Neutral Citation Number: [2021] EWHC 3443 (Ch)

Case No: PT-2019-MAN-000062

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)

Civil Justice Centre
1 Bridge Street West
Manchester, M60 0DJ

Date: 20 December 2021

Before :

His Honour Judge Cawson QC
Sitting as a Judge of the High Court

- -

Between :

PHILIP JOHN MOODY	**Claimant**
- and -	
(1) THE ESTATE OF THE LATE NORMAN JONES	
(2) DANIEL JONES	
(3) MONE (MANCHESTER) LIMITED	
(4) DAJ HOLDINGS LIMITED	**Defendants**

- -
- -

Stephen Connolly (instructed by **Slater Heelis Limited**) for the **Claimant**
Amardeep Dhillon (instructed on a **direct access** basis) for the **Defendants**

Hearing dates: 16-19, 22-24, and 26 November 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, and by release to BAILII. The date and time for hand-down is deemed to be 10.00 a.m. on 20 December 2021.

His Honour Judge Cawson QC:

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Introduction

1. This is a partnership dispute relating to a partnership governed by a partnership agreement entered into as long ago as 20 May 1982 between the late Norman Jones ("**Norman**") (1) and the Claimant, Philip John Moody ("**Philip**") (2) ("**the Partnership Agreement**").

2. Philip seeks a declaration that the partnership as governed by the Partnership Agreement ("**the Partnership**") has been dissolved by a valid notice given by him pursuant to clause 13(iii) of the Partnership Agreement, alternatively by Norman's death, and that he has validly exercised an option pursuant to clause 14 of the Partnership Agreement to purchase Norman's share in the Partnership upon the terms set out in the schedule to the Partnership Agreement, such that he is entitled to specific performance of this option as against Norman's estate, and/or the fourth Defendant, DAJ Holdings Ltd ("**DAJ**"), as assignee of Norman's interest.

3. The Defendants maintain that Philip long ago abandoned his interest in the Partnership and/or is barred by the equitable doctrine of laches from maintaining his claim, alternatively that Norman, prior to his death, served a valid notice of dissolution pursuant to clause 13(iii) of the Partnership Agreement prior to any notice served by Philip, and validly exercised the option provided for by clause 14 of the Partnership Agreement to acquire Philip's share in the Partnership.

4. Issues also arise, amongst other things, as to whether a property known as Chatham Buildings, Chester Street, Manchester ("**Chatham Buildings**") ever formed an asset of the Partnership, and as to the liability of the Second Defendant, Daniel Jones ("**Daniel**"), and the Third Defendant, MONE (Manchester) Ltd ("**MONE**"), to account for income received from Chatham Buildings.

5. By my Order dated 15 July 2021, Daniel was appointed to represent Norman's estate in the present proceedings pursuant to CPR 19.8(1)(b).

6. Philip was represented by Mr Stephen Connolly of Counsel, and the Defendants were represented by Mr Amardeep Dhillon of Counsel, acting on a direct access basis. I am grateful to them both for their helpful written and oral submissions.

Dramatis Personae

7. The following individuals and entities are relevant to the issues that arise for determination:

Name/Definition	**Position**
TH Andrews & Co Ltd ("**TH Andrews**")	The original tenant of second floor of the North Block and the South Block at Chatham Buildings under a lease dated 9 July 1982 and made between Norman and

	Philip (1) and TH Andrews (2) for a term of 999 years from 9 July 1982.
B&S Investments (Manchester) Ltd ("**B&S Investments**")	The present tenant of the first floor of the North Block and the South Block at Chatham Buildings under a lease dated 14 April 1983 for the residue of the term of 999 years from 14 April 1982.
Beard Hall Estates Ltd ("**Beard Hall**")	The freehold owner of Chatham Buildings prior to the purchase thereof by Danebridge/Norman and Philip (also referred to as Lin Foods).
Eli Bourmad ("**Mr Bourmad**")	The original tenant of the first floor of the North Block and the South Block at Chatham Buildings under a lease dated 14 April 1983 and made between Norman and Philip (1) and Mr Bourmad (2) for a term of 999 years from 14 April 1983.
Castletons Accountants Ltd ("**Castletons**")	Chartered Certified Accountants appointed by Norman in relation to the affairs of the Partnership in or about May 2014
Harry Chadwick ("**Mr Chadwick**")	Accountant for the Partnership who practiced as H. Chadwick & Co. and who prepared the Partnership's accounts from the year ended 31 December 1994.
Herondive Limited ("**Herondive**")	The tenant of the ground floor of the South Building under a lease dated 12 March 1987, granting a term of 99 years from 12 March 1987.
Croftons	Solicitors who acted on the purchase of Chatham Buildings and on the establishment of the Partnership in 1981/82.
DAJ Holdings Limited ("**DAJ**")	The Fourth Defendant, being a company incorporated on 24 April 2018, in which Daniel holds 900 shares, and Jordan Slater holds 100 shares, and of which Daniel and Bryan Slater are directors.
Danebridge Engineering Limited ("**Danebridge**")	A company formerly owned and controlled by Norman that has occupied the West Building at Chatham Buildings as a tenant. Now owned by Daniel, who following Norman's death is sole director thereof
Gordon Durward ("**Mr Durward**")	Maintenance man at Chatham Buildings. Witness for the Defendants.
Andrew Ford	Chartered Certified Accountant at Castletons.
Gary Hamilton ("**Mr Hamilton**")	Property developer from Jersey, and Philip's best man. By his company,

	Westminster Estates Ltd, on 18 March 2007, granted a loan facility of £25,001 to Philip to enable him to pay monies to NatWest to prevent the latter from obtaining possession of Chatham Buildings. Together with Mr Leighton and Mr Warner, funding the claim on behalf of Philip.
Carolyn Jones	Daughter of Norman and sister of Daniel.
Daniel Jones ("**Daniel**")	Second Defendant, and Son of Norman. Appointed to act on behalf of the First Defendant, Norman's estate.
Jonathan Jones	Son of Norman and Brother of Daniel Jones. Pastor in Jacksonville, Florida. Witness for the Defendants.
Kidson Impey	Chartered Accountants, who prepared accounts of the Partnership up to 31 December 1993.
Mark Jones	Son of Norman and Brother of Daniel Jones. Made witness statement for the Defendants, but was not called.
MONE (Manchester) Limited ("**MONE**")	Third Defendant. Company incorporated on 2 June 2009. Owned by Daniel, who was appointed as a director on 2 June 2009. Bryan Slater was appointed as a director on 18 December 2018.
National Westminster Bank plc ("**NatWest**")	The Partnership's bankers.
Norman Jones (Deceased) ("**Norman**")	First Defendant, prior to his death on 20 September 2020.
Sheila Jones	Wife of Norman Jones. Made witness statement for the Defendants, but not called as a witness.
John Leighton ("**Mr Leighton**")	Surveyor who provides property management, asset management and property development services. Assisting Philip (including by funding the claim together with Mr Warner and Mr Hamilton). Witness for Philip.
Philip Moody ("**Philip**")	The Claimant.
Percy McCloskey ("**Mr McCloskey**")	Property Developer involved in respect of the potential development of Chatham Buildings between 1999 and 2003. Witness for the Defendants.
Neil Myerson	Solicitors for Philip, circa 1999 to 2001.
Newport Furnishing Ltd ("**Newport Furnishings**")	Secured lender to the Partnership. Granted charge dated 4 January 1994 over Chatham Buildings to secure an advance made to the Partnership to enable

	the latter to settle claim made by Mr Bourmad following a fire at Chatham Buildings.
Restons	Solicitors for NatWest in respect of possession proceedings relating to Chatham Buildings commenced on 11 October 2006.
Sainsburys Solicitors	Solicitors for the Partnership circa 1999.
Martyn Sheppard ("**Mr Sheppard**")	Director of Newport Furnishings. Witness for the Defendants.
John Shorrock ("**Mr Shorrock**")	Maintenance worker at Chatham Buildings. Witness for the Defendants.
Bryan Slater	Former Solicitor who was struck off in 2012 for misusing client funds. Appointed director of MONE on 18 December 2018, and of DAJ on 16 July 2021. Has described himself in correspondence as *"legal adviser"*.
Jordan Slater	Son of Bryan Slater, and shareholder in DAJ.
Walter Ridgeway and Son	Accountants to the Partnership after Mr Chadwick joined this firm. Prepared accounts of Partnership up to 2006.
David Warner ("**Mr Warner**")	Retired Forensic Accountant who is assisting Philip (including by funding the claim together with Mr Hamilton and Mr Leighton). Witness for Philip.
Sheila Wilson ("**Mrs Wilson**")	Former secretary/assistant to Norman. Witness for the Defendants.

Credibility and reliability of the witnesses

Correct approach to the evidence

8. The present case concerns events that took place up to 40 years or so ago. Important parts of the evidence include oral evidence as to discussions contemporaneous with the establishment of the Partnership going back to 1982 concerning the ownership of Chatham Buildings and the respective roles of Philip and Norman in the Partnership, oral evidence of discussions then or shortly thereafter with regard to the grant to Danebridge of a lease of the West Building at Chatham Buildings ("**the West Building**"), and oral evidence as to what may have been said when Philip returned his key to the West Building to Norman in either 1994 or 1999.

9. In the circumstances, it is of particular importance to bear firmly in mind the much repeated observations made by Leggatt J (as he then was) in *Gestmin SGPS S.A. v Credit Suisse Limited* [2013] EWHC 3560 (Comm) at [15] – [22] with regard to the unreliability of memory, and his caution to place limited, if any, weight on witnesses' recollections of what was said in meetings and conversations, and to strive at least to

base factual findings on inferences drawn from the documentary evidence and known or probable facts.

10. Of particular concern in the circumstances of the present case is the ability of a witness, in seeking to recall events that took place a long time ago, to falsely do so, but to do so with genuine conviction and belief that the recollection is accurate. Thus as Leggatt J cautioned in *Gestmin* at [22]: *"… it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."* Allied to this is a concern that a witness seeking to recall events over a significant period of time is liable, in reconstructing those events in his or her own mind, to do so in a way that inaccurately recalls those events in his or her favour, and to exaggerate perceived advantages to his or her own case, but to do so without deliberately giving false evidence.

11. Nevertheless, I take into account the importance stressed by the Court of Appeal in *Kogan v Martin* [2019] EWCA Civ 1645 at [88] of making findings by reference to all the evidence, that is both documentary evidence and witness evidence, placing such weight as the circumstances require on each.

12. Further, in testing what has been said by a witness, it is plainly appropriate to do so as against the inherent probabilities of the relevant situation, and considerations such as the consistency (or otherwise) of a particular witness' evidence with other evidence, the internal consistency of that evidence, and the consistency of that evidence with what the witness might have said on other occasions – see *Kimathi v The FCO* [2018] EWHC 2066 (QB), at [98].

13. I am assisted by the fact that there is a significant amount of contemporaneous documentary evidence going back earlier than 1982 available, against which the oral evidence can be tested. However, I do have to bear in mind that, after this length of time, the documentary evidence is liable not to be complete.

The Claimant's witnesses

Philip

14. Mr Dhillon invites me to find that Philip was an unreliable witness who was prepared not to tell the truth.

15. Particular reliance was placed by Mr Dhillon on what was said by Philip on the morning of the third day of the trial when Philip expressed a concern that he had misled the Court earlier in his evidence with regard to when he returned the key to the West Building to Norman, it having been his evidence in his witness statement and when initially cross-examined thereupon that it was in 1999 rather than in 1994. Mr Dhillon points to fact that Philip went so far as to say that in earlier sticking to what he had said in his witness statement, he had not told the truth and that what he had said was, as Philip himself put it, *"a lie at the end of the day"*. It is said that this taints the rest of Philip's evidence.

16. Specific criticism was made by Mr Dhillon that Philip had, for the first time when under cross-examination, suggested that, as part of the discussions preceding the entry into the Partnership, it had been agreed that Norman would be responsible for the day-to-day management of Chatham Buildings, whereas Philip would be responsible for

pursuing development opportunities. It was submitted that this is simply not credible, and an invention to assist Philip's case.

17. In addition, Mr Dhillon commented on the style in which Philip gave evidence, it being suggested by Mr Dhillon that when Philip was confronted with a proposition that did not assist his case, he remained silent for a long while, before giving a long and rambling answer.

18. Despite these criticisms, I am satisfied that Philip was doing his best to assist the Court with his evidence.

19. As to Philip's contrition on the third day of the trial, I note that the relevant part of his evidence concluded with him saying that the date for the handing back of the key to the West Building *"might have been 1994"*, and that if Daniel had said that that was the date, then that was *"probably right"*. Considering the relevant passage of Philip's evidence as a whole, and as I recall him giving his evidence, I did not take it to be a confession on Philip's part that he had deliberately given false evidence in his witness statement, and earlier under cross examination at trial. Rather that he had reflected overnight on the evidence that he had given, considered that he could not be sure in relation to it in the light of Daniel's evidence, and that he was therefore concerned that he had misled the Court. On the whole, I consider that the relevant part of his evidence pointed to his honesty, rather than the contrary, and that any confusion as to dates was down to the length of time over which the events of the present case have unfolded.

20. So far as concerns Philip's evidence under cross examination that it had initially been agreed that there would be a division of labour as between Philip and Norman such that Philip would be responsible for development aspects, and Norman responsible for day-to-day management of Chatham Buildings, it is certainly right that in giving evidence Philip put this in starker terms than had previously been suggested. However, in closing Mr Connolly drew my attention to paragraph 18 of Philip's witness statement in which he says that his reasoning for agreeing to Norman having the larger 60% share was that he expected Norman to *"do more of the day-to-day running of Chatham Buildings as he would be on site."* Whilst Philip may now be reading rather more than he should into the initial discussions that took place nearly 40 years ago, I do not consider that he was deliberately seeking to mislead the Court.

21. As to the style in which Philip gave his evidence, my impression was that this was a function of the length of time ago that many events took place, rather than Philip pausing for a long period of time so that he could deliberately make things up. This did however lead to a number of Philip's responses coming across as being based on speculation rather than positive recall or other hard evidence. Further, I consider that this also led to Philip giving a number of inconsistent responses, e.g. in respect of his attitude to Norman proceeding with the purchase of Chatham Buildings on his own at one stage in 1982, notwithstanding that Philip had earlier been involved in the purchase, when at one point he said that he did not believe that Norman was acting in an underhand manner, but shortly thereafter suggested that Norman had deceived him.

22. In short, therefore, I consider that Philip was doing his best to assist the Court with his evidence, but that in so far as based on oral recollection dating back many years, I should treat his evidence with considerable caution, particularly if not supported by contemporaneous documentation.

Mr Warner

23. It was suggested by Mr Dhillon that Mr Warner's evidence is tainted by the fact that he has an interest in the outcome of the proceedings. That may be the case, but he came across to me as an honest witness doing his best to assist the Court, and the mere fact that he might have an interest in the proceedings does not mean that it should not be accepted or treated as otherwise unreliable. Indeed, I found Mr Warner to be an impressive witness able to answer questions with clarity and conviction. His evidence is essentially concerned with what he has been able to ascertain from the books and records of the Partnership, rather than with seeking to recollect events that took place many years ago.

Mr Leighton

24. As with Mr Warner, Mr Dhillon maintains that his evidence is tainted by the fact that he has an interest in the outcome of the proceedings, but again that does not mean that it should not be accepted.

25. In fact, Mr Leighton's witness statement only deals with one short point, that is he says that in advance of a meeting arranged for 17 April 2018, having driven into the central courtyard of Chatham Buildings, he expressed an interest to a person, who turned out to be Daniel, in renting some car parking, and was told that the price depended upon whether it was paid for in cash. However, it was put to him under cross examination that in paragraph 45 of a letter dated 20 June 2018, Philip's Solicitors, Slater Heelis, had said that suspicions had been aroused by the fact that at the meeting on 17 April 2018 itself, Daniel had told Mr Leighton that some of the car park income was paid for in cash, and that he offered licensees a discount for cash payments. I note that that is how the matter is also pleaded in paragraph 43(i) of the Re-Amended Particulars of Claim.

26. Mr Leighton, credibly in my judgment, stuck by the account that he had given in his witness statement. Given the vivid nature of his evidence, I consider that any error is more likely to have been in how the matter was recorded in Slater Heelis's letter and the Re-Amended Particulars of Claim, and that it is significant that the substance of the conversation was the same, whenever exactly it took place.

The Defendants' Witnesses

Norman

27. The Defendants put in evidence two witness statements made by Norman prior to his death on 20 September 2020, namely witness statements dated 26 July 2018 and 24 October 2018. These are fairly short and perfunctory, and no very cogent explanation has been provided as to why a more detailed narrative statement was not taken from him prior to his death.

28. Clearly, in assessing the weight to be given to what Norman has said, I must take into account the fact that Philip has not had the chance of cross-examining Norman.

29. A key point of real contention raised by Norman in his evidence is where, in paragraph 7 of his witness statement dated 24 October 2018, he says: *"There was however never*

any intention whatsoever for Philip Moody to have any beneficial interest in [Chatham Buildings]". The basis for him saying this is further developed in paragraphs 8 to 11 of the same statement. This, and the other evidence contained in his witness statements requires to be tested as against the other evidence in the case, and in particular the documentary evidence.

Daniel

30. Daniel now spends most of his time living in Indonesia.

31. It is important to keep in mind that Daniel was only 7 years old when Chatham Buildings was acquired, and the Partnership established in 1982. Although he was present at Chatham Buildings, working with his father, at various stages during the 1990s and thereafter, his involvement with his Father's affairs was limited, at least until he became very much more involved from 2009 onwards. A very significant part of his evidence is therefore derived from the documents, or picked up from he has been told, largely by his Father.

32. In paragraph 5 of his trial witness statement, Daniel says this:

> *"I have been helped by my mother Sheila, to remind me of the past and my co-director in [MONE] to help me assemble my thoughts and the structure of this statement. My evidence is from my own direct knowledge and from relating what [Norman] told me or both. I do not report gossip here. If I say something I believe it to be true and if I speculate I say so. Whatever I say here, referring to Norman or anyone else is what I recall. If my recollection is weak I make it clear."*

33. Under cross examination, Daniel confirmed that the co-director in MONE that he was referring to was Bryan Slater. Bryan Slater was struck off as a Solicitor in 2012. During the course of the trial Mr Connolly, on behalf of Philip, expressed concern with regard to the role played by Bryan Slater in respect of the conduct of the present proceedings, given his involvement and that of his Son, Jordan Slater, in helping to prepare witness statements and otherwise assisting the Defendants in their defence of the present proceedings, as well as providing advice to the Defendants going back to 2018. There may some force in Mr Connolly's concerns, but I do not consider it appropriate for me to say any more with regard to Bryan Slater's or Jordan Slater's involvement without knowing more precisely what their role has been, and without having heard from them with regard to the scope of the prohibition on engaging in reserved legal activities. .

34. However, of concern from a forensic perspective is the way in which Daniel's witness statement has been put together. The witness statement seeks to deal with events going back to 1981 and the lead up to the purchase of Chatham Buildings, and Norman's entry into the Partnership. The exercise deployed of bringing together the recollections of Sheila going back many years and what Daniel might have been told by Norman, and seeking to tie that in with the documents is liable to rendered inherently unreliable by the forensic difficulties identified by Leggatt J in *Gestmin*, including the subconscious creation of false memories to bolster a case and the application of confirmation bias. Evidence derived from this process must therefore be treated with great care.

35. There are aspects of Daniel's evidence that have caused me some concern, in particular:

i) Where Daniel maintains that Norman always thought that he owned Chatham Buildings outright, with Philip or the Partnership having no interest therein – see e.g. Paragraphs 20 and 33 of his witness statement, when there is clear evidence that Norman had historically recognised that Philip, through the Partnership, did have an interest in Chatham Buildings – see e.g. Norman's letter to HM Land Registry dated 16 December 1999;

ii) Daniel's detailed description in paragraph 79 et seq of his witness statement as to the circumstances in which Philip returned his key to the West Building at Chatham Buildings, which strikes me as unrealistically vivid after this length of time;

iii) Daniel's inability satisfactorily to explain the basis which monies that he and/or MONE received from the collection of rents at Chatham Buildings from and after 2009 were received, and were accounted to for to the Partnership, or to Norman; and

iv) Daniel's involvement in a management agreement entered into with Norman in May 2018 that I refer to below ("**the 2018 Management Agreement**").

36. However, having raised these concerns, I do not consider that Daniel, in giving evidence, set out to give false evidence. I note that he did, in the course of cross-examination, make a number of concessions, and I did not detect that he was being deliberately evasive. Rather, I formed the view that he was giving an honest account of events, and I consider that his inability to provide cogent explanations to a number of questions was essentially down either to his inability properly to recall, or a lack of understanding of the relevant events.

37. Unfortunately, I consider that his evidence taken as a whole does suffer from the vice that I have identified in paragraph 34 above, and that in an attempt to recall events that took place many years ago, a false, or at least inaccurate narrative has been created in a number of respects through subconsciously recalling events in a way favourable to the Defendants' own case. This is, to my mind, particularly demonstrated by the evidence as to Norman's belief that Philip had no interest in Chatham Buildings to which I return to below.

Sheila Wilson

38. Mrs Wilson was Norman's secretary/assistant, and clearly worked closely with Norman such that she had a fairly intimate knowledge of his affairs. However, she ceased to work with Norman some 20 years ago in 2000 or 2001, and had little involvement with him thereafter. Further, it is clear that she had little time for Philip, regarding him as a *"hanger on"*, and someone who did not pull his weight so far as Chatham Buildings was concerned. I therefore have a concern as to the reliability of her evidence as to detail after this length of time, and as to the real risk of false recollection.

39. This is, in my judgment, particularly so with regard to her evidence regarding the purchase of Chatham Buildings. I am troubled by what she said in paragraph 25 of her witness statement about having been *"shown evidence"* of a NatWest mortgage and bank statements "*showing that Danebridge paid a £6,000 deposit with the balance funded on mortgage."* No such mortgage has been disclosed, and neither has a bank

statement showing Danebridge paying a deposit of £6,000. It is therefore unclear how she could have come to say what she did. What have been disclosed, as referred to further below, are bank statements of Danebridge showing the payment by Danebridge on 18 May 1982 of £54,000, being the balance of the purchase price of Chatham Mills, and showing the Partnership then paying Danebridge £60,000 on 17 June 1982. However, Mrs Wilson makes no reference to the latter, and I am concerned that documents have been selectively provided to Mrs Wilson to assist a recollection favourable to the Defendants that only tells part of the story.

40. Having said this, I do not consider that Mrs Wilson has done anything other than seek to assist the Court as best as she can with her recollection of events. Further, her evidence that, by 1999, if not considerably earlier, both she and Norman had become concerned and annoyed that Philip was not, from their perspective, pulling his weight so far as Chatham Buildings was concerned, is borne out by the contemporaneous documentation.

Percy McCloskey

41. Mr McCloskey, who is a developer, was involved between 1999 and 2003 in providing advice in relation to the potential development Chatham Buildings, and in particular the West Building, in circumstances that I will return to in more detail in due course.

42. Prior to making his statement dated 13 July 2021, he was approached by Bryan Slater to make a witness statement some 18 or 19 years after he had last had anything to do with Chatham Buildings or the Partnership. According to Mr McCloskey, Bryan Slater asked him to give his version of events from memory without reference to any documents, after which Bryan Slater drafted a witness statement based thereupon for him to approve. Mr McCloskey then approved the draft statement after having made some *"slight amendments"* thereto, as he put it. After having made his witness statement, being that now before the Court, Mr McCloskey discovered a file of documentation relating to his involvement dating between 1999 and 2003, which has been produced as a separate bundle for the present trial. Mr McCloskey was not, prior to trial, asked to review his witness statement in the light of the documents that he had subsequently found.

43. In cross examination, Mr Connolly initially asked Mr McCloskey whether there was anything in his witness statement that he wished to correct. Mr McCloskey identified nothing of substance.

