Neutral Citation Number: [2022] EWHC 1819 (Ch)

Case No: CR-2020-004516

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (ChD)
RE: ENNO CAPITAL LTD (crn.11887468)
AND RE: THE COMPANIES ACT 2006

The Rolls Building, 7 Rolls Buildings,
Fetter Lane, London EC4A 1NL

Date: 20/07/2022

Before :

ICC JUDGE PRENTIS

- -

Between :

SHICHUANG XIE	**Petitioner**
- and -	
1. QINGHENG MENG	
2. YIJIAN GAO	
3. SUNEET SINGH SACHDEVA	
4. CT MANAGEMENT HOLDINGS LTD	
5. ENNO CAPITAL LTD	**Respondents**

- -

Ian Mayes QC (instructed by **BDB Pitmans LLP**) for the **Petitioner**
John McDonnell QC and Richard Bowles (instructed by **Richard Slade and Company**) for the **First to Fourth Respondents**

Hearing dates: 8, 9, 10, 13, 14, 16 June 2022

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JUDGMENT

ICC JUDGE PRENTIS :

Introduction

1. Bubble tea is a relatively recent arrival in Britain, having originated in Taiwan in the early 1980s. Having first tasted it in Australia in 2011, on completion of his A-levels in 2013 the Third Respondent, Suneet Singh Sachdeva, known as "Sunny", perceived a "huge gap" in the leisure-drinks market. He prepared a business plan for approval by his father, who then raised the money to set up his first outlet, in the Friary Shopping Centre, Guildford, which operated through Bubble City Ltd ("Bubble City"). He also invented the styling for his brand: "Bubble CiTea" (the "Brand").

2. In 2019 the Petitioner, Shichuang Xie, also saw an opportunity in bubble tea in Britain, through investment in the Third Respondent's business in which the First Respondent, Qingheng Meng, and the Second Respondent, Yijian Gao, were also now involved (the "Business"). The vehicle used was Enno Capital Ltd (the "Company"). Pursuant to the venture, its shares were held in the names of the Petitioner and of the Fourth Respondent, CT Management Holdings Ltd, in which the First, Second and Third Respondents were interested.

3. By June 2020 relations were ended. This unfair prejudice petition, presented under s.994 *Companies Act 2006* (the "Act") on 14 December 2020 (the "Petition"), comes for trial as to liability only pursuant to the directions of ICCJ Barber of 14 June 2021. Although no formalistic pleading point has been taken, the Petition also contains a money claim against the Company of the amount of the Petitioner's averred lending to it of £1,246,647 (the "Loan"). The other claims which the Petition indicates, including claims against non-parties, are not immediately relevant as they are said to impinge on the value of any buy out.

4. The parties have agreed a list of issues for determination. They are:

> "1. Was the £1.26 million [sic] paid by the Petitioner to the [Company] a loan repayable on demand or some other form of investment, and, if so, what were its terms?
>
> 2. What were the terms (if any) orally agreed in June 2019 between the Petitioner and the First Respondent?

3. What were the terms (if any) orally agreed in August 2019 between the Petitioner and the First to Third Respondents?

4. Are the Written Resolutions of August 2019 binding upon the Petitioner?

5. To whom does the brand "Bubble CiTea" belong?

6. Was the transfer of the EU trademark for "Bubble CiTea" to Bubble City Ltd valid and effective?

7. Were the Respondents entitled to remove the Petitioner as director of the [Company]?

8. Were the allotments of shares of the [Company] in 2019 and 2020 valid and effective?"

5. The next question is whether, leaving aside the Loan, the Petitioner can show that he has been unfairly prejudiced by these matters or any of them. The pleaded heads may be summarised as follows:

5.1 Without the Petitioner's knowledge or agreement, on 15 June 2020 the First Respondent removed him as a director of the Company, though he had no power to do so under s.168 of the Act or otherwise; and on the same date appointed Abdul Khader Mohammed Ismail, and on 18 June 2020 the Second Respondent, without power under regulation 17 of the Model Articles or otherwise; such removals and appointments being pursuant to the improper purpose of excluding the Petitioner from the Company and "diluting and destroying" his majority shareholding in favour of the Fourth Respondent (the "Purpose"), and contrary to the First Respondent's fiduciary obligation of good faith owed directly to the Petitioner, and his fiduciary obligations owed to the Company to act in accordance with its constitution, exercise his powers for the conferred purposes, and "act in the way he considered, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole". The Second to Fourth Respondents were aware of and agreed to each of these

actions. The removal and appointments were void and of no effect.