44. In paragraphs 16 to 19 of his witness statement, Mr McCloskey describes his first meeting with Philip, and does so in negative terms suggesting that Philip was more interested in arguing with Norman than seeing the commercial development of Chatham Buildings, and that he was, amongst other things, *"intransigent"*. However, Mr McCloskey was taken by Mr Connolly to a contemporaneous fax dated 23 July 2001, in which he had reported to Norman in respect of this meeting. In this fax, Mr McCloskey recorded Philip as *"very keen to support this development"* , and the fact that *"Philip was very keen to hear where we had got to with plans and planning permission."*

45. When challenged as to this conflict, Mr McCloskey, somewhat unconvincingly, sought to explain that he wrote in these terms despite the impression that he might have reached

with regard to Philip because he did not wish to portray a negative impression to Norman that might put Norman off pursuing the development of Chatham Buildings.

46. In the circumstances, I consider that I must treat Mr McCloskey's evidence with some caution unless supported by the contemporaneous documentation. I am, however, prepared to accept his evidence that his own contemporaneous perspective was that the reason why development did not proceed at that time was because of the stand being taken by Philip to which I shall return.

John Shorrock

47. Mr Shorrock has been involved in carrying out maintenance works at Chatham Buildings since 1999. In paragraph 5 of his witness statement he says that he has been helped by Daniel to remind him of the past and to help him assemble his thoughts. As to the process by which he made his witness statement, he said under cross examination that he spoke to Jordan Slater, and told him all that he knew, and that Jordan Slater then prepared a witness statement, that Mr Sharrock signed and approved without making any changes.

48. I found Mr Shorrock to be an honest and straightforward witness doing his best to assist the Court. However even though his evidence includes reference to more recent events, the relevant matters in respect of which he gives evidence took place some considerable time ago. Particularly given the circumstances in which his witness statement came to be made, I must treat his evidence with some care if not otherwise corroborated.

Gordon Durwood

49. Mr Durwood has carried out maintenance work at Chatham Buildings. His first involvement at Chatham Buildings dates back to 1989, but it is clear from his witness statement that the level of his involvement has varied considerably over the years.

50. Mr Durwood currently describes himself as Daniel's *"Number 2"*, and given Daniel's absence for most of the time in Indonesia, he is the person now actually overseeing Chatham Buildings on a regular basis in his absence.

51. In a similar way to Mr Shorrock, Mr Durward says that he has been helped by Daniel, who is said to have reminded him of the past and helped him to assemble his thoughts. Further, his witness statement was prepared in the same way as Mr Shorrock's witness statement.

52. Again, I found him to be an honest and straightforward witness doing his best to assist the Court, but subject to the same caveats as in the case of Mr Shorrock given the passage of time, and the circumstances in which his witness statement came to be made.

Jonathan Jones

53. Jonathan has lived in the USA since 1990, and since then has only visited the UK very rarely.

54. I have no doubt that he was an honest witness doing what he considered to be his best to assist the Court. However, he faced the difficulty of seeking to give evidence in

relation to events that took place many years ago, in respect of which he had limited if any actual involvement.

55. Further, his recollection has, in my judgment, clearly been subconsciously affected by a bias in favour of the Defendants.

56. This latter point is illustrated by his evidence under cross examination that Norman, his Father, told him that he had purchased Chatham Buildings. Further, at paragraph 10 of his witness statement he said: *"My Dad paid for the mill, not Philip"*. As to this latter proposition, Jonathan was challenged under cross examination by Mr Connolly who took him to the £60,000 credit in Danebridge's bank statements showing the Partnership to have paid £60,000 to Danebridge on 17 June 1982. Jonathan was unaware of this credit, and unable to explain it. This, to my mind, wholly undermines his evidence that Norman, and not Philip, if that was being suggested, had paid for Chatham Buildings. This has led me to conclude that any recollection that Jonathan might have had of his Father having informed him that he had purchased the mill is a false recollection, at least to the extent that Norman might have done so in terms that he was, at least after mid June 1982, the sole purchaser.

Martyn Sheppard

57. Mr Sheppard's witness statement was prepared by Bryan Slater following a conversation with Mr Sheppard. Bryan Slater produced a draft, which Mr Sheppard altered and sent back.

58. Subject to the usual caveat as to the passage of time bearing in mind that Mr Sheppard's involvement dates back to 1994, I found Mr Sheppard to be an honest and straightforward witness doing his best to assist the Court.

Principal issues for determination

59. The principal issues for determination in the present case are the following:

    i) Whether Chatham Buildings was an asset of the Partnership, or whether it belonged beneficially solely to Norman;

    ii) Whether the Partnership was determined by reason of Philip abandoning the Partnership and ceasing to play any part in the management and operation of Chatham Buildings in October 1994, October 1999, 2007, 2009 or 2012;

    iii) If Philip did abandon the Partnership on any of the dates referred to in sub-paragraph (ii) above, was the effect thereof that:

        a) Philip is to be treated as barred from making any claim in respect of the Partnership or its assets, by laches or otherwise; or

        b) Is the effect thereof to give rise to a general dissolution, and the grant of the usual partnership dissolution relief;

    iv) If the Partnership still subsisted as the date thereof, was the notice of dissolution served by Norman on 20 April 2018 a valid and effective notice of dissolution served pursuant to clause 13(iii) of the Partnership Agreement, containing a

valid notice pursuant to clause 14 of the Partnership Agreement exercising the option provided for thereby to purchase Philip's share in the Partnership;

v) If the Partnership still subsisted as the date thereof, was the notice of dissolution served by Philip on 14 December 2018 a valid and effective notice of dissolution served pursuant to clause 13(iii) of the Partnership Agreement, containing a valid notice pursuant to clause 14(ii) of the Partnership Agreement exercising the option provided for thereby to purchase Norman's share in the Partnership;

vi) If the Partnership still subsisted as the date thereof, was the notice of dissolution served by Philip on 21 June 2019 a valid and effective notice of dissolution served pursuant to clause 13(iii) of the Partnership Agreement, containing a valid notice pursuant to clause 14(ii) of the Partnership Agreement exercising the option provided for thereby to purchase Norman's share in the Partnership;

vii) If Philip has served a valid notice pursuant to clause 14(ii) of the Partnership Agreement exercising the option to purchase Norman's share in the Partnership, either as a result of the service of one of the notices of dissolution referred to in sub-paragraphs (v) and (vi) above, or if following Norman's death a valid notice has been served pursuant to clause 14(iii) of the Partnership Agreement, should the purchase price provided for by paragraph (e)(i) of the schedule to the Partnership Agreement be calculated by reference to:

a) A valuation of Chatham Buildings as at the date of dissolution; or

b) The book value of Chatham Buildings, and if the book value of Chatham Building, as to what book value should be used.

viii) Whether, and if so to what extent and upon what basis Norman's estate is liable to account to the Partnership or otherwise to Philip for rents and profits received by Norman or his estate from Chatham Buildings from approximately 2009.

ix) Whether, and if so to what extent and upon what basis (as constructive trustee or otherwise), Daniel and/or MONE are liable to account to the Partnership or otherwise to Philip for rents and profits that they have received from Chatham Buildings from approximately 2009.

Partnership Agreement

60. The Partnership Agreement dated 20 May 1982, provided, so far as is relevant, as follows:

i) The recital thereto referred to it being agreed that the parties *"shall be partners in the business of Property Managers upon the terms hereinafter contained."*

ii) By clause 1 it was provided that the Partnership business should be carried on under the firm name of *"Chatham Estates"* at fifth floor, 89 Oxford St, Manchester and at such other place or places as the Partners may from time to time approve.

iii) By clause 3(i), it was recorded that the initial capital of the Partnership was £100 which had been contributed by Philip and Norman in the respective proportions of four tenths and six tenths.

iv) By clause 4, it was agreed that each of Philip and Norman was entitled to interest at a rate of 10% per annum on the amount for the time being of their respective shares of the capital of the Partnership with such interest to be credited to them each year before the division of profits.

v) By clause 5, it was agreed that the profits and losses of the Partnership (including profits and losses of a capital nature) should belong to and be borne by Philip and Norman in the respective proportions of four tenths and six tenths.

vi) By clause 6 (iii), it was agreed that Philip and Norman were entitled to draw out of the bank account of the Partnership their respective share of the profit of the Partnership at half yearly intervals after the accounts for such respective half years had been prepared and signed by each of them in accordance with clause 8 of the Partnership Agreement.

vii) By clause 7, it was agreed that the usual books of account for the Partnership should be kept and properly posted up.

viii) By clause 8, it was agreed that during its subsistence, an account of all of the assets and liabilities of the Partnership including a balance sheet and profit and loss account would be taken on 20 May and 20 November in each year showing the amount due to each of Philip and Norman.

ix) By clause 9(ii), it was agreed that all monies belonging to the Partnership including cheques not required for current expenses of the Partnership would be paid promptly into the bank account of the Partnership.

x) By clause 11, it was agreed that each of Philip and Norman would be just and faithful to the other and would diligently attend to the business of the Partnership.

xi) By clause 12, it was agreed that neither Philip nor Norman would without the consent of the other engage in any other business other than that of the Partnership.

xii) By clause 13(i), provision was made for the Partnership to be determined by either partner giving to the other not less than three months notice in writing expiring on 20 May or 20 November in any year.

xiii) By clause 13(iii), provision was made for dissolution of the Partnership by service of a notice in writing by either Philip or Norman on the other in, amongst others, the following circumstances:

a) By sub-clause (c), in the event that either Philip or Norman committed *"any grave or persistent breaches of"* the Partnership Agreement.

b) By sub-clause (d), in the event that either Philip or Norman failed to pay any monies owing by him to the Partnership within 14 days of payment being requested in writing by the other partner.

c) By sub-clause (e), in the event that either Philip or Norman was *"guilty of any conduct likely to have a serious adverse effect upon the partnership business."*

xiv) By clause 14(i), it was agreed that in the event of the Partnership being dissolved by notice being given under clause 13(i), then the partner receiving that notice would have the option of the purchasing the other partner's share in the Partnership on the terms of the schedule to the Partnership Agreement, subject to such option having been exercised by notice in writing given at any time prior to the dissolution of the Partnership.

xv) By clause 14(ii), it was agreed that in the event of the Partnership being dissolved by notice being given under clause 13(iii), then the partner giving that notice would have the option of the purchasing the other partner's share in the Partnership on the terms of the schedule to the Partnership Agreement, subject to such option having been exercised in the notice given under clause 13(iii).

xvi) By clause 14(iii), it was agreed that upon the death of either Philip or Norman the survivor would have the option of the purchasing the other's share in the Partnership on the terms of the schedule to the Partnership Agreement, subject to such option having been exercised by notice in writing given to the personal representatives of the deceased during the period of 2 months following his death.

xvii) By clause 14(iv), it was agreed that if any option under clause 14 was exercised then the provisions of the schedule to the Partnership Agreement would apply but otherwise that the affairs of the Partnership would be wound up in accordance with the provisions of the Partnership Act 1890.

xviii) By clause 17(ii), it was recorded that the expression *"the Purchaser"* in the schedule to the Partnership Agreement was to mean the partner who exercised the option under clause 14.

xix) By clause 17(iii), it was recorded that the expression *"the Vendor"* in the schedule to the Partnership Agreement was to mean the partner whose share of the Partnership had been or was to be purchased pursuant to the option under clause 14 and that where the circumstances so required the expression was to include a reference to that partner's personal representatives.

xx) By clause 17(iv), it was recorded that the expression *"the date of dissolution"* was to mean the date upon which the Partnership was dissolved.

xxi) The schedule to the Partnership Agreement provided as follows:

a) By paragraph (a) for the preparation *"as quickly as reasonably practicable"* of a balance sheet and profit and loss account for the period

from when the last account of the Partnership was taken down to the date of dissolution.

b) By paragraph (d), *"upon the request of the Vendor or the Purchaser made within three months following the date of dissolution any freehold or leasehold property comprised in the partnership property shall be valued as at the date of dissolution by a value agreed upon between the Vendor and the Purchaser or in default of such agreement appointed by the President of the Royal Institution of Chartered Surveyors …"*

c) By paragraph (e), for the calculation of the purchase price, being the amount shown standing to the credit of the Vendor's capital account and the balance sheet prepared as at the date of dissolution adding or subtracting as the case may be any difference in valuation of freehold or leasehold property of the Partnership arising by reason of any valuation undertaken pursuant to paragraph (d) of the schedule.

d) By paragraph (f), goodwill of the Partnership was deemed to be nil.

e) By paragraph (g), for the payment of the purchase price by the purchaser to the vendor by five equal annual instalments with the first instalment being payable 12 months from the date of dissolution and the further four equal instalments being payable on the following four anniversaries of the payment of the first instalment but such that if any instalment should be in arrears for more than 28 days the whole amount of the balance thereof then outstanding should become due and payable and bear interest as provided for thereby.

Background

61. Chatham Buildings is a large former cotton mill constructed in the 1820s, which is divided into a number of sub-buildings, the North Building, the West Building, the South Building, and the East Building.

62. Norman had, from the 1970s if not earlier, carried on a number of engineering businesses from Chatham Buildings, including that carried on by his company, Danebridge. At all relevant times prior to the entry by Norman and Philip into the Partnership Agreement, Danebridge had been a tenant of the West Building from the freeholder, Beard Hall.

63. It is common ground that Norman and Philip met a few years prior to their entry into the Partnership Agreement through the Full Gospel Businessmen's Fellowship ("**FGBF**"), a Christian businessman's organisation, which had a branch in Manchester in which both Norman and Philip were involved. At the time of their entry into the Deed of Partnership, Norman was in his early 50s, and Philip was in his early 30s, there being a difference of about 20 years in their ages.

64. At the time that they met, Philip had been involved in property development through a family company, Hoyle Investment Company Limited ("**Hoyle**"), which appears to have traded from the address specified in clause 1 of the Partnership Agreement as the address of the Partnership. Further evidence as to Philip's involvement in property

development as at the time that he met Norman is provided by the contents of a letter dated 29 January 1991 addressed *"TO WHOM IT MAY CONCERN"* by Kidson Impey, the Partnership's accountants.

65. By Summer 1981, Norman had entered into negotiations to purchase Chatham Buildings, or at least the West Building, from the freeholder, and he must have mentioned this to Philip. As evidenced by a letter from Croftons dated 9 October 1981, by the date of that letter both Philip and Norman were expressing an interest in purchasing the Chatham Buildings, and Croftons had, seemingly on behalf of Philip, written to other tenants thereof with a view to negotiating terms for the grant to these tenants of long (999 year) leases of the parts of Chatham Buildings that they occupied. Philip's evidence was that this was seen as a way of recouping a significant part of the purchase price that would be paid for the freehold title to Chatham Buildings. This does seem to be borne out by further correspondence sent by Croftons to the tenants in question, which included Danebridge.

66. The partner at Croftons dealing with the matter, Jeff Palmer ("**Mr Palmer**"), knew both Philip and Norman through the FGBF.

67. The correspondence from Croftons further shows that by early 1982, if not earlier, Philip was looking to purchase Chatham Buildings himself, without Norman joining in the purchase, but that at a later stage, in or about April 1982, Norman stepped in place of Philip because Philip had not, himself, proceeded at that point with the purchase. As I have already mentioned, Philip gave somewhat ambiguous evidence as to his attitude towards Norman at this point, at one point appearing to accept that Norman had not acted in an underhand manner in proceeding without him, but shortly thereafter suggesting that he had been deceived by Norman.

68. Whatever the precise circumstances, the documentary evidence is clear that Danebridge did proceed with the purchase of Chatham Buildings in that a completion statement naming Danebridge as purchaser has been produced referring to a purchase price of £60,000 (including a deposit of £6,000), and Danebridge's bank statement in respect of its account with NatWest shows a debit of £54,000 on 18 May 1982, with the £54,000 payment being funded by an increase in the overdrawn balance shown on Danebridge's bank statement.

69. However, the contemporaneous documentary evidence further shows the following:

    i) On 27 May 1982, Mr Palmer of Croftons wrote to Norman informing him that a Mr Radcliffe, who I understand to be Norman's accountant, had advised the creation of a partnership between Norman and Philip, with the name *"Chatham Estates"*. The letter also refers to the wish of Norman's accountant that the *"proceeds of sale"* be vested *"into Chatham Estates"*, and reference is made to there being an *"immediate transfer to Chatham Estates whose name the property will finally be registered."*

    ii) On 28 May 1982, Mr Palmer wrote again to Norman, referring to a further lengthy discussion with Mr Radcliffe and highlighting the need to arrange for the legal title of Chatham Buildings to be registered: *"in the name of the partnership that you will be entering into with Mr Moody."* The letter went on to say that NatWest agreed in principle to this but would: *"require a Charge*

from Philip Moody to replace the existing Charge that you have given in favour of Danebridge". The letter further mentioned that TH Andrews wished to complete, i.e on the grant of a long (999 year) lease.

iii) On the same day, 28 May 1982, Mr Palmer wrote to Philip to inform him that Mr Palmer understood that: *"it is proposed that you and Norman form a partnership to handle the purchase and subsequent sub-sales and Leases in respect of Chatham Buildings."*

iv) On 4 June 1982, Croftons wrote to a user of car parking spaces at Chatham Buildings informing them that they acted for *"Chatham Estates, who have recently purchased the above premises … "*

v) On 11 June 1982, Mr Palmer of Croftons wrote to Norman and Philip enclosing copies of a draft Partnership Deed for consideration. This suggests that the Partnership Deed, when signed at some point after this letter dated 11 June 1982, was backdated to the date shown on the Partnership Agreement, 20 May 1982.

vi) Danebridge's bank statement shows a transfer into its account on 17 June 1982 of £60,000 from "CHATHAM EST". It is not seriously in dispute that this sum of £60,000 was funded by way of a facility granted by NatWest to Norman and Philip, secured by way of a charge over Chatham Buildings as anticipated by Croftons letter dated 20 May 1982. Although the relevant charge has not been produced, it was relied on by Nat West in bringing possession proceedings in 2005;

vii) An office copy of the register of title shows Norman and Philip to have been registered as proprietors on 9 July 1982. Reference is made to a transfer dated 28 May 1982 between Beard Hall (1) and Norman and Philip (2);

viii) The lease of the second floor of the North Block and the South Block to TH Andrews for a term of 999 years was granted on 9 July 1982, the date on which Norman and Philip were registered as proprietors.

70. It is common ground that there were discussions between Norman and Philip leading up to the entry into of the Deed of Partnership, the payment by Chatham Estates to Danebridge of £60,000 and the transfer of Chatham Buildings into the joint names of Norman and Philip.

71. It was Philip's evidence that Norman initially sought a 90% share, but ultimately agreed to a 60% share, which Philip said that he was, with some reluctance, prepared to accept bearing in mind that Norman, with his business being on site, was likely to have more involvement in the day-to-day running of Chatham Buildings. As I have mentioned, Philip was, under cross examination, rather more specific, suggesting that it was, at this initial stage, agreed that Philip would take responsibility for development matters going forward, and that Norman would assume responsibility for the day-to-day running of Chatham Buildings. This is disputed by the Defendants.

72. Apart from the question of beneficial ownership, to which I shall return when determining the principal issues that arise for determination in this case, there are other issues between the parties as to the basis and reasoning behind the purchase of Chatham

Buildings, and as to whether at this initial stage it was agreed that the Partnership would grant a long lease of the West Building to Danebridge.

73. As to these other issues, it is the Defendants' case that the development of Chatham Buildings was not, at least initially, a significant motivating factor behind the purchase. It is said that this is evidenced by the intention to grant a number of long leases, which it is said would have frustrated the development of Chatham Buildings as a whole at least, and that listed building status was sought following the purchase. Mr Moody's evidence was that development was at least a significant motivating factor, evidenced, not least, by his own involvement as somebody with development experience.

74. As to the grant of a long lease to Danebridge, it was Philip's evidence that this formed no part of the initial discussions, but that some time following purchase, Norman had a need for collateral to support the business of Danebridge, and that very much as a concession to Norman, Philip agreed to the grant of a long lease of the West Building to Danebridge, which was granted on 30 September 1983 ("**the Danebridge Lease**"). The Defendants maintain that this was always part of the initial discussions that led to the bargain reached in relation to the respective partnership shares. Reliance is placed by the Defendants upon a manuscript note made by Norman on or about 12 May 2005 explaining matters under the heading *"Truth"*, to which I will return.

75. As initially envisaged on purchase, other long leases of parts of Chatham Buildings were granted, namely a lease of the first floor of the North Block and the South Block to Mr Bourmad for a term of 999 years from 14 April 1983, and, a lease of the ground floor of the South Building to Herondive for a term of 99 years from 12 March 1987.

76. So far as the basis for the purchase of Chatham Buildings is concerned, and whether or not future development was a significant reason behind the same, and whether a specific demarcation of responsibilities was agreed between Norman and Philip at the time, I consider it likely that the position in 1982 was rather less clear-cut than either side now seeks to suggest.

77. An objective plainly was to grant a number of long leases so as to recoup a significant part at least of the purchase price. However, subsequent events that I shall identify demonstrate that even after the grant of the long leases in question, there remained development potential which I am satisfied that the parties always had in mind, and wished ultimately to exploit.

78. Although the recitals to the Partnership Agreement talk in terms of the business of *"Property Managers"*, this could mean many things. Given the potential for development, and the intention to grant long leases of significant parts of Chatham Mills, I consider it unlikely that Norman and Philip, at the time that they acquired Chatham Buildings, considered that it would require very significant day-to-day management.

79. In the circumstances, I consider that whilst Philip may well have been prepared to agree to a 60:40 split in partnership shares because he foresaw that Norman, being on site and by reason thereof being best placed to oversee the day-to-day management of Chatham Buildings, I consider it unlikely that there was specific agreement at that stage as to roles, although I consider that the anticipation is likely to have been that Philip, coming to the Partnership with his development expertise, would in practice take the lead with

that particular aspect of the Partnership's business, with Norman taking the lead with day-to-day management for the above reasons.

80. So far as the Danebridge Lease is concerned, it is not easy after this length of time, and on the evidence available, to resolve the disputes of fact that exist in relation to the matters that I have identified above. I note that the Croftons correspondence in 1981 had made reference to a grant of a long lease to Danebridge in the context of a purchase of the freehold by Philip, although I consider it likely that if any firm and settled agreement had been reached in respect thereof at the time of the purchase of the freehold in the joint names of Norman and Philip, then a long lease would have been granted contemporaneously with, or shortly after Norman and Philip were registered as proprietors of the freehold. I consider it more likely that the basis for the grant of a lease to Danebridge was discussed later, and nearer to the date of the lease itself. The basis on the which the Danebridge Lease was granted subsequently became relevant in the context of development proposals pursued with Mr McCloskey between 1999 and 2003, and Norman's attitude to Philip at that time, when Philip considered that what he viewed as his generosity to Norman in respect of the granting of the Danebridge Lease was not reflected in Norman's attitude towards him, and what Philip viewed as a very hard-nosed approach that Norman was taking when it came to recognising Philip's interest in the West Building for the purposes of development.

81. Whatever may have been anticipated on purchase of Chatham Buildings, it is common ground that whilst it was possible to proceed with the long leases that were entered into, matters were thrown off course by a serious fire in December 1984 that significantly damaged the South Building, and in particular the premises occupied by Mr Bourmand, and his company Elibee Manufacturing Ltd. An insurance claim was put in, and significant repair and refurbishment works were carried out. Philip spent considerable time thereafter supervising the removal of debris and the work being carried out, as well as dealing with tenants in respect thereof, for which he was paid a wage. Thereafter, Philip was engaged in respect of other work at Chatham Mills for which he continued to be paid a wage. After that, he was involved in the work generated by disputes with tenants that had arisen in relation to the reinstatement work carried out following the fire.

82. Mr Bourmand brought proceedings complaining that the refurbishment works not been properly carried out. These proceedings were ultimately settled in 1994 upon terms that the Partnership paid Mr Bourmand the sum of £60,000, which it borrowed from Newport Furnishings, following an approach made by Philip to Mr Sheppard, or rather perhaps Mr Sheppard's father, who Philip knew through the FGBF. As security for this loan, Norman and Philip granted a charge dated 4 January 1994 over Chatham Buildings in favour of Newport Furnishings. It is to be noted that this charge, as executed by Norman and Philip, refers to them executing it *"as beneficial owners"*. This charge remains outstanding, and very considerable sums remain outstanding under it.

83. I note that in paragraph 17 of his witness statement, Mr Sheppard explains what he had ascertained prior to Newport Furnishings agreeing to make the loan that it did, saying this:

> *"17 They planned to redevelop the site and that's how they were going to repay. Philip was driving a redevelopment and was convinced of getting planning*

> *to turn the mill into apartments and redevelop. They already had feasibility studies and estimated costings done. Seeing the studies encouraged us to lend. If they were going to redevelop they would have the money to pay back."*

84. This provides cogent evidence that by 1994, at least, the redevelopment of Chatham Buildings was something that was being pursued, and that Philip was taking the lead in respect thereof.

85. There are a number of further matters in respect of the years leading up to 1994 that it is necessary to refer to.

86. Kidsons Impey's letter dated 29 January 1991 referred to above refers to Philip being a partner in Chatham Estates, who are described as the owners of Chatham Buildings. Before setting out a history of Philip's involvement in development, it refers to the fact that it was proposed that Chatham Buildings be developed into student accommodation, and to the fact that cash flow projections and income potential statements had already been prepared by the Partnership.

87. This, to my mind, provides further evidence of an intention to develop Chatham Buildings, and Philip's intended leading role in connection therewith.

88. Apart from a profit and loss account for the period ended 31 December 1983, the oldest set of accounts of the Partnership that has been produced are accounts prepared by Kidsons Impey for the year ended 31 December 1991. These have been signed by both Norman and Philip, and include as a fixed asset *"Property at Cost"* with a value of £20,158, the same figure appearing in the column relating to the previous year (1990). The profit and loss account shows rent and service charges received of £31,838, as against expenses of £38,315.

89. The balance sheets for the next two financial years have also been produced, again showing a *"Property at Cost"* figure of £20,158.

90. It is Philip's case that this figure of £20,158 represents the price paid for Chatham Buildings by the Partnership (£60,000), after giving credit against the same for the premiums received on the grant of the long leases. Unfortunately, there are no workings available in order to confirm whether or not this is the case, and Daniel suggested during the course of his cross-examination that the figures did not add up. On the other hand, it is the Defendants' case that this figure only represents the West Building, but no cogent explanation has been provided as to why the accounts might have included the West Building, but not other parts of Chatham Buildings.

91. It is the Defendants' case that in about October 1994, Philip *"abandoned"* the Partnership. In paragraph 11 of the Re-Re-Amended Defence, it is alleged that Philip did this by handing back his keys to Chatham Buildings to Norman, and indicating that he would be working for the Federation of Small Business in Knutsford, and not the Partnership thereafter. It is then alleged that, whilst prior to 1994 Philip had been involved in the listing of Chatham Buildings, and helping with the litigation brought by tenants and otherwise in respect of the 1984 fire, he played no active or detailed role in the affairs of management of the Partnership thereafter. It is thus alleged that by his conduct, Philip induced Norman to believe that he had *"abandoned"* the Partnership,

and that Norman accepted the same, and relied thereupon by managing Chatham Buildings without interference or objection from Philip until notification of the dispute in relation to the present proceedings.

92. Philip, on the other hand, whilst accepting that he did begin to work for the Federation of Small Business in or about 1994, says that this was only on a part-time basis until 2000 as evidenced by a letter from the Forum of Private Business dated 9 November 2000 offering him a position starting on 13 November 2000. Further, whilst Philip accepts that a key that he had to the West Building was returned to Norman, he says that this was because Norman demanded that he return the same. As to when Norman demanded the return of the key, Philip said in his witness statement that this was in 1999, and not 1994 - although, as I have said, having initially stood by the date of 1999 under cross examination, on reflection he considered that it might have been in 1994. In any event, Philip considered that he had acted stupidly in giving the key to Norman when asked to do so, and made the point that this was to the West Building which Danebridge used for its business. Further, Philip denied that he ceased attending at Chatham Buildings having return the key to Norman, and he emphatically denies having *"abandoned"* the Partnership and his interest therein, including in Chatham Buildings.

93. Whatever may have occurred in October 1994, documentation has been disclosed in the form of a letter dated 21 February 1995 whereby Downs and Variava, a firm of Architects, Planning Consultants, and Building Surveyors etc., wrote to Philip saying that they had tried to contact him with regard to fixing up an appointment. There are then subsequent letters dated 8 June 1995 from Downs and Variava to both Philip and Norman under the heading *"Chatham Mills Proposals"* with regard to a meeting at Chatham Buildings on 12 June 1995. Further, there has been produced a letter dated 24 January 1997 from Global Developments Ltd to Downs and Variava headed *"Re: Chatham Mills"*, which refers to an appraisal of *"the above property"* , and to the sender being interested in asking if the clients could hold on until April when he would have more time to investigate. The letter is marked as copied in to Philip.

94. Further, on 26 January 1996, Norman wrote to Philip enclosing a copy of the Partnership's accounts for 1993-94 and 1994-1995, and setting out a proposal with regard to refinancing liabilities of the Partnership with Bradford and Bingley.

95. Accounts of the Partnership for the three years ended 31 December 1994, 31 December 1995, 31 December 1996 were prepared for the Partnership by H. Chadwick & Co (Mr Chadwick), who subsequently produced accounts for the Partnership for each of the succeeding years up to 31 December 2006. It is to be noted therefrom that:

    i) The three years accounts up to the year ended 31 December 1996, and the accounts produced in respect of subsequent years include a balance sheet which continues to refer to a *"Property at cost"* figure of £20,158.

    ii) A number of the accounts that have been produced have been signed by <u>both</u> Philip and Norman, including those for the years ended 31 December 1999, 31 December 2000, and 31 December 2003, and the documentation suggests that the accounts were routinely sent each year to Norman and Philip for approval and signature.

iii) The accounts for the years ended 31 December 1999, 31 December 2000, 31 December 2001, 31 December 2002, and 31 December 2003 showed the profits as divisible between Norman and Philip.

96. Whilst in paragraph 12 of the Re-Re-Amended Defence it is admitted that Partnership accounts were sent to Philip until 2006, it is alleged that such accounts were sent *"in error"*. It is not explained how this *"error"* came about.

97. Mr McCloskey came on the scene in or about September 1999. In his witness statement, Philip referred to having been introduced to Mr McCloskey through John Quine, and that he, Philip, introduced Mr McCloskey to Norman in 2000. Mr McCloskey, on the other hand, says that Mr Quine rang Norman, and introduced Norman to Mr McCloskey, although under cross examination he was somewhat less clear as to whether he had, in fact, introduced Norman to Mr McCloskey rather than Mr Quine having effected the introduction.

98. However, the first relevant document relating to Mr McCloskey's involvement is a letter dated 29 September 1999 from Mr McCloskey to Norman, which was not copied in to Philip, and which put forward a development proposal that excluded Philip.

99. It was Philip's evidence that his relationship with Norman had deteriorated by late 1999, with Norman making unwarranted assertions as to Philip having done nothing to help him in relation to Chatham Buildings and as to the whole burden of Chatham Buildings falling on him.

100. On 22 November 1999, Philip wrote to Norman to take this up with him, and Philip sought to make the point that he had assisted Norman after the purchase of Chatham Buildings by agreeing to the West Building been transferred to Danebridge to enable the latter to obtain an overdraft, this transfer being a reference to the grant of the long Danebridge Lease. Philip described the granting of this long lease as a *"book transaction"*, and he raised a number of matters in respect of which he contended that Danebridge was liable to account, including for income received from the West Building. He added: *"You now understand why I feel annoyed at the hostility that I have felt from you and Sheila [Wilson]"*, and: *"I helped in your time of trouble at a very high cost but you seem to have forgotten this and seem to be prepared to see me go bankrupt."*

101. The question of the Danebridge Lease was then taken up by Neil Myerson, Solicitors acting on behalf of Philip, in a letter dated 6 December 1999. The letter concluded by Neil Myerson saying, for the avoidance of doubt, that they have been asked to state that it was not Philip's intention that the Partnership be dissolved, but rather that he wished that the position between Danebridge and the Partnership be regularised without undue delay, a reference to Danebridge being required to properly account.

102. At this time, Philip lodged a caution against the registered title to Danebridge's long leasehold interest. This led to Norman writing to HM Land Registry on 16 December 1999 objecting to the caution. Norman concluded his letter by saying: *"I Norman Jones am the senior partner in Chatham Estates to which the whole of Chatham Buildings belong and I have a 60% interest in that partnership."*

103. Some evidence that Philip continued to have some day-to-day involvement in the affairs of the Partnership at this time is provided by a letter from Sainsburys, Solicitors, to Norman dated 7 December 1999 relating to possible forfeiture action against tenants in which there is reference to the writer of the letter having met with Philip the previous week, and *"discussed the position with him"*.

104. Further, it is to be noted that in a letter dated 7 August 2002 to Span Developments Ltd, Norman said: *" … there are no co-owners of Chatham Estates. Chatham Estates are the owners and Landlords of Chatham Buildings, any other occupants are tenants."*

105. Outline development proposals were prepared by Mr McCloskey in January 2000 being a proposed phase 1 of a development, involving the development of the West Building into apartments using a corporate structure that included Norman, Mr McCloskey and John Quine, but not Philip. However, as Mr McCloskey confirmed in evidence, whilst planning permission was obtained for 18 residential units, a longer leasehold title than the residue of the term of 99 years granted by the Danebridge Lease would then have been required to enable any development to proceed, and that that was something that it was appreciated required the cooperation and agreement of Philip.

106. Thus the situation arose whereby Mr McCloskey sought to broker an agreement between Norman and Philip which would enable development to proceed, initially of phase 1 involving the West Building, but in due course of other parts of Chatham Buildings.

107. This was, in essence, the background to the first meeting between Mr McCloskey and Philip in July 2001 that I have referred to above, after which Mr McCloskey, in contrast what he now says in his witness statement, reported to Norman, in his fax dated 23 July 21, that Philip was *"very keen to support this development."*

108. Ultimately, it was not possible for Mr McCloskey to broker an agreement, and terms to enable development to proceed were never agreed, and Mr McCloskey's involvement ceased by 2003. In evidence, Philip put this down to the disagreements in relation to the status of the Danebridge Lease, describing this as the *"stumbling block"*. He considered that if it had been possible to resolve their differences in relation to the Danebridge Lease, then there ought not to have been too much difficulty in reaching agreement with respect to the development of other parts of Chatham Buildings.

109. However, a number of important pieces of evidence emerge from the dialogue concerning possible development that involved Mr McCloskey, including the following:

    i) In a manuscript letter dated 6 November 2001, Philip set out the terms for him to be involved with the proposed development. He concluded the letter by saying: *"You must not be under any misconception that I will not sign a new lease until I have an agreement to be paid my proportion of the profit of the development and the intercompany indebtedness has been agreed. I will not sign a new lease until they are."*

    ii) Manuscript notes have been produced of a meeting between Philip, Norman and Mr McCloskey and others on 21 November 2001. The note describes the meeting as being *"very revealing"* on the basis that it demonstrated that Philip

had a great deal of animosity towards Norman, the note setting out various reasons for this including that Philip's view of the past 19 years events relating to Chatham Estates and Danebridge was very different from that of Norman, that Philip had never been happy with his 40% share, and that Philip believed that he had been very kind in agreeing to let Danebridge have a 99 year lease of the West Building. It was following this meeting that Norman produced his own manuscript note that I referred to in paragraph 74 above.

iii) On 25 November 2001, Mr McCloskey wrote to Norman. This fax highlighted that a new lease to Danebridge would be required for the development of the West Building, and proposed that Philip be given a written undertaking that he would receive: *"his 40% share of the site value as agreed by a professional valuation"*. Norman responded on 28 November 2001. As to the question of the Danebridge Lease, he challenged the account in respect of the same given by Philip at the meeting on 21 November 2001, and he referred to the Partnership Agreement protecting Philip's interest in any future development of the Eastern and South Buildings, and saying: *"I'm not convinced of the wisdom or [indecipherable] of giving any additional assurance of what benefit financially he may receive from any proposed future development of those parts of the estate."*

iv) In a fax to Norman dated 21 February 2002, Mr McCloskey observed that Philip appeared happy to stay on the sidelines so far as development was concerned … *"provided he received a sensible return from his 40% holding in Chatham Estates."*

v) On 18 March 2002, Mr McCloskey sent a fax to Norman and Philip updating them in respect of the proposed development. This recorded, amongst other things, that both Norman and Philip accepted their liability in respect of Chatham Estates loans *"on the basis of their share in Chatham Estates"*. So far as future development of the East Building and the South Building were concerned, the fax noted that Philip was concerned that his 40% interest was fairly represented and dealt with sensitively and fairly. It further noted that Philip had confirmed that he had no wish for a direct involvement in future development, but "would like some form of brief legal agreement to safeguard his interests in the future."

vi) In a fax to Norman and Philip dated 12 May 2002, Mr McCloskey set out terms that he thought had been agreed between Norman and Philip. This proved to be over optimistic.

vii) In a letter to Mr McCloskey dated 24 July 2002, Philip expressed disappointment at Mr McCloskey's last fax and said that he found it astonishing that Mr McCloskey should think that *any* amounts paid in respect of *"the lease"* should go to Danebridge, maintaining that: *"The lease can only be granted by the owners (i.e. Chatham Estates) and any payment must therefore be made to Chatham Estates."* This letter raised other issues of dispute. In a fax in response dated 8 August 2002, Mr McCloskey responded to the effect as Danebridge had a long lease on the West Building, it had a right to *"a significant and reasonable amount for any new lease, which is granted."* The issue was pursued further by Philip in a fax dated 9 October 2002.

viii) On 20 October 2003, and with little progress being made in respect of the proposed development, Mr McCloskey faxed Norman referring to a forthcoming meeting with Philip and saying that: *"I will raise our concern about his non-involvement in the partnership and following various attempts to resolve the outstanding issues in the recent past his continues (sic) to remain non-committed. I will suggest that, as he no longer has an active involvement in the partnership that we should offer him the opportunity to move aside and accept his debts to the partnership and to Danebridge as part of the settlement."* However, no settlement was concluded, and Mr McCloskey's involvement ceased.

110. On 8 March 2004, Philip wrote to Norman referring to payments made from the Partnership's bank account totalling £5,000. He asked Norman to contact him if these withdrawals *"cause any problems"*. Philip further stated that he had been advised that he should insist on there being two signatories on the account, and that he had written to the bank to instigate this. In a letter dated 19 May 2004, Philip took up with Royal Bank of Scotland ("**RBS**") the fact that cheques were still going out on the account without his signature and said that as there was a dispute in respect of the account: *"I would like all future payments to be authorised by both Mr N Jones and myself."*

111. A consequence of the change in the mandate was that it was necessary for Norman to subsequently write to Philip on a number of occasions asking him to sign cheques. Letters to this effect dated 30 November 2004, 2 January 2005, 25 January 2005, and 2 January 2008 have been produced. Further, on 2 July 2007, Walter Ridgeway & Sons wrote to Philip asking him to countersign a cheque for the payment of fees due from the Partnership, Norman having already signed the relevant cheque.

112. On 18 February 2005, Philip wrote to Norman giving him six weeks to provide a signed written agreement surrendering the Danebridge Lease back to Chatham Estates. He said: "*You must also sign it as a partner of Chatham Estates. When I sign it our dispute will be resolved."*

113. There was clearly a meeting between Norman and Philip at this stage in that, on 8 March 2005, Philip wrote to Norman with regard to what been said thereat. The letter set out the basis upon which Philip considered Norman to be a *"hard man"* and a *"bully"*. The letter concluded *"Only you can examine your own heart and motives to see what I say is correct. If it is, it would be better to humble yourself now and get right with God, rather than wait till the Day of Judgment when it will be to your eternal shame. Your brother in Christ …"*.

114. I observe that it was Philip's evidence that he professed to be a committed Christian, and it was Daniel's evidence that his Father also professed to be a committed Christian, which evidence I accept. This explains some of the contents of Philip's letter.

115. The Danebridge Lease was not surrendered, and matters remained unresolved. During the course of his cross-examination, I put it to Philip that there was no basis for him to insist on a surrender of the Danebridge Lease, and he accepted that his letter demanding the same had been, as he put it, *"clumsy"*. I further enquired as to why he thought that action had not been taken earlier by either party after matters had reached a stalemate, and he volunteered that he and Norman were both Christians and that it is not the

inclination of Christians to take others to Court. I note St Paul's injunction against litigation between believers in 1 Corinthians 6:1-8.

116. On 17 May 2006, Norman wrote to RBS instructing them not to pay certain standing orders and direct debits, including those due to NatWest as secured lender. Norman signed the letter as *"Senior Partner"*. In consequence of this instruction, the Partnership defaulted on the sums due to NatWest, and NatWest commenced possession proceedings against Norman and Philip in respect of Chatham Buildings. An order for possession was made on 24 November 2006, requiring possession by 22 December 2006.

117. It has been Philip's case that the possession proceedings were orchestrated by Norman as part of a scheme to create a position whereby Chatham Buildings would be repossessed by NatWest, enabling Norman to buy the same back at a forced sale value free from Philip's interest therein. An allegation to such effect was relied upon in the first of the dissolution notices served by Philip in 2018. This allegation is strongly denied by the Defendants, and it was Daniel's evidence that the reasoning behind Norman's letter 17 May 2006 was to enable cash to be available to pay for urgent debts.

118. In the event, Philip borrowed £25,001 from Westminster Estates Ltd, a company incorporated in Jersey belonging to his friend, Mr Hamilton, and £19,232.50 of this was used to repay an amount agreed in settlement with NatWest, and to redeem the latter's charge over Chatham Buildings. The monies were borrowed under the terms of a loan facility letter dated 18 March 2007 ("**the Westminster Loan Agreement**").

119. The Defendants place reliance upon the fact that the terms of the Westminster Loan Agreement provide for the payment of a hefty *"arrangement fee"* upon any sale of Chatham Buildings, and contain a number of potentially onerous covenants on the part of Philip, including one in clause 10.1.1 thereof to: *"use his reasonable endeavours to ensure that [Chatham Buildings] is sold or otherwise dealt with by the Partnership (or, in so far as the Borrower obtains sole ownership of the Property or such part of [Chatham Buildings] as the Lender may agree in writing, by the Borrower) in such manner as the Lender may from time to time direct the Lender acting reasonably and in the interests of maximising the interests of the Lender and the Borrower in relation thereto."*

120. It is relevant to note that Norman continued to engage with Philip on the basis that he continued to be a partner after March 2007, including by:

    i) Sending Philip cheques for counter signature as evidenced by Norman's letter dated 2 January 2008;

    ii) In January 2009, sending Philip accounts for the Partnership that he himself had produced to 31 March 2007; and

    iii) Submitting tax returns for the Partnership in which he named both himself and Philip as partners, see e.g. the return to 5 April 2009, and the return to 5 April 2011.

121. The Defendants, in paragraph 18 of the Re-Re-Amended Defence, allege that from 2009, MONE has repaired and maintained Chatham Buildings, and managed and insured it without contribution from Philip. As pleaded, the Defendants' case is that:

i) MONE initially occupied *"the Third Floor"* pursuant to a document signed on 22 June 2009 and described a *"Licence"* ("**the 2009 Licence**"). It is alleged that this document took effect as a lease, with MONE having exclusive possession and initially paying the rent as set out in clause 2 of the 2009 Licence; alternatively, it is alleged that the 2009 Licence took effect as a licence. It is to be noted that the 2009 Licence was signed by Norman as *"Senior Partner"*.

ii) It is then alleged that in or around August 2012, and with Norman being 81 years old and unable to continue to manage Chatham Buildings, and as a result of MONE's success in making the Third Floor more profitable, Norman permitted MONE to enter into possession of and occupy all remaining parts of Chatham Buildings save for the parts thereof subject to the existing long leases, such occupation taking effect as an oral licence, with MONE paying rent each year in an amount to be agreed between Norman and MONE dependent upon (1) the investment and monies expended by MONE on Chatham Buildings, and (2) the profits achieved by MONE.

iii) It is alleged that MONE has been paying rent for the whole of Chatham Buildings pursuant to the arrangement referred to in sub-paragraph (ii) above, and that the total sum paid is as set out in paragraph 18(c) of the Re-Re-Amended Defence.

iv) It is alleged that Phillip's consent was not required to the above arrangements because Chatham Buildings was not an asset of the Partnership, and Philip was not a partner at the relevant time. Alternatively, it is alleged that Norman had implied authority to enter into these arrangements in respect of the management of Chatham Buildings if the Partnership subsisted and Chatham Buildings was an asset of it.

122. The evidence of Mr Shorrock and Mr Durward supports that of Daniel to the effect that from 2009 onwards, Daniel, whether through MONE or otherwise, took control over the Third Floor of the South Building initially, with an MONE sign being erected thereat, and to the effect that as time went on Daniel/MONE took control of the other parts of Chatham Mill not subject to the long leases, managing the same and carrying out an extensive refurbishment and repair works, and collecting rents from tenants thereof. However, the evidence also suggests that Norman maintained a fairly close interest in Chatham Buildings, and the management thereof, at least until 2015 or thereabouts when he retired, albeit returning to Chatham Buildings on a regular basis on a more social basis thereafter.

123. MONE's accounts show the following figures, with turnover representing rent and service charges received from Chatham Buildings:

	Turnover	**Pre-tax profit**	**Dividends**
	£	£	£
2014	134,064	61,511	30,000
2015	183,147	108,051	28,679

2016	202,246	38,331	28,607
2017	235,355	118,470	30,000
2018	271,319	100,752	223,500
2019 (15 months)	401,102	150,941	87,500

124. In paragraph 39 of his witness statement, Mr Warner sets out details of the payments made by MONE to or on behalf of Daniel as extracted from documents that have been disclosed. This shows a total of £638,199 being paid to or for the benefit of Daniel between 2014 and 2019. When questioned about these figures when giving evidence, Daniel did not contest the accuracy thereof.

125. Whilst MONE's accounts show a total of some £262,235 being paid by MONE as rent between 2011 and 2020, it was Mr Warner's evidence that the actual amount received into the Partnership's bank account over the relevant period was significantly less than that.

126. Despite the Defendants' pleaded case that MONE has had some interest as tenant or licensee in Chatham Buildings, and what MONE's accounts show, there are numerous examples of both Norman and Daniel contemporaneously referring to Daniel having been appointed to manage and look after Chatham Buildings on behalf of Norman. Thus, for example:

i) In an email dated 9 January 2017 to Mr Sheppard, Daniel referred to having no ownership of any of Chatham Buildings, stating: *"I just manage and look after it on behalf of my dad."* However, in text dated 17 August 2017, Daniel said to Mr Sheppard: *"anyway I'm the boss now…"*.

ii) In a witness statement dated 25 April 2018 made in other proceedings, Norman referred to the fact that since 2010 Daniel had been *"situated full-time in the management of Chatham Buildings"*.

iii) In a witness statement concerning proceedings relating to Herondive having been struck off ("**the Crown Proceedings**") made on 16 April 2018, Daniel stated that he set up MONE in 2010: *"to manage CB, its income and liabilities and to pay me a wage for the management work I did for the building."*

iv) In a letter to Darren Perks of Stanley Tee LLP dated 17 August 2018, Daniel referred to his father being 87 years old, and stated: *"I am his managing agent"*.

v) In an email to Trevor Rogers of Manchester City Council dated 27 March 2018, Daniel signed off on the email describing himself as: *"Duly authorised agent for Norman Jones and Philip Moody, Freeholders, Chatham Buildings."*

vi) In paragraph 104 of his witness statement made in these proceedings on 8 January 2021, Daniel said this: *"In 2009 my father, then very semi-retired, appointed M ONE to formally manage the common areas including those areas without leases and to take the benefit of my work. I was then 35 years of age, keen to manage and build up a business."*

127. Further, so far as concerns the status or role of Daniel and MONE in respect of Chatham Buildings, in May 2018, Norman (as *"Owner"*), and Daniel (as *"Agents"*) signed the 2018 Management Agreement, a detailed 11 page agreement providing for the management of Chatham Buildings by Daniel. As to this document:

    i) The recitals thereto recorded, amongst other things, that:

        a) "The 40% owner Philip Moody, has not sought to exercise any interest or control or management of the property since the terms of a partnership in 1982".

        b) "The general intention of the owner is that the agents should manage and maintain the property, and in living within the property and securing it take whatever profits are maintainable for his own use and benefit."

    ii) By clause 1 it was provided that Norman appointed Daniel: *"be his agents to perform the Services during the Contract Period"*, and provided that Daniel accepted that appointment. *"Contract Period"*, was defined as meaning the period starting on 1 January 2010 and continuing until ended in accordance with clause 6. *"Services"* were expressed as being defined by reference to clause 3, but were in fact set out in clause 2, and include a wide variety of services including the collection of rent etc., "payable to the Owner in respect of [Chatham Buildings]", and the instruction of contractors to carry out reasonably necessary works of repair and maintenance.

    iii) As appears from Schedule 2 thereto, Daniel was to receive, for the services provided, 80% of the gross rent, service charges and other income received from Chatham Buildings.