5.2 Without the Petitioner's knowledge or agreement, on 15 June 2020 the First Respondent allotted 10,000 ordinary £1 shares in the Company to the Fourth Respondent; in pursuit of the Purpose; in breach of s.561 or s.549 of the Act; in breach of regulations 7(1), 8(1), 9(3), 11(1) and 11(2) in the decision being made at a non-quorate and improperly called meeting of directors, and of 8(3), which excluded the Petitioner from voting; contrary to those same fiduciary duties as immediately above and, in respect of the Company, also that to declare the nature and extent of his interest in the allotment to the Petitioner as co-director. The Fourth Respondent had notice of these breaches, as the First Respondent was a director and shareholder. The Second and Third Respondents were aware of and agreed to each of these actions. The allotment was void and of no effect.

5.3 Without the Petitioner's knowledge or agreement, on 12 August 2019 the First Respondent allotted 30 non-voting shares in the Company to the Fourth Respondent; to dilute the Petitioner's dividend rights; in breach of s.561 or s.549 of the Act, and the same regulations as immediately above; in breach of the same duties to the Petitioner and the Company as immediately above. Again, the Fourth Respondent had notice of these breaches, and the Second and Third Respondents were aware of and agreed to the action. The allotment was void and of no effect.

5.4 Without the Petitioner's knowledge or "approval" (nothing turns on that word being used, rather than the "agreement" of the other heads), on or about 25 August 2020 the Company transferred its interests in Bubble Citea Ltd ("Bubble Opco") to Bubble City, and Bubble City to the Third Respondent, who had no entitlement to such transfers; the transfers were contrary

to the First Respondent's duty to the Petitioner, and his and the Second Respondent's duties to the Company to act in the ways alleged in sub-paragraph 5.1 above. The Third Respondent was aware of the lack of authority and breach of duty, as was Bubble City. The transfers were void and of no effect.

5.5 Without the Petitioner's knowledge or agreement, on 30 September 2020 the Company applied to transfer ownership of the EU trademark to Bubble City, which was effected on 6 October. Bubble City was aware of the lack of authority, through its directors', the Second and Third Respondents', awareness of the invalidity of the removal of the Petitioner and appointment of the Second Respondent as director of the Company. The transfer was invalid and of no effect.

6. The agreed list of issues has honed the multiple issues which the pleadings threw out. It has allowed both sides to concentrate their fire on those particular points. It has also had the result, considerably aided by the expertise of Ian Mayes QC for the Petitioner, and John McDonnell QC (leading Richard Bowles) for the non-Company Respondents, that, unusually for an unfair prejudice trial, the parties have not in cross-examination spent days trawling through the minutiae of each other's cases: instead, each of the four individual parties gave evidence over a single day. It follows that, while it will cover the necessary territory, this judgment cannot be a comprehensive account of the parties' dealings.

7. This high-level approach may also reflect the secrecy and inadequacies of each witness, which I will address further below, and also the informality with which they carried out their business dealings; not only in the sense of their being, at best, only partially documented, but that actions were undertaken without (on this evidence) any existing easily-discernible agreement, based on trust and respect. To take one example, when the Fourth Respondent was incorporated on 16 July 2019 the First and Second Respondents took 5 ordinary £1 shares each, the Third Respondent being issued with 5 on 12 August 2019; but nobody speaks to why the shares were issued in these stages, nor why the shares were issued in those proportions, given that the Third Respondent had transferred to

the Company Bubble City, which he owned in its entirety, and his interest in Bubble Ci.Tea Portsmouth Ltd ("Bubble Portsmouth"), owned equally with the Second Respondent.

8. Another aspect of this generalised approach is that the parties have set their own restrictive boundaries to the court's attention. Thus, although this judgment will treat the Company as being the vehicle for the Business, acting as holding company for the four companies of which it consisted, it was also the holding company for three other companies operating in different fields. Of those we have heard nothing material, and they will be excluded from consideration.