128. It is to be noted that as late as 28 June 2021, Daniel said in his witness statement of that date in the present proceedings, at paragraph 19 thereof, that: *"M ONE <u>manages</u> the mill under a lease dated 22 June 2009 and a management agreement dated 25 May 2018."* [My emphasis]. However, in his witness statement for trial, Daniel said that the 2018 Management Agreement was: *"signed in a rush on Bryan's suggestion and without thinking it through properly, before I looked again at the 2009 licence and was forgetful of it. We wanted some formality between father and son, not remembering the 2009 licence. Bryan had not seen the 2009 licence at that time either and he produced a template of the agreement for Norman and I to look through. The agreement provides all sorts of rights. Neither Norman nor I relied much on the management agreement after seeing the 2009 licence, but I produced it on disclosure because of the rules."*

129. The 2018 Management Agreement does, to my mind, raise more questions than it answers. From what Daniel has said, I am inclined to believe that it was prepared at Bryan Slater's suggestion as a misguided attempt to distance the Partnership from the profits made from Chatham Buildings through the collection of rents, and to seek to minimise the amount for which MONE/Daniel might be liable to account. However, it does show that, by May 2018, and following the receipt of Philip's letter dated 16 March 2018 referred to below, Daniel must have been aware, to the extent that he was not earlier aware, that Philip was looking to Norman, MONE and Daniel to properly account.

130. On 30 August 2012, Philip wrote to Norman with an offer of help in respect of overdue tax returns and accounts. According to Philip's evidence, Norman did not respond. However, after Philip had made enquiries of HMRC, he telephoned Norman, who informed him that he had matters in hand, and was being assisted by his daughter.

131. On 30 May 2014, Andrew Ford of Castletons, who said that Castletons had recently been appointed by Norman as accountants and tax advisers, wrote to Philip. The gist of the letter was to the effect that Castletons had been instructed to, and had carried out investigations that indicated that Philip's capital account might be overdrawn by a figure in excess of £400,000 which, so it was contended, was in *"direct contravention"* of clause 13(iii) of the Partnership Agreement.

132. In response thereto, Philip sought assistance from Mr Warner. On 11 June 2014, Mr Warner wrote to Castletons seeking further information as to how the figure of £400,000 was made up. After Mr Warner had sent a chaser letter about a month later, Andrew Ford responded to Mr Warner by a letter dated 15 July 2014. In this letter, Andrew Ford sought to distance himself from the figure of £400,000 previously asserted. However, having referred to the 2004 accounts of the Partnership, Andrew Ford contended that Philip had overdrawn £13,000 every year, and referred to the Partnership owing money to Norman's other businesses for ongoing repairs and maintenance. Ultimately, Andrew Ford proposed the appointment of an independent accountant to bring the accounts up to date.

133. Mr Warner responded to Andrew Ford on 30 July 2014, challenging Andrew Ford's assertions, and asking a series of questions. Further, Mr Warner offered to draw up accounts provided that access to workings and records was provided. On 2 September 2014 Mr Warner sent a chasing letter to Andrew Ford, chasing a response and making the point that Philip, as a partner, was entitled to have access to the records. Mr Warner sent further chasing letters on 11 November 2014 and 18 December 2014. Ultimately, there was an exchange of correspondence on 12 January 2014 during the course of which Andrew Ford apologised for the delay, and, referring to earlier telephone conversations, repeated that he had been placed in a difficult position by his client who had not responded to him since the previous August. Nevertheless, in his letter of this date, Andrew Ford set out a number of answers to Mr Warner's enquiries.

134. On 20 April 2015, Philip wrote to Norman inviting him to engage with him to sort out their respective financial positions in the Partnership in the light of the correspondence from Castletons. Philip concluded by asking Norman to let him know where Mr Warner might inspect the partnership's accounting documentation and records. Norman did not respond to this letter.

135. On 30 October 2015, Philip attended at Chatham Buildings, and had a conversation with Daniel. Philip has produced what I understand to be a contemporaneous note of his discussions with Daniel on this occasion. A number of points arise therefrom:

    i) Philip recorded Daniel having commented that he, Philip, had *"not had much input into the running of the site in recent years"*, to which Philip responded that if he had not stepped in when NatWest had taken court action, then there would not be any building to manage. Philip then records Daniel as having said: *"Oh if the bank had foreclosed my father had the money and he would have bought it back"*. Philip says that he read this as a *"shocking admission"* to the

effect that *"the whole episode was engineered by Norman so that he could get me out of the way."*

ii) Philip also recorded that Daniel had advised him that his father: *"had allowed his company to occupy two of the previously vacant floors in the main block of six thousand feet each"*, in respect of which Philip observed: *"Permission has never been given for these to be occupied nor has there been a lease signed for either of these."*

136. In July 2017, Philip received a letter before action from one of the tenants of Chatham Buildings with the benefit of a 999 year lease, B&S Investments, threatening proceedings in respect of an alleged failure to give access to common areas for works of repair to be carried out, and an alleged failure to give consent to a change of use under a user covenant in the relevant lease. In response thereto, and having taken advice, and having shared that advice with Norman, Philip gave his consent in relation to both matters. In the Defence served in proceedings brought by B&S Investments, and in the dissolution notice that he served on 20 April 2018, Norman has alleged that these actions on Philip's part amounted to a breach by Philip of his duties as a partner in the Partnership.

137. On 16 March 2018, Philip wrote to Norman referring to the fact that Daniel had recently been in contact with him, and suggested a meeting to discuss how the situation regarding Chatham Buildings could be resolved to everyone's advantage. Philip commented that this had prompted him to consult solicitors and take Counsel's advice. However, he said that whilst he was happy to meet with Daniel, he had not received accounts for the partnership since 2006, and needed to understand the financial position for subsequent years, as well as better understanding entries made in earlier accounts. He further referred to the fact that he understood that MONE, a company controlled by Daniel, had entered into leases, licences or other agreements with third parties in relation to office, retail or storage space or car parking places at Chatham Buildings, and that he needed to understand the basis on which such agreements had been entered into, and the income that had arisen therefrom. Philip therefore attached two detailed requests for information relating to these issues, one addressed to Norman, and the other to MONE. Philip asked for the information as soon as possible, but said that he was happy to meet Daniel in the meantime to discuss matters more generally, and that he would phone Daniel to make the necessary arrangements.

138. Daniel responded by way of a letter dated 21 March 2018. He began by commenting that for the last 24 years, since 1994, he and his father had managed and maintained Chatham Buildings without any input or monetary contribution from Philip, apart from the payment off of the NatWest mortgage in 2007. Daniel maintained that Philip had taken no part in the management of Chatham Buildings, which he had handled day by day as a full-time job. As he put it: *"In a real sense I have dedicated my adult life to the building. My father stepped down in around 2009 from management."* Daniel complained that Philip had asked for a range of documents going back many years without any prior discussion. He went on to say that he had considered the position with his father and considered that: *"it is time for the 60/40 (NS:PM) partnership between my father and you to be wound up. My father is now 86 and you are a sleeping partner. There is no purpose in the partnership, and there has not been for years."* Daniel sought Philip's confirmation that he was willing to dissolve so that: *"we can then work out the numbers to ascertain how the assets of the business might be disposed."*

139. In his evidence, Daniel referred to having met together with Philip, Mr Warner and Mr Leighton at Costa Coffee near Chatham Buildings on 17 April 2018, with Bryan Slater and Jordan Slater also being in attendance. Daniel says that he saw that they had brought the Partnership Agreement with them. As there was no copy thereof, Bryan Slater took photographs thereof on his mobile telephone. Daniel describes the meeting as *"awful"*, with Mr Leighton being *"very pushy"*, and Mr Warner being *"very sure of himself"*. There is no suggestion that the meeting was at all productive.

140. A few days later, on 20 April 2018, Norman served his dissolution notice ("**the Norman Dissolution Notice**"). This stated that it was served pursuant to clause 13(iii) of the Partnership Agreement, on the basis that Philip had committed grave breaches and persistent breaches of the Partnership Agreement, and had been guilty of conduct likely to have a serious adverse effect on the partnership business. Particulars were provided by way of a schedule. By the Norman Dissolution Notice, Norman also purported to exercise the option provided for by clause 14(ii) of the Partnership Agreement to acquire Philip's share in the Partnership.

141. So far as the schedule to the Norman Dissolution Notice is concerned, this:

i) Asserted that Philip had persistently and without reasonable excuse, failed to comply with clause 11 of the Partnership Agreement which stated that: *"Each partner shall be just and faithful to the other and diligently attend to the partnership business."*

ii) In paragraphs 3 to 10, set out a number of allegations concerning an alleged failure by Philip to contribute to the business of the Partnership since Christmas 1993. It is, essentially, alleged that Philip had done nothing to contribute to the business of the Partnership since then, leaving everything to Norman to take the strain. By way of example, paragraph 10 alleges that: *"You have shown dereliction of the duty of good faith that one partner owes to the other in rejecting any interest in CB, with an adverse effect on the partnership business. Your lack of interest has been grave, long and very persistent. You have made no attempt over 24 years (except for perhaps three letters) to contact me or Daniel, managing agent for CB."*

iii) In paragraph 11 it is alleged that Philip, while ignoring Chatham Buildings, ran his own separate business without Norman's knowledge or consent, in breach of clause 12 of the Partnership Agreement.

iv) In paragraph 12, it is alleged that the last time that Philip made any payment in respect of the Newport Furnishings mortgage debt of the Partnership was in the 1990s.

v) In paragraph 13 set out a number of allegations in respect of the litigation recently brought by B&S Investments, including an allegation that Philip had schemed with the latter.

vi) In paragraph 14 alleged that without Norman's knowledge or consent, Mr Leighton, acting on Philip's behalf, had *"liked"* a tweet on Twitter advertising an open day event to be held by B&S Investments.

vii) In paragraph 15 alleged that there had been a breach of duty of good faith by Philip, by him lying when he agreed to attend an inspection of Chatham Buildings on 19 April 2018 when he knew that Mr Leighton would attend alone.

viii) In paragraph 16 alleged that Philip's intentions for Chatham Buildings were selfish and damaging to the Partnership interest with: *"You doing nothing, asleep for 24 years, and timing your activity after 24 years at the moment when property prices are substantially increasing around City Centre Manchester. It is a breach of the utmost good faith expected of a partner for you to ensure your financial position is secured at the expense and detriment of the partnership business."*

142. In paragraph 4 of a witness statement dated 25 April 2018 made in the Crown Proceedings, Norman referred to having been a partner with Philip for 36 years prior to the service of the Norman Dissolution Notice. Reference was also made to Norman having exercised his option to acquire Philip's share of the Partnership, and the fact that a balance sheet and valuation of Chatham Buildings was to be *"established prior to payment under the procedure set out in the agreement."* Further, this witness statement included, as an exhibit thereto, a statement of means prepared on behalf of Norman. It is to be noted therefrom that:

i) On the basis that he had given notice dissolving the Partnership, Norman referred to Chatham Buildings as one of his assets, which he said that he now solely owned *"pending the agreement of a purchase price for my former partner's interest"*.

ii) Norman identified a number of income streams that he and Mrs Jones enjoyed including (1) income direct from the occupier of the computer shop at Chatham Buildings, (2) income provided to him and his wife directly by Daniel, and (3) income provided to him and Mrs Jones indirectly through the payment by Daniel of their monthly mortgage payment.

143. On 3 May 2018, Philip's Solicitors, Slater Heelis, wrote to Norman responding to a letter dated 30 April 2018 that had been received in respect of the Crown Proceedings. The letter sought to explain Philip's position in respect of those proceedings, and sought further information in relation to them.

144. By an Order of HHJ Davies dated 4 May 2018, Norman was required to provide further information in respect of the Crown Proceedings. Norman purported to provide the requisite information by way of a letter dated 11 May 2018, but Philip has complained that the information provided was inadequate.

145. It was at this point that the 2018 Management Agreement referred to above was entered into between Norman and Daniel.

146. On 31 May 2018, Norman wrote to Slater Heelis, amongst other things giving notice pursuant to paragraph (d) of the Schedule to the Partnership Agreement, requiring that freehold and leasehold property be revalued as at the alleged dissolution date.

147. On 28 June 2018, Slater Heelis wrote to Norman providing a detailed response to each of the numbered paragraphs of the schedule to the Norman Dissolution Notice, and

setting out why it was contended on behalf of Philip that the allegations contained therein were ill founded and misplaced. In addition to this, the letter complained that Norman ought to have provided Philip with an opportunity to respond prior to serving the Norman Dissolution Notice.

148. Slater Heelis's letter then went on to state that Philip considered that Norman was, himself, in breach of the terms of the Partnership Agreement, such that Philip would be entitled to serve a notice of dissolution upon him pursuant to clause 13(iii) of the Partnership Agreement. However, the letter stated that Philip wished to give Norman a reasonable and adequate opportunity to consider and respond to the allegations of breach before any notice was served. The letter invited Norman to respond within 14 days, and then listed the matters in respect of which a response was required. These included, the following:

    i) The matters raised by Philip's letter dated 16 March 2018 seeking explanations, that had not been provided;

    ii) An additional request for information in respect of car park income;

    iii) An allegation that Norman had failed to provide the information that he ought to have provided in respect of the Crown Proceedings ;

    iv) An allegation that the Norman Dissolution Notice amounted to a breach of Norman's partnership obligations in having failed to allow Philip an opportunity to respond to the allegations raised thereby before the notice was served, it being further suggested that the Norman Dissolution Notice was served otherwise than in good faith, on the basis that it was served in an attempt to avoid answering the requests for information made by Philip's letter dated 16 March 2018;

    v) An allegation based upon the matters referred to in paragraph 117 above, that the possession proceedings brought by NatWest were contrived by Norman with a view to buying the Chatham Buildings back from NatWest at forced sale value, thereby defeating Philip's interest therein.

149. Norman did not respond to Slater Heelis's letter dated 28 June 2018. Daniel was cross-examined as to the reasons for him not doing so. Daniel suggested that this was because everybody had been busy with other things at the time, but no cogent explanation was provided as to why there was no substantive response to this letter.

150. On 12 July 2018, Norman made an application within the proceedings brought by B&S Investments seeking to appoint Daniel as his litigation friend. In this application, Norman stated that: *"Daniel has managed the building for over 20 years and has an intimate knowledge of the building and its management."*

151. On 24 September 2018 Norman wrote to Slater Heelis asserting that as Philip had been served with the Norman Dissolution Notice, it was not open to Philip to serve a dissolution notice. In this letter, it was maintained, seemingly for the first time, that Philip had no beneficial interest in Chatham Buildings, Daniel asserting that: *"I have no evidence of his beneficial interest in the property except note of a joint tenancy yet I have unassailable 1982 evidence from bank statements, agents and Croftens, my former solicitors, that Philip paid nothing towards the purchase price."* The letter stated that

Norman would respond to Slater Heelis's letter dated 28 June 2018, but he never in fact did so.

152. On 24 October 2018, Norman made his witness statement dated 24 October 2018 stating that: *"There was however never any intention whatsoever for Philip Moody to have any beneficial interest in Runcorn (sic) Mill."*

153. On 14 December 2018, and no response having been received to Slater Heelis's letter dated 28 June 2018, under cover of a letter from Slater Heelis, Philip purported to give notice to Norman dissolving the Partnership pursuant to clause 13(iii) of the Partnership Agreement, and purported to exercise the option provided for by paragraph (d) of the Schedule to the Partnership Agreement "**the First Philip Dissolution Notice**").

154. The First Philip Dissolution Notice, amongst other things:

i) Referred to Norman's obligations under clauses 9(ii) and 11 of the Partnership Agreement, and also the duty under section 28 of the Partnership Act 1890 ("**the Section 28 Term**") to render true accounts and full information of all things affecting the Partnership.

ii) Alleged that the Partnership Agreement is subject to an implied term that each partner would afford the other a reasonable and adequate opportunity to consider and to respond to allegations before a dissolution notice was served pursuant clause 13(iii) of the Partnership Agreement relying upon the same.

iii) Maintained that the Norman Dissolution Notice was a nullity and did not operate to dissolve the Partnership for the reasons set out in Slater Heelis's letter dated 28 June 2018, and that the failure to afford Philip the opportunity to respond to the relevant allegations prior to the service thereof amounted to a breach of the implied term referred to in sub-paragraph (ii) above, clause 11 of the Partnership Agreement, and the Section 28 Term.

iv) Alleged that in accordance with the implied term referred to in sub-paragraph (ii) above, Philip had afforded Norman the opportunity to respond to the prima facie conclusions as to breach set out in Slater Heelis's letter dated 28 June 2018, and that in the absence of a substantive response thereto, Philip had concluded that Norman had failed to comply with the implied term referred to in sub-paragraph (ii) above, and the Section 28 Term.

v) Referred to the fact that in addition to the breaches of the terms of the Partnership Agreement referred to in sub-paragraphs (iii) and (iv) above, Slater Heelis's letter dated 28 June 2018 had identified further instances where Philip had reached a prima facie conclusion that Norman had acted in breach of the terms of the Partnership Agreement to which Philip wished to give Norman a reasonable and adequate opportunity to respond.

vi) Stated that notwithstanding Philip having given Norman such reasonable and adequate opportunity to respond in respect of the above matters, Norman had failed to provide any response and that, in the absence thereof, Philip had concluded that Norman was in breach of the terms of the Partnership Agreement including those under clauses 9 and 11 thereof, and the Section 28 Term.

vii) Further stated that Philip had concluded that the breaches identified were *"grave and persistent"* within the meaning of clause 13(iii)(c) of the Partnership Agreement, and constituted *"conduct likely to have a serious adverse effect upon the Partnership business"* within the meaning of clause 13(iii)(e) of the Partnership Agreement.

viii) On the basis of the above, purported to give notice to Norman dissolving the Partnership with immediate effect in accordance with clauses 13(iii)(c) and (e) of the Partnership Agreement.

ix) Further, purported to give notice pursuant to clause 14(ii) of the Partnership Agreement, exercising the option to acquire Norman share provided for thereby.

155. On 3 January 2019, Slater Heelis wrote to Norman, without prejudice to the validity of the First Philip Dissolution Notice, providing an opportunity to Norman to respond to further matters concerning income received from Chatham Buildings. This letter referred to the income streams that had been identified in the statement of means exhibited to Norman's witness statement dated 25 April 2018 and enquired of Norman as to whether or not that income belonged to the Partnership. Having set out the basis for Philip's concerns, the letter went on to assert that if Phillip's prime facie view was correct, and there had been a failure by Norman to account for income belonging to the Partnership, and/or if he had permitted or allowed income belonging to the Partnership to be diverted away to a third party (e.g. Daniel), that would represent a very serious breach of the terms of the Partnership Agreement including, but not limited to clauses 6(iii), 9(ii) and 11 of the Partnership Agreement, and the Section 28 Term, and would give rise to an entitlement on the part of Philip to serve a dissolution notice for cause under clause 13(iii) of the Partnership Agreement. The letter also raised further matters concerning profit/income distribution from the Partnership. A response was sought within 14 days.

156. On 11 March 2019, Norman, Mrs Jones and DAJ executed a Deed of Assignment whereby Norman, expressed as being *"beneficial owner"* of Chatham Buildings, purported to assign his interest therein to Mrs Jones, and Mrs Jones purported to assign the interest so assigned to her, to DAJ. It was put to Daniel under cross examination that this was an attempt by Norman to put assets beyond the reach of creditors. Daniel denied that this was the case, and maintained that this Deed of Assignment had been entered into for inheritance tax planning reasons rather than to put assets beyond the reach of creditors.

157. On 27 June 2019, and no response having been received to their letter dated 3 January 2019, Slater Heelis wrote to Norman serving a further notice of dissolution on behalf of Philip ("**the Second Philip Dissolution Notice**").

158. The Second Philip Dissolution Notice was served without prejudice to the First Philip Dissolution Notice, and pursuant to clauses 13(iii)(c) and (e), and 14 of the Partnership Agreement. It relied upon the matters that had been raised in Slater Heelis' letter dated 3 January 2019, and asserted that between the date of the latter letter and the date of the Second Philip Dissolution Notice, Norman had been given reasonable and adequate opportunity to respond to the prime facie allegations of breach that had been set out therein, but had failed to do so. It further asserted that, in the absence of such response, Philip had concluded that:

i) Norman was in breach of the terms of the Partnership Agreement, including clauses 5, 6, 9 and 11 thereof, and the Section 28 Term; and

ii) The breaches identified in the letter dated 3 January 2019 were *"grave and persistent"* within the meaning of clause 13(iii)(c) of the Partnership Agreement, and constituted *"conduct likely to have a serious effect upon the Partnership business"* within the meaning of clause 13(iii)(e) of the Partnership Agreement.

159. On the basis of the above, the Second Philip Dissolution Notice purported to give notice to Norman dissolving the Partnership with immediate effect pursuant to clauses 13(iii)(c) and (e) of the Partnership Agreement, as well as giving notice exercising the option provided for by clause 14(ii) of the Partnership Agreement.

160. The present proceedings were commenced on 5 July 2019.

161. Norman sadly died aged 89 on 20 September 2020.

162. To the extent that it still subsisted, and/or had not previously been dissolved, the effect of section 33(1) of the Partnership Act 1890 would have been to dissolve the Partnership.

163. By letters dated variously between 16 November 2020 and 20 November 2020, Slater Heelis, without prejudice to the validity of the First Philip Dissolution Notice and the Second Philip Dissolution Notice, gave notice on behalf of Philip to Mrs Jones, and Norman's children, Daniel, Mark, Heather and Felicity, purporting to exercise the option to acquire Norman's share provided for by clause 14(iii) of the Partnership Agreement. Whilst it is pleaded in the Re-Re-Amended Defence that proper notice had not been given to Norman's personal representatives, in closing Mr Dhillon confirmed that no point was now taken by the Defendants with regard to the validity of the service of this option notice.

164. Norman's personal representatives have not served any notice pursuant to paragraph (d) of the Schedule to the Partnership Agreement requesting that any freehold and leasehold property comprised in the partnership property be valued as at the dissolution date apart from that dated 31 May 2018 relating to the Norman Dissolution Notice. No notice has been served in respect of the First or Second Philip Dissolution Notices, or following any dissolution on Norman's death.

Whether Chatham Buildings was an asset of the Partnership

Introduction

165. Philip's case is that Chatham Buildings was always an asset of the Partnership. The Defendants, on the other hand, maintain that Chatham Buildings always, until the Deed of Assignment dated 5 March 2019, belonged beneficially Solely to Norman.

Philip's case as to beneficial ownership

166. Philip's case is, in short, as follows:

i) Mr Connolly refers to:

a) S. 20 of the Partnership Act 1890, which provides that property acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, is called partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement; and

b) S. 21 of the Partnership Act 1890, which provides that unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

ii) Mr Connolly also refers to Lindley and Banks on Partnership, 20th Edn, at paragraph 18-03, where it is observed that it is up to the partners to agree between themselves what assets are to be treated as partnership property, and that in the absence of express agreement, the relevant factors will generally be: (1) the circumstances of the acquisition, with particular reference to the source from which it is financed, (2) the purpose of the acquisition, and (3) the manner in which the asset has subsequently been dealt with.

iii) It is submitted on behalf of Philip that the evidence shows that there was an initial agreement between Norman and Philip that Chatham Buildings should be acquired as an asset of the Partnership as evidenced by the correspondence from Croftons in May and June 1982, the fact that the Partnership (i.e. Norman and Philip) borrowed £60,000 from NatWest which ultimately paid for Chatham Buildings prior to its transfer into the joint names of Norman and Philip, and the way that Chatham Buildings was treated and dealt with thereafter until the Defendants, for the first time, in September 2018, suggested that Norman was the sole beneficial owner.

iv) To the extent that it might be necessary to go back to first principles in respect of the purchase of a property in joint names, Mr Connolly relies upon the following propositions:

a) The starting point is that equity will follow the law (i.e. beneficial interests will mirror legal interests) (see *Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432 at [56]). Hence, in the present case the starting point would be 50/50 beneficial ownership between Norman and Philip;

b) That starting point can be displaced where the common intention of the parties was different (initially or subsequently), and such common intention can be deduced objectively from the parties' words and conduct at the time of purchase and subsequently - see *Jones v Kernott* [2011] UKSC 53, [2012] 1 AC 776 at [31]. This is a principle not limited to domestic properties - see *Marr v Collie* [2017] UKPC17, [2018] AC 631 at [39] and [49].

c) Applying these principles to the present case, the 50/50 presumption has been displaced by a contrary agreement between Norman and Philip for a 60/40 split, that 60/40 split being evidenced by the Partnership Agreement and, until September 2018, being accepted by all parties as being the basis upon which Chatham Buildings was owned.

The Defendants' case as to beneficial ownership

167. The Defendant's case is, in essence, as follows:

i) Reliance is placed by the Defendants upon Norman's evidence as contained in paragraphs 7 to 11 of his witness statement dated 24 October 2018. Having said, in paragraph 7 thereof, that there was never any intention whatsoever for Philip to have any beneficial interest in Chatham Buildings, he went on in paragraph 8 to say that he remembers distinctly that Philip was to have no interest in Chatham Building save that his name was to be on the title because NatWest wanted the *" ... names of the persons on the building to be the same as the names of the persons managing [Chatham Buildings] ... I agreed to his name being on the legal title only because the bank wanted it doing that way."*

ii) The Defendants point to the fact that it was Norman's company, Danebridge, that paid for Chatham Buildings when the freehold thereto was acquired from Beard Hall, with the bank statements evidencing the payment of the balance of the purchase price of £54,000 on 18 May 1982.

iii) Reliance is placed by the Defendants upon the fact that the Partnership Agreement makes no reference to Chatham Buildings, and refers to the initial capital of the Partnership as being £100, as well as reciting that the business of the Partnership was that of *"Property Managers"*, suggesting, so it is said, that the Partnership business was to be limited solely to managing Chatham Buildings rather than anything else.

iv) The Defendants do not accept that their cases is undermined by the reference in all the accounts of the Partnership that have been produced to *"Property at Cost"*, with a figure against the same of £20,158. In his closing submissions, Mr Dhillon submitted that this was simply a reflection of the value of the West Building, and not the whole of Chatham Buildings. Further, he submitted that it is inconceivable that the Partnership's accountants would have accounted for the premiums received on the grant of the various long leases in the way contended for by Philip, particularly given that the value of Chatham Buildings had never been updated since the inception of the Partnership's accounts. Mr Dhillon submitted that the figure of £20,158: *"can only reflect a counterweight to the granting of a long lease to Danebridge in 1983, and also explains Mr Moody's continuing gripe with the Danebridge lease, as it deprived the partnership of the only asset it had for 99 years. The other areas, it is submitted, were held on trust for Norman."*

v) Insofar as later documentation may tend to reflect Philip having a beneficial interest in Chatham Buildings, Mr Dhillon submits that this is due to some later assumption of the parties, rather than a reflection of the reality of the position such that the Court should still enquire as to whether, as a matter of fact, the whole of Chatham Buildings was an asset of the Partnership.

Determination of the issue as to the ownership of Chatham Buildings

168. As mentioned above, the office copy of the register of title relating to Chatham Buildings refers to a transfer dated 28 May 1982 between Beard Hall (1) and Norman

and Philip (2). It is unclear how this transfer operated in practice bearing in mind that Danebridge appears to have completed on a purchase of Chatham Buildings, paying the balance of the purchase price of £54,000 on 18 May 1982. Unfortunately, the relevant transfer or transfers executed at the time are not available, despite extensive efforts to get hold of them. Ordinarily, the starting point to any consideration as to the beneficial ownership of Chatham Buildings would have been the transfer to Norman and Philip, and whether this transfer contained any declaration of trust, which would have governed the position. In the absence of this transfer, I must proceed on the basis that it was silent as to beneficial ownership.

169. In the absence of any express declaration of trust, the key consideration in the present case is, in my judgment, that whilst Danebridge might initially have funded the purchase of Chatham Buildings, funded by an overdraft or other facilities provided by NatWest, the Partnership (i.e. Norman and Philip) clearly borrowed £60,000 from NatWest, which such sum was paid by the Partnership to Danebridge on 17 June 1982, prior to Chatham Buildings being registered in the joint names of Norman and Philip on 7 July 1982.

170. Whilst Norman might, in his witness statement dated 24 October 2018, have referred to Chatham Buildings as having been transferred into the joint names of himself and Philip simply because that is what NatWest required, it is, to my mind, highly implausible that NatWest would, as Norman suggested, have required this because Chatham Buildings was to be managed by the Partnership. Rather, what was done is consistent, and consistent only in my judgment with Chatham Buildings having been transferred into the joint names of Norman and Philip because they were acquiring the same using monies borrowed in the name of the Partnership in circumstances where the security to be provided for the loan was to be charged on Chatham Buildings. Pursuant to s. 21 of the Partnership Act 1890, this raises a very strong presumption that Chatham Buildings was to be acquired as an asset of the Partnership.

171. There is, to my mind, nothing that serves to rebut the presumption that Chatham Buildings was acquired as an asset of the Partnership. To the contrary, the evidence, in my judgment, clearly demonstrates that the parties proceeded, and acted on the basis of Chatham Buildings being an asset of the Partnership until it was first suggested that the latter belonged beneficially solely to Norman in September 2018 in Daniel's letter of 24 September 2018.

172. There are numerous examples of the parties acting on the basis that Chatham Buildings was an asset of the Partnership, including, by way of example, the following:

    i) The accounts of the Partnership consistently showed the item: *"Property at Cost"* with a value of £20,158. It is not suggested that the Partnership owned any other property apart from Chatham Buildings. I do not consider there to be any logic in Mr Dhillon's contention that this is simply a reflection of the value of the West Building, the subject matter of the 99 year Danesbridge Lease granted in 1983. I can see no reason why, if the Partnership had no interest in Chatham Buildings on its acquisition in 1982, the grant of this lease would have led to this entry in the Partnership's accounts. To the contrary, I consider the more logical explanation to be that provided by Philip, namely that the grant of the long leases, and in particular the 999 year leases, were treated as disposals of the relevant parts of the Chatham Buildings, and that the premiums received

were applied as against the cost of Chatham Buildings in its accounts. I bear in mind that one of the objectives on the purchase of Chatham Buildings was that long leases should be granted so that a substantial part of the purchase price paid could be recovered, and the indebtedness to NatWest reduced. In that case, the figure of £20,158 in the Partnership's accounts represents the cost, giving credit for the premiums received on the grant of long leases, of Chatham Buildings. Consequently, the inclusion of this figure in the Partnership's accounts consistently until the last accounts were produced in 2006, can only have been because Chatham Buildings was regarded as an asset of the Partnership.

ii) On several occasions, as highlighted in the recitation of the background circumstances above, Norman expressly referred to Chatham Buildings as being an asset of the Partnership, or at least to Philip having a 40% beneficial interest therein by virtue of his status as a partner. The following are examples:

a) Norman's letter dated 16 December 2009 to HM Land Registry in which Norman referred to the fact that he was the senior partner in Chatham Estates to which the whole of Chatham Buildings belonged, and to him having a 60% interest in that partnership.

b) Norman's manuscript note prepared following the meeting on 12 February 2005, in which he referred to the lease of the West Building being part of *"the verbal agreement to transfer the mill to the partnership with NJ generously allowing PM a 40% share in the deal."*

c) The management agreement entered into between Norman and Daniel in May 2018 which recited in very clear terms that Norman is not the sole owner of Chatham Buildings but the *"60% owner of the freehold interest in the property"*, identifying Philip as the *"40% owner"*.

173. I consider that the above evidence significantly outweighs anything that might have been said by Norman, in his witness statement dated 24 October 2018, some 36 years after the event, as to what the parties' intentions might have been in 1982.

174. I therefore find that Chatham Mills was acquired as an asset of the Partnership and remained such at all relevant times.

Whether the Partnership is to be treated as having been determined or dissolved at any time prior to the service of the Norman Dissolution Notice

The Defendants' Case as to abandonment and laches

175. The Defendants had, at one stage, relied upon the Partnership as having determined in 1983 because it was then insolvent. This allegation is no longer pursued.

176. The case that is pursued is that Philip abandoned the Partnership, or is now to be treated as barred by laches from asserting his rights as a Partner. The essence of the factual basis for the case of abandonment or laches is encapsulated in paragraph 14 of Mr Dhillon's written closing submissions where he said:

> *"14. When the Claimant left in 1994, and failed to take any step to assert his interest until the issuing of these proceedings until 2019, it is asserted that the Claimant cynically waited until the Property was turning a profit, before asserting his interest in it, or put differently, he has sat back and played a game where he has risked nothing to 24 years, relying on others to ensure the management and insurance of it, rising only to claim his interest as it now turns a profit."*

177. As I understand it, the Defendants' primarily contend that abandonment occurred when, as Mr Dhillon put it, Philip *"left the property"* in 1994, and/or in 1999, and took no part in any of the management or otherwise of Chatham Buildings thereafter. Mr Dhillon emphasised that an important consideration was that Philip did not ask to be *"let back into"* Chatham Buildings thereafter.

178. However, in paragraph 56 of his Skeleton Argument, Mr Dhillon expressed the case in a number of alternative ways saying that:

> *"... the Claimant has induced the Defendants, by his conduct, to believe that he has abandoned the Partnership, on any of the following dates:*
>
> *a. Between 1994 and 1999 as he failed to undertake any of the duties on management;*
> *b. Between 1994/1999 and 2007, as in that time, he did not undertake any role whatsoever that was akin to managing or maintaining the Property;*
> *c. After 2007, he did not take any steps, until making enquiries of the accounts in 2014, that is another 7 year period; and*
> d. *Finally, between 2014 and 2018, and having not received any accounts, he still did not undertake any real steps to assert his interest."*

179. Mr Dhillon's submissions recognise the distinction between abandonment on the one hand, which will generally involve some form of agreement or estoppel, and laches which provides a defence to the bringing of equitable claims where it is not necessary to provide positive evidence that the claimant has abandoned his right – see Lindley and Banks (Supra) at 23-25 to 23-27. I note that the latter expresses the view at 23-26 that where abandonment can be proved, it may in practice be unnecessary to rely on laches or acquiescence.

180. As to abandonment, I understand Mr Dhillon's case to be one based on estoppel or agreement based upon Philip voluntarily surrendering his key to the West Building, and Norman accepting the same as recognising that the Partnership was at an end, or at least acting thereafter on the basis, induced by Philip's conduct, that Philip would not assert his rights as a Partner.

181. Mr Dhillon seeks to draw an analogy with the following cases concerning abandonment of an interest in a partnership, namely:

i) *Predergast v Turton* (1841)1 Y&C Ch 98 at 100, and on appeal at (1843) 13 LJ Ch 268 at 269 – In this case the partnership's capital was exhausted, and the plaintiff partners refused to contribute additional funds. The other partners did introduce additional funds, and several years later succeeded in making a profit. Only at that stage did the plaintiffs assert their interest, in respect of which they were held to be barred. As the Lord Chancellor put it, on appeal at 269:

> *"This court can never sanction this sort of conditional acquiescence. To allow the party to lie by, in a case of this nature, to watch the course of events – to urge his claim, if it should be to his advantage to do so, and to abandonment on a continuance of misfortune and loss, which as a proprietor, he must have shared, would be at variance with the plainest rules of justice."*

ii) *Rule v Jewell* (1881) 18 Ch D 660 - In this case a member of a mining company, which was seriously in debt, had his shares forfeited for non-payment of calls. After five years he disputed the validity of the forfeiture and claimed to be reinstated as a partner. The claim was rejected on the basis of estoppel, and if necessary, abandonment. As Kay J put it at 667:

> *"… During that time the Plaintiffs clearly lay by, and can I have the smallest doubt that if this mine had turned out to be a losing affair instead of a profitable one, they would not have asserted any claim to be partners. I have not the least doubt of it. I think the lying by here was entirely analogous to the lying by in the case of Prendergast v Turton … I am of the opinion that that period of over six years during which no claim was made was such a lying by as in Prendergast v Turton was treated as a complete estoppel to the plaintiffs' right to make such a claim."*

182. So far as laches is concerned, Mr Dhillon relies upon Lindley and Banks (supra) at 23-21:

> *"Questions of laches and/or acquiescence frequently arise where a person has agreed to enter into partnership but has in effect hung back in order to see whether participation in the venture is worthwhile. Lord Lindley explained:*
>
> *' The doctrine of laches is of great importance where persons have agreed to become partners, and one of them has unfairly left the other to do all the work, and then, there being a profit, comes forward and claims a share of it. In such cases as these, the [plaintiff's] conduct lays him open to the remark that nothing would have been heard of him had the joint venture ended in loss instead of gain; and a court will not aid those who can be shown to have remained quiet in the hope of being able to evade responsibility in case of loss, but of being able to claim a share of gain in case of ultimate success.'"*

183. Mr Dhillon submitted that the modern approach to the doctrine of laches, acquiescence and estoppel is as set out in *Patel v Shah* [2005] EWCA 157 at [32], where Mummery J said, approving, dicta in *Frawley v Neill* [2000] CP Report 20:

> *"…There is, however, in my judgment a wider principle, which embraces the defences of laches and delay, and can be invoked in answer to claims which are made to equitable interests in property arising in circumstances affecting the sale and purchase of property. I refer to the principle formulated by Aldous LJ on the Frawley v Neill [2000] CP Reports 20. Aldous LJ (with whose judgment Ward and Swinton Thomas LJJ agreed) stated, having discussed instances of the doctrines of laches, acquiescence and estoppel, the following principle:*

> *"In my view, the more modern approach should not require an inquiry as to whether the circumstances can be fitted within the confines of a preconceived formula derived from earlier cases. The inquiry should require a broad approach, directed to ascertaining whether it would in all the circumstances be unconscionable for a party to be permitted to assert his beneficial right. No doubt the circumstances which gave rise to a particular result in decided cases are relevant to the question whether or not it would be conscionable or unconscionable for the relief to be asserted, but each case has to be decided on its facts applying the broad approach."*

184. On the basis thereof, Mr Dhillon submits that when considering whether the present claim by Philip is barred by laches, the Court, adopting this modern approach, is essentially concerned with answering a broad question as to whether, where a claim is brought after a considerable period of time, there exist circumstances which render it unconscionable for Philip to now claim the relief that he seeks.

185. Mr Dhillon submits that the present circumstances do now render it inequitable for Philip to bring his claim, reliance being placed upon the matters referred to in paras 173-177 above as showing that it is now unconscionable for Philip to seek the relief that he does.

186. Further, in his closing submissions, Mr Dhillon raised other matters said to go to the question of unconscionability, namely:

i) The terms of the Westminster Loan, which are said to be in conflict with Philip's duties under the Partnership Agreement; and

ii) What is said to be the behaviour of Philip, acting with Mr Warner and Mr Leighton, in approaching Newport Furnishings with a view to acquiring its charge in order to put pressure on Norman.

Philip's case as to abandonment and laches

187. The essence of Philips case in respect of the Defendants' arguments as to abandonment and laches is as follows:

i) Abandonment is akin to an offer to dissolve or to a renunciation which the other party is at liberty to accept - see *Palmer v Moore* [1900] AC 293 at 296 and 298, and Lindley & Banks on Partnership (supra) at 23-26. Typically, acceptance will be by way of getting on with the Partnership venture without reference or regard to the abandoning partner.

ii) Abandonment is denied by Philip who, in addition to saying that there was no *material* change in the position pre or post 1994, will point to the fact that far from treating the Partnership as having been abandoned or dissolved in 1994, there are countless examples of Norman having continued to treat the Partnership as extant down to at least April 2019 (i.e. for another 25 years or more).

iii) As to laches and the Defendants' reliance on *Patel v Shah*, it is submitted that the present case is not, on any proper consideration of the facts, a *"one way bet"*

case, i.e. a case involving a party who has agreed to enter into a partnership with another but does not engage, but rather waits to see if there is a profit or loss, with a view to evading any liability for the loss, whilst claiming any profit.

iv) In the present case, there was no holding back or one-way bet on the part of Philip. Rather both Philip and Norman continued to recognise Philip's continuing membership of the Partnership and his 40% interest therein, and thus in the assets of the Partnership including Chatham Buildings.

v) Further, as to the Defendants' reliance upon *Patel v Shah,* it is submitted that:

a) The conduct of the claimants in *Patel* was such as to have led the defendants to believe that the claimants' interests had been abandoned (see at [16]). Norman had no such belief, whether propagated by Philip or otherwise;

b) The Defendants in *Patel* had relied upon that belief to their detriment by continuing to service a mortgage debt due from the claimants and proceeding on the basis that the claimants had abandoned the venture. There was no such detriment suffered by Norman in reliance upon anything Philip said or did in the present case;

c) The belief of and the detriment to the Defendants in *Patel* made it unconscionable for the Claimants to assert their strict rights (i.e. laches prevented them from doing so) (see at [39]). Absent belief or detriment, questions of unconscionability cannot arise in the present case.

vi) Further, it is submitted that:

a) Laches, whilst providing a bar to enforcement of discretionary remedies does not affect property rights and, so, will not affect Philip's interest in Chatham Buildings (see *Fisher v Brooker* [2009] 1 WLR 1764 at [79]);

b) As at 1994 and down to at least 2019, Norman continued to recognise Philip's continuing membership of the Partnership and his interest in Chatham Buildings. That continuing recognition provides an absolute bar to any defence of laches succeeding - see *Penny v Pickwick* (1852) 16 Beav. 246 at 773. As it is put in Lindley & Banks (supra) at 23-25:

> "*It goes almost without saying* that, *whilst protests may be insufficient, a plea of laches will be defeated if there is positive evidence of the defendant continuing to recognise the claimant's rights*"

vii) In any event, it is Philip's case that he was excluded from the West Building by being asked to return his key thereto, whether in 1994 or 1999, and that Norman was in breach of the terms of the Partnership Agreement in excluding him this way, e.g. under clause 11 thereof. In the circumstances, the application of the prevention principle prevents Norman from relying upon his own wrong by alleging abandonment or laches arising from Philips non-attendance at Chatham

Buildings, cf. *Roberts v The Bury Improvement Commissioner* [1870] LR 5 CP 310 at 326 and 329.

viii) As to the attempt to rely upon the terms of the Westminster Loan, and any discussions with Newport Furnishings with regard to its charge, these formed no part of the Defendants' pleaded case, and cannot in any event assist on this issue.

Determination of the issue as to whether Philip's claim is barred as a result of abandonment or laches

Legal Principles

188. Whilst *Patel v Shah* (supra) does support the proposition that a laches defence may lie where delay, coupled with the circumstances of the case, make it unconscionable for the claimant to assert the claim, it is important to consider the facts of that case, and the basis for the decision.

189. *Patel v Shah* involved a number of ventures between the defendants and the claimants' predecessor in title, a limited company. The participants in these ventures provided the funds for the purchase of properties, which were purchased in the names of one or more of the defendants. This gave rise, in respect of the various properties, to resulting trusts in favour of those who provided the purchase monies, including the limited company. The limited company assigned its interest to the claimants, who did not assert any interest in the properties for many years in circumstances where the defendants had borne the risk in respect of shortfalls, and, in some instances, borrowed on the security of certain of the properties. It was held that this was a classic case of the claimants having pursued *"a one-way bet"*. As Mummery J put it at [15]:

> *"At the time of the property slump, where many of the properties were probably in negative equity and the rental income was insufficient to meet the mortgage instalments, the defendants took on the whole burden of keeping the properties afloat. The defendants were at risk if they defaulted on the mortgage repayments and the properties were repossessed. They were at risk if the properties were in negative equity. Neither Greetflow [the limited company that had assigned its interest to the claimants] nor its successors, the claimants, did anything to meet their share of the burden."*

Rather, they emerged, when circumstances had improved, with a view to taking the benefit.

190. At paragraph 34, Mummery J described the commercial arrangements in that case as follows:

> *"They were buying and selling properties with a view to making a quick profit. It was a collaborative commercial venture, in which those participating in it were expected to work together in making their contributions to achieve the aim of the joint ventures, the aim in the case of each acquisition being the same. The creation of resulting trusts arising on the purchases by the defendants of properties in their name, with contributions made by predecessors of the claimants and others, was, as Sullivan J pointed out in oral argument, not the aim of the joint ventures. The*

trusts were a by-product or incidental equitable consequence, a vehicle for accomplishing the commercial aim."

191. The equitable defence of laches was, after *Patel v Shah*, considered by the House of Lords in *Fisher v Brooker* [2009] UKHL 41, [2009] 1 WLR 1764. There are two particular helpful passages from the speeches in that case:

i) At paragraph 64, Lord Neuberger said this:

> *"… laches is an equitable doctrine, under which delay can bar a claim to equitable relief. In the Court of Appeal, Mummery LJ said that there was "no requirement of detrimental reliance for the application of acquiescence or laches" … Although I would not suggest that it is an immutable requirement, some sort of detrimental reliance is usually an essential ingredient of laches, in my opinion. In Lindsay Petroleum Co v Hurd (1874) LR 5 PC 221 , 239–240, Lord Selborne LC, giving the opinion of the Board, said that laches applied where "it would be practically unjust to give a remedy", and that, in every case where a defence "is founded upon mere delay … the validity of that defence must be tried upon principles substantially equitable". He went on to state that what had to be considered were "the length of the delay and the nature of the acts done during the interval, which might affect either party, and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy"."*

ii) At paragraph 79, Lord Neuberger said this:

> *"The argument based on laches faces two problems. The first is that, as pointed out by David Richards J, laches only can bar equitable relief, and a declaration as to the existence of a long-term property right, recognised as such by statute, is not equitable relief. It is arguable that a declaration should be refused on the ground of laches if it was sought solely for the purpose of seeking an injunction or other purely equitable relief. However, as already mentioned, that argument does not apply in this case."*

192. Given the basis on which *Patel v Shah* was decided, and the observation on the doctrine of laches in *Fisher v Brooker*, I consider it unlikely that the doctrine of laches could properly be applied to defeat a partner's claim to enforce his proprietary rights as against the partnership assets, at least absent the sort of detrimental reliance that might support an estoppel.

193. Further, I consider that Mr Connolly has quite correctly identified, by reference to *Penny v Pickwick* (1852) 16 Beav. 246 at 773 and Lindley & Banks (supra) at 23-25, that a plea of laches is likely to be defeated if there is positive evidence that the defendant continued to recognise the claimant's rights.

Factual considerations

194. I do not accept the Defendants' contention that the Partnership, as established, was all about the management of Chatham Buildings, and that the development thereof was not an important consideration behind the Partnership being established. It is certainly true that the granting of 999 year, or indeed 99 year leases, would potentially serve to limit

the development opportunities, as might the obtaining of a grade 2 listing status for Chatham Buildings. However, what is clear, not least from Kitson's Impey's letter dated 29 of January 1991, is that Philip came into the Partnership with a development background, and by 1991 at least there was a proposal to develop as student accommodation. Further, there is Mr Sheppard's evidence that when he visited Chatham Buildings in 1994, Philip was driving a redevelopment. There is then the further evidence of the correspondence involving Downs and Variava thereafter, and of course the involvement of Mr McCloskey in respect of proposed development between 1999 and 2003.

195. Consequently, attendance at Chatham Buildings in order to assist with the management thereof was, as I see it, only one facet of the Partnership's activities. Consequently, even if Philip did absent himself therefrom, or if he was excluded therefrom by Norman, that did not mean that he did not have a continuing interest in the affairs of the Partnership. Thus I attach limited significance to the fact that Philip might have made limited, if any, efforts to *"get back into"* Chatham Buildings. I consider this particularly so bearing in mind that the only key that he ever had was to the West Building, which was leased to Danebridge under the Danebridge Lease.

196. Whilst Philip may now genuinely believe that it was part of the initial agreement pursuant to which the Partnership was established that there would be a division of labour as between Philip on the one hand, with responsibility for the development of Chatham Buildings, and Norman with responsibility for the management thereof on the other hand, I consider it unlikely that there was any formal division of labour of the sort suggested. However, I regard it as significant that Philip came into the Partnership from a development background, and that Norman was already, through Danebridge, a tenant of the West Building, and thus on site so as to be in a position to more readily supervise the management of Chatham Buildings. Further, given the intention to grant long leases and to develop, I doubt that when the Partnership was established, it was anticipated that Chatham Buildings would necessarily involve the significant management and maintenance responsibilities that ultimately arose.

197. Matters were, plainly, fundamentally affected by the fire that took place in 1984, and this is no doubt delayed steps that might otherwise have been taken to further development proposals. Once the issues in relation to the fire had been dealt with, one can see how Norman, being on site, might have assumed effective responsibility for the management and maintenance of Chatham Buildings, leaving Philip to look into development opportunities. The impression that I got from Philip's evidence in particular is that he really did not have the acumen to drive forward any development proposals particularly constructively, and that this frustrated Norman. Further, it is clear from Philip's own letter to Norman dated 22 November 1999, that Norman had, through Sheila, expressed dissatisfaction as to Philip's efforts to more generally assist and contribute in respect of Chatham Buildings.

198. I consider it unlikely that Philip handed back his key to the West Building on a voluntary basis, at least in circumstances such as to give any indication that he was abandoning, or giving up his interest in the Partnership, particularly bearing in mind what I consider to be the wider objectives of the Partnership than simply managing Chatham Buildings. I consider it more likely that Norman asked for the key back having become frustrated by the matters referred to in the previous paragraph. I have already observed that I have found Daniel's account of the circumstances surrounding the return

of the key to be unrealistically vivid. I have also referred to Philip's own uncertainty in giving evidence as to when the key was returned. I have based my findings in relation to the return of the key not upon Daniel's and Phillips recollections of events, which I consider to be inherently unreliable, but upon the inherent probabilities extracted, as best I can, from the evidence as to the surrounding circumstances.

199. Having asked for the key back, whether this was in 1994 or 1999, and nothing much turns on the point in my view, it is plain on the evidence that Norman continued to deal with Philip as a partner. Thus, for example, on 26 January 1996, by sending to Philip copies of the 1993-94, and 1994-1995 accounts of the Partnership, together with a proposal regarding refinancing the Partnership's liabilities, and, on 16 December 1999, Norman, as we have seen, wrote to HM Land Registry referring to the Partnership owning Chatham Buildings, and to him (Norman) owning 60% of the Partnership. These would have been extraordinary actions if it had been considered that the return of the key had, in some way, brought the Partnership to an end.

200. So far as the Danebridge Lease is concerned, it is clear that a serious and fundamental difference arose as between Philip and Norman as to the basis upon which this lease had been granted, and the extent to which it was to be brought into account when the West Wing was developed with a view to making a development gain.

201. I explain the different positions adopted by Philip on one hand, and Norman on the other hand, above, but I am satisfied that each of Philip and Norman held a genuinely held belief as to the righteousness of their own position, based upon their own honest recollection, looking back many years beforehand to the establishment of the Partnership in 1982. Unfortunately, this led to Philip sending his letter dated 18 February 2005 requiring the surrender of the Danebridge Lease as a condition for agreeing to any form of development. In giving evidence, Philip, I believe, recognised himself that this was an unrealistic stand to take, but the real indication is that it served to frustrate any possible development.

202. I have gained the impression, not least from the way that he gave his evidence, that Philip is not a particularly strong personality, whereas Norman does appear to have had a significantly stronger personality in his prime. Further, there was the age difference of some 20 years between Norman and Philip. I can therefore see how Philip might have perceived Norman as a *"bully"* and a *"hard man"* as set out in his letter to Norman dated 8 March 2005.

203. The question does arise as to why nothing was done a lot sooner than it was by either of the partners to bring the Partnership to an end. As I have mentioned, when questioned in respect of this, Philip expressed the view that as committed Christians, neither he nor Norman would be naturally inclined to embark upon any form of legal proceedings against each other. From Norman's perspective, Daniel, in paragraph 27 of his witness statement, refers to Christian values having brought Philip and Norman together, and in paragraph 83 of his witness statement refers to the fact that the Partnership could so easily have been dissolved, but that Norman *"wanted no more lawyers and their bills. He felt it would go away."* In giving evidence, Daniel referred to there being *"a lot of avoidance"* from both sides.

204. It was put to Daniel in cross examination that Norman could, at least of the Defendants' case, have sought to dissolve the Partnership a lot earlier than he actually sought to do

by the Norman Dissolution Notice. Daniel accepted that this was the case, and further that Norman would have been aware of his ability to serve an appropriate dissolution notice. Whilst Daniel, in his witness statement, maintains that a copy of the Partnership Deed was only obtained by Bryan Slater photographing the same at a meeting in Costa Coffee shortly prior to service of the Norman Dissolution Notice, Norman must, as I see it, have had a copy thereof because Castletons referred to the term of clause 13(iii) thereof in their letter dated 30 May 2014, having stated that they had just been instructed by Norman.

205. The overall impression that I get is that both Norman and Philip were, despite their differences, prepared to let sleeping dogs lie until matters got significantly more contentious in recent years after Daniel became involved, assisted by Bryan Slater, and, from Philip's perspective, after Mr Hamilton, Mr Warner and Mr Leighton became more involved.

206. This is not, as I see it, a *"one-way bet"* case akin to *Patel v Shah* (supra). Even if it can properly be said that Philip did not fully or properly pull his weight in respect of the affairs of the Partnership, and attended at Chatham Buildings as little as suggested, he did not, as did the claimants in that case, sit back without any responsibilities or liabilities, only to come forward and assert his claim when Chatham Buildings looked a much better proposition. He remained, throughout, on the hook for Partnership liabilities, including those to NatWest and Newport Furnishings, he approved the accounts up to 2006, and he did not simply stand idly by leading Norman to believe that he had no claim on the Partnership or its assets.

207. To the contrary, one can see that right up until when Norman served the Norman Dissolution Notice on 20 April 2018, which itself presupposed the continuing existence of the Partnership and was not served on any form of without prejudice basis, Norman and Philip both recognised the continuing existence of the Partnership, and proceeded on the basis that it did still subsist, and that Philip had an interest in the Partnership assets. This is, to my mind, demonstrated by numerous documents in the present case, including the following:

    i) The accounts of the Partnership as produced, and as approved by Norman and Phillip as partners, for all years up to 2006 at least, a number of which showed the profits as divided between Norman and Philip. Mr Dhillon submits that these accounts are equally consistent with accounts produced following a dissolution, but I do not agree and even if these accounts were consistent with a dissolution they were plainly inconsistent with the partners proceeding on the basis that Philip had abandoned the partnership and any interest therein;

    ii) Norman's letter to HM Land Registry dated 16 December 1999;

    iii) The premise of the discussions with Mr McCloskey which recognised that Philip, as a partner in the Partnership, had an interest in the redevelopment of Chatham Buildings;

    iv) Norman signing, and referring to himself as *"Senior Partner"* in Chatham Estates, in various documents including his letter to HM Land Registry dated 16 December 1999, the 2009 Licence and his letter dated 15 May 2006 to RBS asking the latter to stop payments to Newport Furnishings and NatWest;

v) The *"Licence"* to MONE signed on 22 June 2009 by Norman as *"Senior Partner"*;

vi) Castletons' letter dated 30 May 2014, written on Norman's instructions, and seeking to recover monies from Philip on the basis that they were due under a provision of the Partnership Agreement;

vii) The 2018 Management Agreement entered into between Norman and Daniel in May 2018 which, subject to the Norman Dissolution Notice having been given, recognised the existence of the Partnership.

208. The focus of the Defendants' case was on the position after 1994, alternatively 1999, when the key to the West Building was returned by Philip to Norman, but Mr Dhillon put forward 2007 and 2014 as alternative dates when he says that Philip abandoned the Partnership, or as alternative dates that triggered a laches defence. This is said to be because no accounts were produced after 2006, and because Philip did little if anything thereafter to assert any interest in the Partnership. Alternatively, Mr Dhillon pinpoints 2014, suggesting that nothing was done after the Casteltons' correspondence came to an end. However, the fact is that there was continuing partnership engagement after 2007 as demonstrated by the matters referred to in paragraph 207 above, where Norman was recognising the existence of the Partnership. Further, it is significant that Philip did seek to move matters on - see e.g. the letters dated 30 August 2012 and 20 April 2015, which went unanswered, and the meeting with Daniel on 30 October 2015. It may be that Philip had not assumed any responsibilities concerning the management of Chatham Buildings for many years, or possibly at all, but as explained above, this was merely one facet of the Partnership. In this context, and given the circumstances in which this came about as considered elsewhere in this judgment, this do ere this did not mean that Philip was making a one way bet.

Conclusion

209. Having regard to the relevant legal principles, and applying them to the facts of the present case:

i) I do not consider that there can be any proper basis for the Defendants' case based on abandonment in so far as it is said to arise from an agreement or estoppel. There is simply no evidence of any such agreement, or to support the proposition that Norman acted to his detriment in reliance on Philip holding back from asserting that he was a partner with a claim upon the Partnership's assets.

ii) Further, I do not consider there to be any proper basis for laches to apply so as to prevent Philip from asserting that the Partnership subsisted until, at least, the date of Norman's Dissolution Notice. This is because even if, which is doubtful, laches could ever properly be applied to bar Philip out, as partner, from his interest in the Partnership and Chatham Buildings, on the present facts, the fact is that Norman, throughout, continued to recognise that Philip was a partner, and thus had rights as such. I consider that this must prevent a plea of laches succeeding, not least because the fact that Norman continued to recognise that Philip was a partner must negate the existence of the kind of detrimental reliance

required to support a plea of laches to defeat the assertion of the rights of a partner under a partnership agreement of the kind that Philip seeks to assert.

210. I thus find that the Partnership still subsisted, and had not been abandoned, dissolved, or otherwise determined on 20 April 2018 when the Norman Dissolution Notice was served, and that Philip is not barred by laches from asserting that the Partnership still subsisted at that time.

211. The fact that laches might not be capable of being applied to defeat Philip's interest as a Partner in the Partnership and require the Court to regard the Partnership as having been determined does not, as I see it, necessarily prevent the doctrine of laches being considered when it comes to considering the equitable remedies that Philip claims to be entitled to. This is something that I shall return to in due course.

The validity or otherwise of the Norman Dissolution Notice

Introduction

212. In the light of my findings as to the Defendants' arguments as to abandonment and laches, it is necessary for me to consider the validity or otherwise of the Norman Dissolution Notice, and whether it was valid and effective to dissolve the Partnership pursuant to clause 13(iii) of the Partnership Agreement.

213. I have set out in paragraphs 137 and 138 above details of the Norman Dissolution Notice, and the grounds upon which it maintained that Norman was entitled to serve a notice of dissolution pursuant to clause 13(iii) of the Partnership Agreement and, at the same time, exercise the option to acquire Philip's share provided for by clause 14(ii) of the Partnership Agreement.

214. The basis upon which Philip challenges the validity of the Norman Dissolution Notice was set out in detail in Slater Heelis letter dated 28 June 2018 referred to in paragraph144 et seq above.

215. Although the various notices provided for by clause 13 of the Partnership Agreement provide for the giving of notice to dissolve the Partnership, the fact that the service of a notice pursuant to clause 13 (iii) entitles the party serving a valid notice to exercise an option of the kind provided for by clause 14 of the Partnership Agreement to acquire the other party's share means that such a notice is akin to an expulsion notice. The consequence is that the power to give such a notice will be treated as tantamount to a power of expulsion, and will be construed and given effect to as such – see Lindley and Banks (supra) at 10-161.

216. The issues that arise for consideration in respect of the Norman Dissolution Notice are the following, namely:

i) Whether the Norman Dissolution Notice is invalid because Philip was not provided with the opportunity to respond to the matters that been alleged against him;

ii) Whether the grounds set out in the Norman Dissolution Notice were capable of being made out, and that it has been established that Philip committed *"grave*

or persistent breaches" of the Partnership Agreement (clause 13(iii)(c)), or that Philip has been *"guilty of any conduct likely to have a serious adverse effect on the partnership business"* (clause 13(iii)(c));

iii) Whether the Norman Notice is to be treated as invalid and ineffective because Norman failed to act in good faith in serving it, on the basis that he served it for the collateral purpose of avoiding having to answer proper enquiries made of him by Philip by his letter dated 16 March 2018.

Failure to provide opportunity to respond

217. It is Philip's case that the Partnership Agreement was subject to an implied term (an "**Opportunity to Respond Term**") that, prior to the service of a dissolution notice pursuant to clause 13(iii), the party seeking to serve the notice should give to the other partner a reasonable opportunity to respond to the allegations that would be the subject matter thereof.

218. Mr Connolly, on behalf of Philip, submits that the rationale for such an implied term is as follows:

i) The Partnership is a relationship based on mutual trust.

ii) If one of the two partners (partner A) has grounds to believe that the relationship of mutual trust has been broken by the other partner (partner B) so as to allow de facto expulsion and appropriation of that partner B's share of the Partnership, then the mutual trust relationship and the obligation under section 28 of the Partnership Act 1890 requires that partner A articulates his grounds of complaint to partner B and takes account of the answers of partner B before seeking to expel and to appropriate for cause.

iii) Were it to be otherwise, then partner A would be ignoring and failing to give effect to the relationship of mutual trust and to section 28.

iv) It obviously cannot have been the mutual intention of the partners to negate such fundamental terms of the Partnership relationship.

v) Indeed, and to the contrary, it is obvious that both would want to give effect to such fundamental terms of the Partnership relationship.

i) That is achieved by implying the Opportunity to Respond Term contended for by Philip.

219. I can see the logic of this line of argument, and there is much to commend it. However, there is Court of Appeal authority in *Green v Howell* [1910] 1 Ch 495, to the effect that such a term is not generally to be implied. Further, Lindley and Banks (supra) describes this area of law as being *"somewhat confused"*. Whilst it might be possible to distinguish the present case from *Green v Howell*, the resolution of this issue is not essential to my decision as to the validity of the Norman Dissolution Notice and, in those circumstances, I do not consider it necessary or appropriate to consider this point further.

Are the Clause 13 (iii)(c) and (e) grounds made out?

220. So far as clause 13 (iii)(c) is concerned, there appears to be no authority as to the meaning of either *"grave breach"* or *"persistent breaches"*.

221. *"Grave breach"* clearly, by reference to ordinary definitions, connotes something *"serious"* upon which expression there is some authority – see Lindley and Banks (supra) at 10-134. The expression *"serious"* has been held not to require that the conduct complained of be repudiatory in nature – *see DB Rare Books Ltd v Antiqbooks* [1995] to BCLC 306 (CA)). In his dissenting judgment in the latter case, Dillon LJ spoke in terms of the appropriate test as being that:

> *"It is enough if a breach goes to the root of the confidence and good faith which should exist between partners."*

To my mind, this is a helpful and appropriate test as to apply in respect of the language used in clause 13(iii)(c).

222. As to *"persistent breaches"*, the editors of Lindley and Banks (supra), at 10-134, suggests that in addition to the breaches in question being repeated there should also be some gravity to them, i.e. be non-trivial. This, to my mind, makes perfect sense in that again, one would not ordinarily expect one partner to be able to expel the other unless something had occurred that had fundamentally affected the confidence and good faith that existed between them.

223. So far as clause 13(iii)(e) is concerned, and whether a partner has been guilty of conduct likely to have a serious adverse effect on the partnership business, I consider that the appropriate considerations are:

i) What is the business of the Partnership?

ii) What, as a matter of fact, is the conduct complained of?

iii) Is the relevant partner in any sense *"guilty"* in respect of such conduct, i.e. has he done something that he ought not to have done in accordance with the terms of the partnership, express or implied?

iv) Applying an objective standard is the conduct complained of likely to have a serious adverse effect on the business of the Partnership?

224. Again, in considering the points, I consider that it would be an important consideration as to whether something had occurred that had fundamentally affected the confidence and good faith that existed between the partners. If it had not, then it is difficult to see that the conduct would have had a *serious* adverse effect on the partnership business.

225. The Norman Dissolution Notice identifies that it proceeds on the basis that Philip has acted in breach of clause 11 of the Partnership Agreement providing that: *"Each party shall be just and faithful to the other and diligently attend to the partnership business."*

226. In closing, Mr Dhillon's emphasis, on behalf of the Defendants, was very much upon paragraphs 1 to 11 of the Schedule to the Norman Dissolution Notice, and the allegations contained therein which are, in essence, all allegations that Philip failed to engage as a partner in the Partnership Business by not working at or attending Chatham Buildings, and not making appropriate financial contributions.

227. Mr Dhillon placed little emphasis on the following paragraphs (paragraph 12 et seq) of the Norman Dissolution Notice. In my judgment, he was correct not to do so. I shall deal with these paragraphs before returning to paragraphs 1 to 11.

228. So far as paragraph 12 is concerned, two broad allegations are made by Norman. Firstly, an alleged failure on the part of Philip to contribute to the mortgage debt owed to Newport Furnishings; and secondly, a failure on the part of Philip to disclose advice that he had obtained in relation to this debt and the charge that secured it. In respect thereof:

    i) As to the first of these matters, I consider the answer to be that Philip had offered to provide any financial contribution needed, but that Norman never notified him of any such need – see Philip's letter to Norman dated 21 February 2009 in which Philip said: *"If, in future, Chatham Estates is in need of finance make sure that you contact me."* Further, the Partnership Agreement does not, in terms, require a partner to make a contribution to the running of Chatham Buildings, and Philip's obligation is to meet 40% of any losses as provided for by clause 5.

    ii) As to the second of these matters, it is, as I see it, clear that the advice that Philip sought was for his own benefit, considering his own position as a partner, and not for the Partnership, and therefore that he has no obligation to share it with Norman.

229. Paragraphs 6, 13 and 15 concern B&S Investments, and litigation that the latter brought when a request for consent to gain access and for a change of user was declined. The most serious allegation made was that Philip had in some way conspired with B&S Investments to agree to a change of user in order to make a secret profit, and that Philip had, in some way, encouraged the litigation in order to obtain a collateral advantage of some kind. It is not entirely clear as to the extent to which these allegations are still pursued, but I do not consider them to be made out on the evidence. The evidence is to the effect that Philip took advice in respect of the requests made by B&S Investments in respect of access and change of user, and his dealings with the latter were entirely based, in good faith, upon the advice that he received in circumstances where Norman was taking an intransigent stand which risked significant legal costs being incurred.

230. Paragraphs 14 and 15 concern allegations about Mr Leighton *"liking"* a Tweet, and an allegation that Philip lied with regard to attendance at a site inspection. There is not, in my judgment, the evidence to support the relevant allegations and, in any event, they were not of sufficient gravamen to support the service of a notice pursuant to clause 13(iii).

231. So far as paragraphs 1 to 11 are concerned, these essentially consist of allegations that Philip failed to make financial contributions, and a wider allegation that Philip failed to engage with the affairs of the Partnership going back many years.

232. So far as the allegations in relation to a failure to make financial contributions are concerned (paragraphs 4, 5, and 9), the allegations are, as I see it, answered by the points set out in paragraph 228(i) above. In any event, it is, as I see it wrong to say that Philip has failed to make contributions bearing in mind the contribution that he did make by discharging the indebtedness to NatWest in March 2007. The position would

be different if it had been alleged, and there were evidence that Norman had raised particular financial difficulties with Philip, and asked him to help him in addressing them, but this is not alleged and there is no such evidence.

233. So far as concerns the wider allegation concerning not engaging with the Partnership business, and not working or attending at Chatham Buildings, I consider the position to be as follows:

i) It is significant that the events relied upon by Norman go back to 1994 (or even 1993) on Norman's case, and 1999 on Philip's case, when the key was returned.

ii) It is certainly right that from when Philip returned the key to the West Building to Norman, in whatever circumstances he did so, if not before, Philip did not attend at Chatham Buildings on any regular or systematic basis, and did not significantly contribute to the day-to-day management involved in connection therewith. However, on the basis of my findings above, I consider that this was more down to the way that the division of responsibility between the partners had worked out in practice, rather than any wilful decision on the part of Philip not to engage.

iii) Further, I consider it significant that the Partnership was not all about the management of Chatham Buildings, but involved wider purposes and objectives such as the development of Chatham Buildings. Thus, the mere fact that Philip might not have attended Chatham Buildings, did not mean that he had disengaged from the affairs of the Partnership.

iv) To the extent that Philip may have accepted under cross-examination that he not never willing, ready or able to assume responsibilities towards managing Chatham Buildings, his response must be considered in the context referred to in the preceding subparagraphs, with Norman having assumed those responsibilities as between himself and Philip.

v) There were clearly proposals for the development of Chatham Mill under consideration between at least 1991 and 1995, if not 1997. Further, the prospect of development was clearly under consideration during Mr McCloskey's involvement between 1999 and 2003. So far as this latter period is concerned, it does seem that Norman did seek initially to exclude Philip as evidenced by the initial correspondence produced with Mr McCloskey, with Norman looking to develop the West Building. Philip did subsequently engage with Mr McCloskey, and the correspondence shows that Philip was, at least initially, keen to assist in contributing. However, unfortunately, as I have considered in more detail above, the Danebridge Lease proved to be a sticking point, with each of Norman and Philip taking an entrenched position in respect thereof, and it is clear from the evidence that this is the reason why, ultimately, development was not progressed.

vi) Philip, as he himself appeared to accept, may have taken an unreasonable stand in 2005 with regard to requiring Norman to surrender the Danebridge Lease as a condition for cooperating with any development. However, this was, to my mind, based on an honestly held view as to the status of the Danebridge Lease

based upon his honest recollection of the discussions that he had held with Norman going back to 1982 and 1983.

vii) Thereafter, as I have also analysed above, there was something of a stand-off as between Norman and Philip, with each of them being prepared to let sleeping dogs lie for many years, and to do so even though Philip had not, following Mr McCloskey's involvement and Philip's letters of 18 February 2005 and 8 March 2005, mooted any development proposals.

viii) I am not satisfied that, in the above circumstances, Philip can properly be said, for the purposes of a dissolution notice given under clause 13(iii) of the Partnership Deed served on 20 April 2018, to have acted in *"grave"* or *"persistent"* breach of the terms of the Partnership Agreement, or that he is properly to be regarded as *"guilty of conduct likely to have a serious adverse effect upon the partnership business".*

ix) In any event even if, contrary to the above, the conduct of Philip might, at some stage, had been capable of being so regarded, I do not consider that it can have been open to Norman, in March 2018, and many years after Norman might first have had cause to complaint and having let sleeping dogs lie so many years, to reopen old wounds by the service of a dissolution notice under clause 13(iii) of the Partnership Agreement.

x) Further, I consider that Norman would, by his conduct, have waived any entitlement to serve a dissolution notice based upon the relevant matters. As referred to above, the evidence is to the effect that Norman had a copy of the Partnership Agreement, and was aware of the ability to serve a dissolution notice thereunder, cf. *Peyman v Lanjani* [1985] 1 Ch 457. I do not accept that if, contrary to the above, any failure on the part of Philip to participate in the day to day management had at some point entitled Norman to serve a notice under clause 13(iii), this is to be regarded as a continuing breach which could not be waived.

234. In short, therefore, I do not consider that the grounds for serving the Norman Dissolution Notice are made out.

Collateral Purpose

235. There is, to my mind, a further objection to the Norman Dissolution Notice.

236. As an incident of a partner's duty to act in good faith, it is necessary that a partner serving an expulsion notice (or a notice of dissolution that is of like effect) should do so acting bone fide for the benefit of the firm as a whole, and not for the serving partner's own ends – see e.g. *Blisset v Daniel* (1853) 10 Hare 493, where an expulsion clause was exercised by the majority of the partners in order to obtain the other party's share at a discount.

237. It is evident from Daniel's letter to Philip dated 21 March 2018, sent in response to Philip's letter dated 16 March 2018, that Norman (through Daniel) was then proposing a general dissolution. However, I am satisfied that the primary motivation behind the Norman Dissolution Notice was to frustrate Philip's attempts to obtain further

information in relation to the matters raised by the enclosures to Philip's letter dated 16 March 2018, and that this amounted to Norman using the Norman Dissolution Notice for an impermissible collateral purpose, rather than for the benefit of the partnership as a whole.

238. Ultimately, bearing in mind my findings as to whether the grounds for the Norman Dissolution Notice were made out, my findings as to impermissible collateral purpose are not essential to my decision, but they do, in my judgment, provide an additional reason as to why the Norman Dissolution Notice should be treated as invalid and ineffective.

Conclusion

239. For the reasons set out above, I consider the Norman Dissolution Notice to be invalid and ineffective, that the Partnership was not dissolved thereby, and that it was not therefore open to Norman to exercise the option provided for by clause 14(ii) of the Partnership Agreement.

First and Second Philip Dissolution Notices

240. I have described the contents of the First and Second Philip Dissolution Notices in paragraphs 144 and 148 above. As set out above, these notices followed on from the failure of Norman to respond to Slater Heelis' letters dated 28th of June 2018 and 3 January 2019, and, perhaps more fundamentally, from the failure of Norman to respond to Philip's letter dated 16 March 2018 seeking information in respect of the matters set out in Information Requests sent therewith.

241. As appears therefrom, the First and Second Philip Dissolution Notices alleged that Norman had breached the terms of the Partnership Agreement, including clauses 5, 6, 9 and 11 thereof, and the Section 28 Term, and that the breaches in question were *"grave"* and *"persistent"* within the meaning of clause 13 (iii) (c) of the Partnership Agreement, and constituted conduct *"likely to have a serious effect upon the partnership business"* within the meaning of clause 13 (iii) (e) of the Partnership Agreement.

242. I am not, on balance, satisfied that Norman did contrive to bring about the possession proceedings brought by NatWest, and so I would not uphold the First Philip Dissolution Notice insofar as it seeks to rely upon this allegation. Further, I am not, for the reasons identified to in paragraph 219 above, prepared to find that Norman acted in breach of the Opportunity to Respond Term.

243. However, Mr Dhillon was, frankly, hard pressed to resist with any great vigour or conviction, or able to offer any substantive answer to Philip's case that Norman had acted in breach of the terms of the Partnership Agreement, and done so in a *"grave"* way, and had acted such that he was guilty of conduct *"likely to have serious adverse effect upon the partnership business"*, by failing to respond at all to the information requests made by Philip's letter dated 16 March 2018, and Slater Heelis' letters dated 28 June 2018 and 3 January 2019, particularly given the serious matters raised by the information requests, and the legitimate concern of Philip to find out, amongst other things, about what was happening in respect of the receipt of rental income from Chatham Buildings.

244. I am well satisfied that, based upon the breaches of Norman's obligations and duties as a partner in the Partnership by his failure to at least seriously attempt to provide the information that Philip was seeking, Norman did act in *"grave"* breach of the terms of the Partnership Agreement, and that he was *"guilty"* of conduct *"likely to have a serious adverse effect upon the partnership business"* by his failure to address the information requests.

245. Consequently, I am satisfied that the First Philip Dissolution Notice, and failing that the Second Philip Dissolution Notice were valid and effective to give notice to Norman pursuant to clause 13(iii) of the Partnership Agreement dissolving the Partnership.

246. Further, on the basis that Philip has served a valid dissolution notice pursuant to clause 13(iii) of the Partnership Act on 14 December 2018, and failing that on 27 June 2019, each expressly stating that Philip was also exercising the option under clause 14(ii) of the Partnership Agreement, I am satisfied that Philip has validly and effectively exercised the option to acquire Norman's share in the Partnership pursuant to clause 14(ii) of the Partnership Agreement.

247. Even if neither of Philip's Dissolution Notices was valid or effective to dissolve the Partnership, the Partnership would have been dissolved on 20 September 2020 pursuant to s. 33(1) of the Partnership Act 1890 by reason of Norman's death. It is no longer in dispute that Philip did, following Norman's death, serve a valid and effective notice pursuant to clause 14(iii) of the Partnership Agreement exercising the option to acquire Norman share in the Partnership.

248. It follows that the validity or otherwise of the First and Second Philip Dissolution Notices only affects the date upon which the dissolution of the Partnership occurred, and which is to be taken into account for the purposes of drawing up the balance sheet provided for by paragraph (a) of the schedule to the Partnership Agreement given that however the Partnership dissolved, Philip served a valid and effective option notice pursuant to clause 14.

249. Philip seeks specific performance of the agreement constituted by the exercise by him of the option provided for by clause 14 of the Partnership Agreement. Of course, specific performance is an equitable remedy, and the Court has a discretion as to whether or not to grant specific performance.

250. As mentioned in paragraph 211 above, the defence of laches might potentially be capable of being deployed in opposition to a grant of specific performance. However, if, as I consider to be the case, laches did not bar Philip from serving the First and Second Philip Dissolution Notices and exercising the option provided for by clause 14, then I do not see any proper basis in the present circumstances for laches being deployed in order to defeat the claim for specific performance, whether as a matter of discretion or otherwise. I will therefore grant specific performance as sought be Philip.

251. As to laches, and the exercise of my discretion with regard to the grant of specific performance that Philip seeks:

    i) The Defendants' contention that Philip acted in breach of his own duties of good faith as a partner in the Partnership in entering into the arrangements that he did enter into in respect of the Westminster Loan, and/or otherwise with Mr

Hamilton, Mr Warner and/or Mr Leighton, whilst touched upon in Daniel's witness statement, and also in Mr Dhillon's Skeleton Argument and written closing submissions, are not pleaded in the Re-Re-Amended Defence as providing a defence to the claim for this head of relief or otherwise. Consequently the issues so raised, even if there were merit in them, were not developed in evidence or submissions, or otherwise in any proper way during the course of the trial so as to enable Philip fairly to deal with them. I do not, therefore, consider that they provide an answer to the claim for specific performance.

ii) Likewise, I do not consider that it is an impediment to specific performance that unsuccessful attempts might have been made by or on behalf of Philip to acquire Newport's charge in order to put pressure on Norman to buy him out. This formed no part of Defendants' pleaded case. However, even if it had have done, and Philip had had a proper opportunity to deal with the point, I do not consider it to be an issue of such moment as would have caused me to exercise my discretion against a grant of specific performance if the requirements for validly exercising the option provided for by clause 14 of the Partnership Agreement were otherwise made out.

iii) Mr Dhillon has also, in a note provided after the circulation of the draft of this judgment seeking clarification of a number of issues therein, sought to place reliance on the fact that Philip may, at an earlier stage, have stated that he did not want to buy Chatham Buildings, and on the fact that Philip may have said that a dissolution notice had not been served earlier because he (and/or Mr Hamilton, Mr Warner and Mr Leighton) did not want to wait five years to be paid out under the Partnership Agreement. However, this was only tangentially touched on in paragraph 9(g) of Mr Dhillon's written closing submissions, and was not a point developed at any length, if at all in oral closing submissions. It does not, in any event, alter my view that it is appropriate for me to make an order for specific performance. Philip having to wait five years for payment presupposes, if anything, the service by Philip a dissolution notice without cause under clause 13(i) of the Partnership Deed, and not a notice under clause 13(iii) carrying the right to exercise the option under clause 14 to acquire Norman's share in the Partnership. Philip did not establish that he had the grounds to serve a notice under clause 13(iii) until Norman failed to respond to his enquiries beginning with Philip's letter of 16 March 2018. Philip may have had legitimate commercial reasons for seeking to avoid serving a notice under clause 13(i) and, amongst other things, risking a general dissolution. He cannot, in my judgment, fairly be criticised for not serving a notice under clause 13(iii) until he had grounds for doing so.

In short, I do not consider that considerations arise that ought properly to cause me to decline to exercise my discretion in favour of granting Philip specific performance if the requirements for the valid exercise of the option provided for by clause 14 of the Partnership Agreement have otherwise been made out.

252. Pursuant to the 2019 Deed of Assignment, DAJ purported to have acquired Norman's interest in Chatham Buildings, but did so otherwise than as a purchaser for value without notice, and so acquired subject to all equities, including those arising under the Partnership Agreement, and in particular clause 14 thereof. Consequently, as Chatham

Buildings formed an asset of the Partnership, and to the extent that DAJ has acquired an interest in Chatham Buildings, Philip is entitled to an order for specific performance against DAJ as well as against Norman's estate.

Can the Defendants (or the relevant one or more of them) still request that Chatham Buildings be valued as at the date of dissolution?

Introduction

253. As referred to in paragraph 60(xxi) above, paragraph (e) of the schedule to the Partnership Agreement provides that the purchase price to be paid following the exercise of the option pursuant to clause 14 of the Partnership Agreement is calculated by reference to the balance sheet provided for by paragraph (a) of the schedule, adjusted in consequence of any valuation of the partnership property as at the date of dissolution required pursuant to paragraph (d) of the schedule.

254. Paragraph (a) provides that a balance sheet as at the date of dissolution and a profit and loss account the period from the date when the last account of the partnership was taken down to the date of dissolution should be prepared *"as quickly as reasonably practicable."*

255. The effect of the above provisions is that if Chatham Buildings is not valued pursuant to paragraph (d) of the schedule, then, subject to the arguments that are referred to below, the value of Chatham Buildings is liable to be taken as being the book value thereof as historically shown in the Partnership's accounts, i.e. a figure of approximately £20,000, as against its current market value. I note that a desktop valuation as at 15 March 2021 has valued the freehold interest in Chatham Buildings at £2.25 million.

256. The position is that whilst Norman did, following the service of the Norman Dissolution Notice, request a valuation pursuant to paragraph (d) of the schedule to the Partnership Agreement, no such notice has been served following either of Philip's Dissolution Notices, or following Norman's death, and the service by Philip option notices pursuant to clause 14 by reference thereto.

257. Paragraph (d) of the schedule provides that the request of either the Vendor or Purchaser for a valuation of freehold and leasehold property as at the date of dissolution is to be made within three months following the date of dissolution, i.e. within three months of 14 December 2018 if, as I have found, the First Philip Dissolution Notice was valid.

258. The question that arises is as to whether it is now too late for the relevant Defendant or Defendants to request a valuation pursuant to paragraph (d), and whether it is necessary for them to do so in order to ensure that the purchase price payable following the exercise by Philip of the option to acquire Norman's share is determined by reference to the true value of Chatham Buildings, as opposed to some very historic figure based on historic cost.

259. The Defendants put forward a number of reasons as to why they say that the purchase price should be determined by reference to a valuation as at the date of dissolution, namely the Defendants submit that:

i) Clauses 5 and 8 of, and paragraphs (d) and (e) of the schedule to the Partnership Agreement , properly construed, so provide;

ii) The request for a valuation made pursuant to paragraph (d) of the Partnership Agreement on 31 May 2018 in the context of the Norman Dissolution Notice and the exercise by him of the option provided for by clause 14 of the Partnership Agreement, is effective as a notice pursuant to paragraph (d) of the schedule following the exercise by Philip of the option provided for by clause 14 of the Partnership Agreement; or

iii) In any event, the time is not of the essence of the period of three months specified in paragraph (d) of the schedule to the Partnership Agreement.

Clauses 5 and 8 of, and paragraphs (d) and (e) of the schedule to the Partnership Agreement

260. Mr Dhillon submits that these provisions provide for the Partnership's books and accounts to be prepared in such a way as to provide for Chatham Buildings to be revalued from time to time therein, such that when it comes to the balance sheet provided for by paragraph (a) of the schedule to the Partnership Agreement, the balance should be prepared in such a way as to show Chatham Buildings as having an up-to-date valuation.

261. However, I do not read the provisions that Mr Dhillon refers to as having this effect.

262. Clause 5 merely provides for how profits and losses (including profits and losses of a capital nature) should be dealt with as between the partners. However, this is, as I see it, concerned with realised profits and losses, rather than ongoing valuation. Clause 8 merely provides for usual books of account to be kept properly posted up taking account of all assets and liabilities, but this does not require, as I see from anything more than that capital assets be recorded at cost.

263. So far as paragraphs (a) and (d) of the schedule are concerned, the fact that paragraph (d) makes express provision for a request to be made for a valuation as at the dissolution date presupposes, as I see it, that the balance sheet would otherwise be prepared by reference to the Partnership's usual book entries - otherwise paragraph (d) would seem otiose.

Norman's request for valuation dated 31 May 2018

264. I do not consider that this request dated 31 May 2018, served in a different context, can serve for the purposes of a notice pursuant to paragraph (d) of the schedule to take effect following the subsequent service of an option notice pursuant to clause 14 linked to either the First or Second Philip Dissolution Notice or Norman's death.

265. As I see it, the fact that paragraph (d) provides that the requisite notice should be served within three months *"following"* the date of dissolution must mean that it is to be served after dissolution, and not before it or in anticipation of it. Otherwise it might be possible to make a standing request pursuant to paragraph (d) the schedule just in case the need should arise, and that could not, as I see it, be right.

Time of the Essence

266. The real issue is, as I see it, as to whether time is of the essence of paragraph (d) of the schedule.

267. I consider the relevant principles that are engaged, to be the following:

i) As to whether time is of the essence of a particular provision is a question of the proper interpretation thereof applying the usual test as to what the relevant words would mean to the reasonable objective bystander, with knowledge of the admissible background, i.e. whether the reasonable objective bystander would have understood the parties to have intended that the relevant partner would not be entitled to seek a valuation unless the same was requested within three months of the date of dissolution -see Lewison, The Interpretation of Contracts, 7th Edn, at 15.38 et seq.

ii) Although concerned with the question as to whether there had been a repudiatory breach of a mercantile contract, in *Bunge Corporation v Tradex Export SA* [1981] 1 WLR 711, Lord Wilberforce, at 715D, provided what I consider to be some helpful guidance as to the appropriate course for the Court to take when he said:

> *"As to such a clause there is only one kind of breach possible, namely to be late, and the questions to be asked are: first what importance have the parties expressly attached to this consequence? And, second, in the absence of expressed agreement, what consequence ought to be attached to it having regard to the contract as a whole?"*

iii) It is well established that time will generally be of the essence so far as concerns the time in which a notice exercising an option is to be given – see *United Scientific Holdings Ltd v Burnley Borough Council* [1978] A.C. 904, 928–929 per Lord Diplock, and 945 per Lord Simon. The reasoning for this was, in that case, said to be because a contractual offer must be accepted in exact compliance with its terms, and, further, the grantor needs to know with certainty the moment when his proprietary rights come to an end by the exercise of the option.

iv) However, although time will generally be of the essence of the exercise of an option, it does not follow that any further time stipulations that arise consequential upon the exercise of the option will also be of the essence – see *Simmers v James* [2008] SC (HL) 137.

v) The time prescribed by a lease for the exercise by a landlord of a rent review provision will not generally be of the essence, unless expressly made so by the terms of the relevant provision – see *United Scientific Holdings Ltd v Burnley Borough Council (supra).* However, one of the circumstances in which time may be held to be of the essence of a rent review provision is if it is tied in with some other provision that clearly is of the essence, such as the exercise by the tenant of a break clause - see *United Scientific Holdings Ltd v Burnley Borough Council* (supra) at 946C, per Lord Simon.

268. Mr Connolly submits that, as a matter of interpretation, time plainly is of the essence of the time stipulations in paragraph (d) of the schedule to the Partnership Agreement, and that such follows from how paragraph (d) fits in with the other provisions of the schedule to the Partnership Agreement. Thus:

i) He accepts that paragraph (a) in referring to a balance sheet and profit and loss account being prepared *"as quickly as possible"*, does not make time of the essence of that provision. However, he does say that such wording indicates that there ought not to be delay in preparation of the balance sheet.

ii) The balance sheet is required in order to ascertain the purchase price as provided for by paragraph (e) of the schedule as it is the amount shown standing to the credit of the partner's capital account subject to an adjustment to take into account any valuation as at the date of dissolution requested pursuant to paragraph (d).

iii) Mr Connolly submits that a key provision is paragraph (g) of the schedule which provides for the purchase price to be paid by five equal instalments with the first instalment to be paid 12 months from the date of dissolution, with the further payments being paid annually thereafter, and with it being expressly provided that if any instalment should be in arrears for more than 28 days, then the whole of the balance then outstanding should become immediately due and payable. He submits that this makes it of key importance that the purchase price should be ascertained in good time before the first anniversary of the date of dissolution in order that payment of the first instalment can be made, and indeed steps taken to raise the funds to make that payment.

iv) Against this background, it is submitted that once the option provided for by clause 14 of the Partnership Agreement has been exercised, either in the dissolution notice if served pursuant to clause 13(iii), or within two months of death in case of a dissolution occasioned by the death of one of the partners, it is of importance that the process provided for by paragraphs (a) to (e) of the Schedule is completed in good time to enable the first of the instalments provided for by paragraph (g) to be paid.

v) This, so it is said, requires the time period of three months provided for by paragraph (d) to be of the essence for the provisions to work.

vi) Consequently, objectively construed, time must be the essence of the relevant provision.

269. Mr Dhillon's submission on this issue were fairly limited, but the arguments that might be advanced against the approach submitted by Mr Connolly to be the correct approach are, as I see it, the following:

i) Paragraph (d) of the schedule equally applies on death as on the service of a notice pursuant to clause 13 (iii).

ii) On death, it is open to the surviving partner to exercise the option provided for by clause 14(iii) within two months of death, i.e. within two months of the date of dissolution. This could then potentially leave the estate of the deceased

partner with only one month to request a valuation as provided for by paragraph (d). That is a very tight, and potentially unrealistic timescale bearing in mind that it is unlikely that, in the ordinary case, the grant of probate would be taken out within that timescale. This points to the time period of three months in paragraph (d) not being intended to be a hard three months.

iii) What really matters is that any valuation should have been obtained within such a timescale as permits the figures derived from the balance sheet to be adjusted once the latter has been prepared. Consequently, what is more important, for a practical point of view, is that the requisite valuation should be carried out within the same sort of timescale as the preparation of the balance sheet and profit and loss account pursuant to paragraph (a), in respect of which time is not of the essence. This further points to time not being intended to be the essence of paragraph (d).

iv) The expression *"as quickly as reasonably practicable"* in paragraph (a) of the schedule reflects that there might be practical difficulties in immediately preparing a balance sheet and profit and loss account, e.g. if there is a dispute as to the validity of a dissolution notice, as in the present case, or issues in relation to the identity of personal representatives on the death of a partner. If such is a reason for not making time of the essence of paragraph (a), then the same logic and reasoning applies to the time limit of three months provided for by paragraph (d).

v) A failure to request a valuation pursuant to paragraph (d) could have very serious consequences, and will almost certainly do so in the circumstances of the present case given the difference between the book value of £20,000 odd, and the recent valuation of Chatham Buildings of £2.25 million that has been obtained. If, as I have held, one of the purposes of the acquisition of Chatham Buildings by the Partnership was to develop the same, and make a development profit, then one might reasonably have expected it to have been anticipated at the time that the Partnership Agreement was entered into, had the parties given it thought, that there might well be a significant disparity between the book value of Chatham Buildings, and its actual market value at the date of a subsequent dissolution. In these circumstances, it might be considered unlikely, looking at matters objectively, that the parties would have intended to be bound by a strict time limit for requesting a valuation pursuant to paragraph (d).

vi) Requesting a valuation pursuant to paragraph (d) is to be contrasted with the exercise of the option pursuant to clause 14. In the case of the latter, one can see why time may well have been intended to be of the essence, considering matters objectively, given that strict compliance with the machinery provided for exercising the option was required in order to give rise to a binding agreement between the parties for the acquisition by Philip of Norman's share of the Partnership, and in order that the parties should know where they stood. However, the same considerations do not apply to ascertaining the price to be paid on performance of the agreement constituted by the exercise of the option.

vii) It might fairly be said that clause (d), being part of the machinery for ascertaining the price, is more analogous to the process of a landlord giving notice of a rent review to ascertain a revised rent, than the exercise of an option,

albeit that there is the tie in with the mechanism referred to in paragraph (e) that might point to being of the essence.

270. Lewison (supra) at 15.51 observes that it is not always easy to reach a conclusion as to whether time is of the essence of a contract as a matter of interpretation. However, I have reached the firm view that the considerations referred to in paragraph 269 above in favour of time not being of the essence, outweigh those referred to in paragraph 268 above in favour of time being of the essence. Having regard to the considerations referred to in paragraph 269 above, I am satisfied that the reasonable objective observer with knowledge of the background circumstances at the time that the Partnership Agreement was entered into would conclude that the language used in paragraph (d) of the schedule to the Partnership Agreement, set in context, did not point to time being of the essence of the period of three months therein provided for.

Conclusion

271. In the above circumstances, I do not consider that time is of the essence of the period of three months provided for by paragraph (d) of the schedule to the Partnership Agreement, and given that the parties are a long way off having prepared a balance sheet and profit and loss account of the kind provided for by paragraph (a) of the schedule, I am satisfied that it remains open to the relevant Defendant or Defendants to seek a valuation as at the date of dissolution pursuant to paragraph (d) of the schedule.

Status of MONE and Daniel in respect of Chatham Buildings from and after 2009, and whether any liability arises on the part of Norman's estate, or MONE and/or Daniel in respect of the way that Chatham Buildings has been managed from and after 2009

Philip's Case

272. It is Philip's case that, in the light of the various explanations that have been given with regard to the use made of Chatham Buildings by MONE and Daniel from and after 2009, which Mr Connolly on behalf of Philip describes as opaque, the reality of the position is that Norman simply handed over Chatham Buildings, being the principal asset of the Partnership, to MONE and/or Daniel and let them treat it as their own, receiving some £638,000 of income from Chatham Buildings, and paying only a nominal amount of some £36,000 odd into the Partnership bank account, and further monies to or for the benefit of Norman, and keeping substantial sums for themselves.

273. Philip submits that is difficult to imagine a clearer case of a breach by Norman of his duty of good faith to Philip, reliance being placed upon Lindley and Banks (supra) at 16-01 as to the nature and scope of that duty.

274. It is Philip's case that whilst the Defendants might seek to rely upon the 2009 Licence as granting a lease of a part of Chatham Buildings to MONE in 2009, and might seek to allege that the remainder of Chatham Buildings not subject to long leases was licensed to MONE in 2012, there are a number of difficulties with this line of argument on the basis that:

    i) It is inconsistent with other accounts of events that have been given, as referred to above, where Daniel and/or MONE were held out or described as managing Chatham Buildings for Norman;

ii) Norman was not able to grant a lease without his fellow legal owner, Philip, being joined therein – see Megarry & Wade, 9th Edn at 12-006, and *Ahmed v Kendrick* [1987] 56 P&CR 120 at 129.

iii) Any attempt to rely upon Norman being the agent of Philip with authority to enter into some agreement with MONE or Daniel on behalf of the Partnership ought to fail on account of the transaction being outwith the terms of s. 5 of the Partnership Act 1890. In that regard, it is submitted that the nature of the transaction cannot be said to be related to the business of the Partnership being carried on *"in the usual way"*, and it is submitted that Daniel cannot but have known that Norman did not have authority to enter into the transactions alleged without the approval of Philip.

iv) Until the re-re amendments to the Defence permitted by His Honour Judge Hodge QC on 27 August 2021, the Defence was silent with regard to the 2009 Licence and the further 2012 arrangements, merely pleading, in paragraph 18 thereof, that Norman had implied authority to encourage and agree to MONE using the East Building, and that MONE has, from 2009, repaired and maintained the mill and managed and insured it without contribution from Philip.

275. Philip then submits that as there has been a breach by Norman of his duty of good faith in letting MONE and/or Daniel into occupation and control of Chatham Buildings, this has given rise to the existence of remedies against each of Norman, MONE and Daniel in relation to the losses suffered by the Partnership and the profits that they have made.

276. In the case of Norman, it is submitted that there are two potential limbs to that loss:

i) The benefits derived from Norman letting MONE and/or Daniel into occupation and control of Chatham Buildings, including the benefits referred to in the Schedule of Means that Norman exhibited to his witness statement dated 25 April 2018 referred to in paragraph 142 above, which shows income paid to Norman and Mrs Jones the source of which must be Chatham Buildings.

ii) The loss suffered by the Partnership through the loss of control of Chatham Buildings, and the loss of the opportunity arising from that loss of control.

277. Philip submits that the best measure of those losses will be, as to the matters referred to in sub-paragraph 276(i) above, the sums received by Norman and his wife, Mrs Jones; and as to the matters referred to in sub-paragraph 276(ii) above, the benefits obtained by MONE and Daniel arising from their exploitation of the opportunities belonging to the Partnership. It is submitted that the obvious measure of those opportunities is the profit generated by MONE and the payments made to or on behalf of Daniel from those profits, as to which, see paragraph 123 and 124 above.

278. In the case of MONE and Daniel, the claims advanced against them in the Re-Amended Particulars of Claim are of knowing receipt and knowing assistance (See paragraphs 55 to 63 thereof).

279. As to knowing receipt, it is submitted by Philip that:

i) The elements of a claim can be summarised as follows (see *El Ajou v Dollar Land Holdings plc* [1994] 2 All ER 685, at 700 and *BCCI v Akindele* [2001] Ch 327):

a) Assets held under a trust or fiduciary duty.

b) Disposal of those assets in breach of that trust or fiduciary duty.

c) Beneficial receipt of those assets by the defendants.

d) The defendants having sufficient knowledge to render it unconscionable for them to retain the assets.

ii) In letting MONE and/or Daniel into occupation and control of Chatham Buildings there was a disposal by Norman of assets which were subject to his fiduciary duty and beneficial receipt of those assets by MONE and/or Daniel (those assets being Chatham Buildings and the opportunities the property presented).

iii) Daniel, as his father's son, and MONE as a company wholly owned and controlled by Daniel, cannot but have known that Norman was acting contrary to his fiduciary duty to Philip and that he was transferring property and opportunities to them which they knew were jointly owned by Philip and Norman, and which they knew Norman did not have unilateral licence or authority to transfer. That knowledge renders it unconscionable for MONE and/or Daniel to retain the assets and the profits derived from those assets – see McGrath QC, Commercial Law in Practice, 2nd Edition at 5.161.

280. As to knowing assistance, it is submitted on behalf of Philip that:

i) The criteria echo those for knowing receipt, save that the defendant must have: (1) induced or assisted in the breach of trust; and (2) must have acted dishonestly in providing that assistance.

ii) As to (1), and given the age and infirmity of Norman, it is submitted that it is obvious that MONE and/or Daniel must have induced or assisted in Norman's breach of fiduciary duty.

iii) As to (2), it is submitted that the Court is required to embark upon a two stage process of first establishing the state of mind (in this case of Daniel) and thereafter assessing objectively whether or not his conduct was dishonest - see *Ivy v Genting Casinos* [2017] UKSC 67 at 74. It is submitted that it is difficult to see how, armed with the knowledge of the Partnership and of Philip's interest in that Partnership and in the Property, Daniel can be said to have behaved honestly in inducing or assisting Norman to effectively give up occupation and control of Chatham Buildings, and the opportunities it enjoyed, without reference to Philip. This must, it is submitted, have amounted to a breach of Norman's fiduciary duty of good faith.

iv) In providing that assistance, Philip has been deprived of, and MONE and/or Daniel have gained substantial profits which it is submitted they should be

obliged to disgorge in calculating their liability to Philip - see McGrath QC, Commercial Law in Practice, 2nd Edition at 9.138 to 139.

281. It is recognised by Philip that the quantification of the claims against both Norman and MONE and Daniel are matters for another day when it is envisaged on behalf of Philip that an account will be taken. However, it is submitted on behalf of Philip that the Court should decide, and give directions as to the basis upon which the requisite account or accounts should be taken.

282. By way of re-re-amendment, the Defendants advance a broad based limitation defence. It is said on behalf of Philip that this limitation defence is not understood, at least in so far as reliance is placed upon ss. 5, 8 and 9 of the Limitation Act 1980. Philip notes and accepts Norman's case that under s. 23 of the Limitation Act 1980, the time for the taking of an account as between partners will run from the date of dissolution, but that is a date being no earlier, on Philip's case, than April 2019 - see Lindley & Banks on Partnership, 20th Edition at 23-34.

The Defendants' case

283. It is unfortunate, in the light of my findings, that the Defendants' case has focussed on the ownership of Chatham Buildings and the contention that the Partnership had determined well prior to 2018. As a result the Defendants' case as to the position in the event that Chatham Buildings was an asset of the Partnership and the Partnership did continue until at least 2018 has not perhaps been developed as fully as it might have been in answer to the case advanced by the Philip, and the authorities relied upon by Mr Connolly.

284. In essence it is the Defendants' case that:

i) Not least because Philip had left it to Norman to get on with the management of Chatham Mills, and had shown no interest in day to day management and had effectively frustrated any extant development plans, Norman had the implied authority of Philip to enter into the arrangements that he did with Daniel/MONE;

ii) Pursuant to those arrangements, MONE had the benefit of a lease of the third floor of the South Building with effect from the date of the 2009 Licence, and thereafter from 2012 had a licence of the rest of Chatham Buildings not the subject matter of the long leases, MONE being obliged to pay rent as pleaded in paragraph 18(b) of the Re-Re-Amended Defence.

iii) MONE and Daniel had properly accounted, at least to Norman, for the sums that they were obliged to pay.

iv) Consequently, not being guilty of any wrongful or unconscionable conduct, no question of any constructive trust as an accessory or knowing recipient arises, and MONE/Daniel are not under any liability to account;

v) Thus in paragraph 31 of his closing submissions, Mr Dhillon submits that the basis of account in the event of the Partnership being held to exist until 2018 is:

"a. Those payments which D3 and/or D2 has made to D1 since 2009;

b. This is because, as freely admitted by the Claimant, he left all the management to D1 and so cannot complain now upon the basis upon which the Partnership Property has been let out to D3/D2 to generate a return; and

c. The Claimant has failed at any point to stop D3 or D2 from managing the Property, he having been fully aware that MOne was doing so since the first payment was made by MOne to the RBS Partnership Account."

Discussion

285. I have not inconsiderable sympathy for Norman's position by 2009 in that the reality of the matter was that he was, in practice and for whatever reason, undertaking the burden of managing Chatham Buildings and assuming responsibility for its maintenance as between himself and Philip, and doing so in circumstances where Philip had, in 2005, made it clear that, as a condition for cooperating in respect of any development of Chatham Buildings, he would require that the Danebridge Lease was surrendered in circumstances where Philip, as he himself accepted, had no entitlement to so require.

286. One can perhaps see why, in the circumstances, if Daniel was, through MONE, interested in taking on a management and maintenance function, and taking steps to maximise the rental received, Norman might have considered it in everyone's interests to let Daniel, through MONE, assume that role. However, clearly, this would only have been a proper exercise for Norman to embark upon if he acted in good faith and in the best interests of the Partnership in the circumstances. This would, to my mind, have required that Norman negotiate terms at arm's length with Daniel which ensured that the Partnership received a proper return whilst, at the same time, allowing for Daniel/MONE to be properly rewarded for their own efforts.

287. In principle the formula referred to in paragraph 18(b)(ii) of the Re-Re-Amended Defence was capable of achieving this in providing for Daniel/MONE to pay rent by reference to the amount of investment monies expended by MONE on Chatham Buildings and the profits achieved by MONE. However, this would have required a rent or licence fee, appropriately calculated and agreed, to be paid to the Partnership and not simply to or for the benefit of Norman. However:

i) Whilst the 2009 Licence did provide for payment of a specific sum, once MONE/Daniel had assumed responsibility for the whole Chatham Buildings not the subject matter of long leases, the position becomes, as Mr Connolly suggests, entirely opaque as to what was to be paid, and to whom MONE/Daniel actually accounted; and

ii) When it came to the 2018 Management Agreement, it is difficult to see that it can ever properly have been agreed for Daniel/MONE to have been entitled to receive a flat 80% of rental and other income received going back to 2009.

Daniel's evidence under cross examination

288. Mr Connolly cross-examined Daniel at some length with regard to his/MONE's involvement with Chatham Buildings.

289. Mr Connolly put to Daniel that his father *"just gave you the mill"* and that he, Daniel, knew that that had been wrong. Daniel denied that this was the case, and responded to the effect that he knew that Philip was a partner, but did not know what his rights were, and did not know that his permission was required in respect of what his father had agreed with him.

290. It was put to Daniel that, without his help, there would have been no breach by Norman of his duties as partner in, effectively, letting Daniel/MONE have £800,000 worth of income from Chatham Buildings. Daniel responded to the effect that he did not think about Philip, but considered that he was making things better for all concerned by making improvements to Chatham Buildings, stopping the rain coming in, and putting considerable effort into sorting out what he described as a mess, and maximising the rental income from Chatham Buildings.

291. Daniel commented that the long leasehold owners were glad about what he was doing. He also said that he had no knowledge of the Castletons' correspondence in 2014, and made the point that he was not, at any relevant time, told to stop what he was doing. As he put it: *"I thought I was doing the right thing until Slater Heelis wrote to me"*. I understand this reference to Slater Heelis writing to him to be a reference either to Philip's letter dated 16 March 2018 with the information requests accompanying the same making a number of enquiries with regard to Daniel's/MONE's involvement with Chatham Buildings, and/or the subsequent correspondence directly from Slater Heelis thereafter.

292. I broadly accept the account given by Daniel as to his own subjective understanding of events as set out above. On the other hand, I accept Philip's account that, whilst he might have seen a MONE sign going up at Chatham Buildings in or about 2009, he was not really aware of what was going on save through what was discussed with Daniel on 30 October 2015, hence the making of the enquiries that Philip did make from 16 March 2018 onwards.

293. So far as what the arrangements were as between Norman and Daniel/MONE, I am prepared to accept that the 2009 Licence was signed when it purported to be signed in 2009, and that the intention behind it was to provide a formal basis for Daniel/MONE to assume *some* sort of control over parts of the third floor at Chatham Buildings whereby MONE would carry out works of improvement and repair thereto and receive the enhanced income therefrom, on the basis that it would pay the licence fee provided for by the 2009 Licence. I accept that, for the reasons advanced by Philip, this cannot have created a lease or tenancy binding on Norman and Phillip as freehold owners of Chatham Buildings, not least because Philip was not a party to the 2009 Licence, and the terms of the 2009 Licence did not provide for exclusive possession or occupation.

294. However, I consider that it is reasonably clear that when, in all probability in or about 2012, Daniel/MONE began to assume responsibility for other parts of Chatham Buildings, the arrangement is more properly to be described as one, as put by Mr Connolly to Daniel and from which Daniel did not really dissent, whereunder Chatham Buildings was effectively handed over to Daniel/MONE to run. This, in my judgment, explains all the later references to Daniel being *"the boss"*, and to Daniel managing Chatham Buildings on behalf of Norman. The difficulty with Chatham Buildings being handed over to Daniel/MONE in this way is that although the latter did pay over some monies to the Partnership's bank account, and other monies to or for the benefit of

Norman and Mrs Jones, the basis upon which they did so was and remains ill-defined, as do the amounts actually paid over.

Norman's position, and that of his estate

295. Despite the less than satisfactory position that he found himself in given the breakdown in the relationship between himself and Philip, I do not consider that Norman can have had implied authority to enter into the arrangements that he did enter into with Daniel. I consider this to be so not least because s. 5 of the Partnership Act 1890, dealing with the power of a partner to bind the firm, limits the acts in respect of which a partner can bind the firm to *"any act for carrying on in the usual way business of the kind carried on by the firm"*. I do not consider that the acts involved in Norman making arrangements with Daniel/MONE in respect of the latter's use of Chatham Buildings on the basis referred to above, can conceivably fall within the circumstances prescribed by s. 5.

296. Further, whilst it is conceivable that arrangement such as those provided for by the 2009 Licence itself might have been considered by Norman to have been in the best interests of the Partnership to enter into, that could only have been on the basis that arrangements were in place to ensure that the licence fee provided for by the 2009 Licence was properly accounted for to the Partnership. Unfortunately, the evidence suggests that no such arrangements were in place. Further, I consider it difficult to see that Norman could properly have considered the later (post 2012) arrangements with Daniel/MONE to have been bone fide and in the best interests of the Partnership given the lack of formality in relation thereto, given the absence of any proper formula to define the basis upon which Daniel/MONE should account to the Partnership in respect of some elements at least of the profits generated from Chatham Buildings having taken into account the efforts of Daniel/MONE, and given that no proper procedures were put in place to ensure that Daniel/MONE did account to the Partnership, rather than to Norman. Consequently, and to this extent, I consider that Norman did act in breach of his duties of good faith owed to Philip.

297. Once Philip began to make the enquiries that he did, beginning in earnest with his letter of 16 March 2018, the response to which was, as I found, to serve the Norman Dissolution Notice, the position becomes, in my judgment, even more clear. It is only thereafter that the 2018 Management Agreement was entered into, with Bryan Slater's assistance, in the unsatisfactory circumstances that I have described above.

298. I agree with Mr Connolly's assessment in the course of submissions that the agreement pursuant to the 2018 Management Agreement, providing for Daniel to receive, and be treated as having been entitled from 2009 to receive, 80% of the rental and other income from Chatham Buildings cannot have been objectively honest. Thus I consider that, by this stage, if not earlier, Norman was in breach of his fiduciary duties as a partner owed to Philip, and in breach of his duties in an objectively dishonest way.

299. I consider it clear therefore that Norman's estate ought to be required to:

i) Account to the Partnership and/or Philip for all sums received from Daniel or MONE, or otherwise actually received by Norman (or Mrs Jones) in respect of the income from Chatham Buildings, from 2009 to date, that have not already been accounted for. Any monies that Daniel or MONE did pay over to Norman

or Mrs Jones representing income earned from Chatham Buildings ought to be accounted for as income of the Partnership and/or Philip, and not just that part thereof that found its way into the Partnership's bank account. I will therefore direct that an account be taken of the monies received.

ii) Compensate the Partnership for the breach of the duty of good faith that has been established. As to this, I am not persuaded that the loss that Philip is entitled to recover is necessarily, as contended by Philip, the opportunity loss by reason of control of Chatham Buildings being ceded to MONE/Daniel such that Norman's estate is liable to account for the actual profits made by MONE/Daniel from Chatham Buildings from 2009 onwards. In these circumstances, I consider that the appropriate course is for me to direct an inquiry as to the loss (if any) that the Partnership has suffered from and after 2009 by reason of the breach of the duty of good faith on the part of Norman that has been established.

300. I understand it to be common ground between the parties that so long as a partnership subsists, time can never run in respect of an action between the partners based on their fiduciary obligations towards each other, time only starting to run on the dissolution of the partnership. On this basis, no question of Philip's claim as against Norman's estate in respect of the above matters being statute barred arises – see s. 23 of the Limitation Act 1980.

Are Daniel and MONE liable to account as constructive trustees?

301. It is a touchstone of liability as a constructive trustee for dishonest assistance in a breach of trust or fiduciary duty, or in respect of knowing receipt of trust monies, that the accessory sought to be impugned should have been at fault.

302. Where one is concerned with knowing receipt, then the authorities demonstrate that the defendant must know enough of the facts surrounding the misapplication of trust property to make it unconscionable for him to retain the benefit of his receipt. As Snell's Equity, 34th Edn at 30-072 points out, the degree of knowledge which might make the defendant's conduct unconscionable varies with the context, thus allowing the court to set a standard that is appropriate to the exigencies of the transaction in question. A defendant's wilful decision to overlook a possible breach of trust, or a deliberate failure to make reasonable enquiries as to that possibility, is likely to give rise to liability. A failure to appreciate a probable breach which would have been obvious to a reasonable person in his situation may be enough to make his receipt unconscionable. So too, the recipients knowledge of facts that would put a reasonable person on enquiry might amount to unconscionable knowledge - see *MacMillan Inc v Bishopsgate Investment Trust plc* [1995] 1 WLR 978 at 1000.

303. Where one is concerned with dishonest assistance, the defendant's assistance in a breach of trust must have been, in itself, dishonest – *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378. This is an objective standard which implies a more serious degree of fault than ordinary negligence.

304. In applying this objective standard, the defendant is to be judged according to the standards of an ordinary honest person, who would have the same knowledge of the circumstances as he does, and sharing some of his personal characteristics, such as his

age and experience – see *Royal Brunei Airlines* (supra) at 391. The better view of the authorities probably now is that the defendant does not need to realise that his conduct will be regarded as dishonest by the standards of an ordinary honest person, so long as it is to be so regarded - see *Starglade Properties Ltd v Nash* [2010] EWCA Civ 314.

305. The remedy sought by Philip in respect of the alleged liability of Daniel and MONE as constructive trustees is for an account of profits, i.e. an account of the profit that they have made through knowingly receiving Partnership monies, or dishonestly assisting Norman to act in breach of his fiduciary duties as a Partner. A number of points should be noted so far as the remedy of an account is concerned, when applied to an accessory who is said to have dishonestly assisted in a breach of fiduciary duty, or to have knowingly received trust property, the remedy being more restricted than that available against the fiduciary himself. In particular:

    i) An accessory will only be accountable for profits gained where the conduct was the effective cause of the profit made – see *Novoship (UK) Ltd v Nikitin* [2015] QB 499 at [94]- [119], per Longmore LJ;

    ii) The court has a discretion to withhold the remedy if, for example, it would be disproportionate – see *Novoship (UK) Ltd v Nikitin* (supra) at [119], per Longmore LJ;

    iii) A dishonest assistant is not accountable for profits gained by the primary wrongdoer - *Ultraframe (UK) Ltd v Fielding* [2005] EWHC 1638 (Ch) at [1595]-[1601] , per Lewison J.

    And see Snell (supra) at 20-041.

306. Having broadly accepted Daniel's evidence with regard to the matters referred to in paragraph 288 et seq above, I am prepared to accept that until Daniel begun to receive correspondence from Slater Heelis, or perhaps more correctly until Daniel received Norman's letter dated 16 March 2018 containing information requests including those addressed to MONE, Daniel did genuinely believe that he was doing the right thing. Further, having regard to his age and experience, and comparative lack of knowledge as to the internal affairs and workings of the Partnership, I am not persuaded that, looking at the matter objectively, so far as the period prior to March or April 2018 is concerned, Daniel is properly to be considered as having acted dishonestly applying the criteria referred to in the authorities referred to in paragraph 302 et seq above. Consequently, prior to March or April 2018, I do not consider that Daniel or MONE are properly to be regarded as having dishonestly assisted Norman in respect of any breach of fiduciary duties, or to have knowingly received Partnership monies.

307. Thus I do not consider that Daniel or MONE are liable to account as constructive trustees in respect of any profits made in the period up to March or April 2018. In any event, in respect of the period prior to March or April 2018, I consider that there would be a very cogent case for not exercising the Court's discretion in favour of ordering an account bearing in mind the very positive steps that Daniel and MONE had taken to improve and increase the profitability of Chatham Buildings, without any objection. Whilst Philip might not really have known what was going on, he was hardly, until March 2018, taking a particularly active interest in what was going on, or doing much following the correspondence with Castletons and his letter to Norman dated 20 April

2015 to chase up the sorting out of the Partnership accounts until his letter of 16 March 2018, apart perhaps from his conversation with Daniel on 30 October 2015.

308. However, I consider the position after March/April 2018 to be very different. By that stage, it is clear that Philip was beginning to make serious complaint in respect of a failure to account to him in respect of profits made in respect of Chatham Buildings. Further, as I have held, the Norman Dissolution Notice was used as an attempt to fend off Philip's legitimate enquiries, and I consider that Daniel is likely to have been the driving force behind this bearing in mind the contents of his letter dated 21 March 2018. In addition, it is clear that Daniel was an active party to the 2018 Management Agreement which, it is clear to me, was contrived at this point, in April or May 2018, to at least muddy the waters.

309. Thus I consider that Daniel and MONE are liable to account as constructive trustees for the profits that they made from Chatham Buildings, but only for those from and after 20 April 2018, being the date of the Norman Dissolution Notice, by when it is clear in my judgment that Daniel was on sufficient notice as to Philip's concerns, and after which receiving profits from Chatham Buildings without accounting to the Partnership and/or Philip cannot objectively be considered to be honest behaviour – thus rendering Daniel's actions unconscionable in retaining monies received without accounting to the Partnership and/or Philip.

310. I will therefore direct that an account be taken of such profits as from 20 April 2018, but not prior thereto. However, that would be an account of profits after allowing for proper expenses, and on the taking of that account Daniel and MONE would, as I see it, be entitled a proper allowance for their efforts involved in managing Chatham Buildings. I will, if necessary, hear further submissions as to the precise basis of that account.

Overall Conclusion and summary of determinations

311. My overall conclusions, reached for the reasons set out above, can be summarised as follows:

i) Chatham Buildings was an asset of the Partnership;

ii) The Partnership was not dissolved or otherwise determined until Philip validly and effectively served the First Philip Dissolution Notice pursuant to clause 13(iii) of the Partnership Agreement on 14 December 2018;

iii) If, contrary to sub-paragraph (ii) above, the First Philip Dissolution Notice did not dissolve the Partnership, then the Partnership was dissolved by the Second Philip Dissolution Notice on 27 June 2019, and failing that by Norman's death on 20 September 2020;

iv) Philip has validly exercised the option to acquire Norman's share in the Partnership pursuant to clause 14 of the Partnership Agreement, and is entitled to an order for specific performance of the agreement constituted thereby as against Norman's estate, and also against DAJ, which is bound thereby to the extent that it has acquired any interest in the Partnership or Chatham Buildings pursuant to the 2019 Deed of Assignment;

v) It remains open to Norman's estate and/or DAJ to request that Chatham Buildings be valued as at the dissolution date pursuant to paragraph (d) of the Schedule to the Partnership Agreement, time not being of the essence of that provision;

vi) Norman's estate is liable to account to the Partnership and/or Philip for all monies derived by Norman, Mrs Jones or Norman's estate from the rent and other income from Chatham Buildings from 2009 to date;

vii) There should be an inquiry as to the loss (if any), recoverable from Norman's estate, that the Partnership has suffered from and after 2009 by reason of the breach of the duty of good faith on the part of Norman that has been established in respect of the ceding of control of Chatham Buildings to MONE/Daniel;

viii) Daniel and MONE are liable to account to the Partnership and/or Philip as constructive trustees for all profits that they have made from the rent and other income from Chatham Buildings from 20 April 2018 to date;

ix) There should be an account and/or enquiry as to:

a) The sum payable by Philip to Norman's estate and/or DAJ pursuant to paras (e) and (g) of the schedule to Partnership Agreement after bringing into account the sum found to be due from Norman's estate pursuant to sub-paragraph (b) below ;

b) The amount for which Norman's estate is liable to account pursuant to sub-paragraph (vi) above;

c) The amount for which Daniel and MONE are liable to account pursuant to sub-paragraph (vii) above.

312. Given that the parties have been unable to agree a final form of order giving effect to this judgment, I will today order that:

i) Judgment having been handed down, the hand down hearing be adjourned to a date to be fixed at which all consequential matters arising from or in connection with the Judgment including, but not limited to, the nature of the accounts and inquiries to be ordered, interest, questions of permission to appeal, and costs will be determined.

ii) The time for the parties to file any appellant's notice with the Court of Appeal under CPR 52.12 be extended until 21 days after the hearing under subparagraph (i) above.