9. Nor is it the case that the Petitioner was the largest funder of the Company, even if he may now be its largest creditor; yet aside from the dates of her lending and partial repayment, and the provision of a post-lending 17 July 2020 Facility Agreement, no party has been willing to say very much about Mrs Kun Ding or their dealings with her, let alone call her as a witness; and that is although she is known to them all, and although her evidence would very likely determine who is right, she being a later and substantial financial supporter of the Company. Inferences to be drawn from her dealings with the Company can therefore be from and in only the broadest terms.

The law: unfair prejudice

10. This is not a case of legal controversy. Again leaving aside the Loan, Mr McDonnell concedes that were the Petitioner to make out a head of complaint in his Petition, then that would amount to prejudice to him as a member of the Company in the conduct of its affairs: the first three elements of a s.994 claim. It is the fourth element, that of the prejudice being unfair (and again, the burden of proof being on the Petitioner), on which the legal defence is founded. It is Mr McDonnell's position that the "beginning and end" of the Respondents' case is the 10 August 2019 board resolution (the "August Resolution") which assuming it was duly executed, and approved by all parties, created by agreement the rules by which the Company was to be run between the parties; and properly construed gave the Petitioner only a nominal role as director and

shareholder, and therefore, in the end, no right to complain about the matters in the Petition.

11. In drawing out this element Mr McDonnell cited in particular the well-known judgment of Lord Hoffmann in *O'Neill v Phillips* [1999] 1 WLR 1092, concerning the materially-identical predecessor to s.994, s.459 *Companies Act 1985*, including this, from 1098D-1099B:

> 5. "Unfairly prejudicial"
>
> In section 459 Parliament has chosen fairness as the criterion by which the court must decide whether it has jurisdiction to grant relief. It is clear from the legislative history (which I discussed in *In re Saul D. Harrison & Sons Plc. [1995] 1 B.C.L.C. 14* , 17–20) that it chose this concept to free the court from technical considerations of legal right and to confer a wide power to do what appeared just and equitable. But this does not mean that the court can do whatever the individual judge happens to think fair. The concept of fairness must be applied judicially and the content which it is given by the courts must be based upon rational principles. As Warner J. said in *In re J.E. Cade & Son Ltd. [1992] B.C.L.C. 213* , 227: "The court … has a very wide discretion, but it does not sit under a palm tree"
> Although fairness is a notion which can be applied to all kinds of activities its content will depend upon the context in which it is being used. Conduct which is perfectly fair between competing businessmen may not be fair between members of a family. In some sports it may require, at best, observance of the rules, in others ("it's not cricket") it may be unfair in some circumstances to take advantage of them. All is said to be fair in love and war. So the context and background are very important.
> In the case of section 459, the background has the following two features. First, a company is an association of persons for an economic purpose, usually entered into with legal advice and some degree of formality. The terms of the association are contained in the articles of association and sometimes in collateral agreements between the shareholders. Thus the manner in which the affairs of the company may be conducted is closely regulated by rules to which the shareholders have agreed. Secondly, company law has developed seamlessly from the law of partnership, which was treated by equity, like the Roman societas, as a contract of good faith. One of the traditional roles of equity, as a separate jurisdiction, was to restrain the exercise of strict legal rights in certain relationships in which it considered that this would be contrary to good faith. These principles have, with appropriate modification, been carries over into company law.
> The first of these two features leads to the conclusion that a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted. But the second leads to the conclusion that there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal

> powers. Thus unfairness may consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith.

12. Cited as well was this, from 1101D-G:

> I agree with Jonathan Parker J. when he said in *In re Astec (B.S.R.) Plc. [1998] 2 B.C.L.C. 556* , 588:
>
> "in order to give rise to an equitable constraint based on 'legitimate expectation' what is required is a personal relationship or personal dealings of some kind between the party seeking to exercise the legal right and the party seeking to restrain such exercise, such as will affect the conscience of the former."
>
> This is putting the matter in very traditional language, reflecting in the word "conscience" the ecclesiastical origins of the long-departed Court of Chancery. As I have said, I have no difficulty with this formulation. But I think that one useful cross-check in a case like this is to ask whether the exercise of the power in question would be contrary to what the parties, by words or conduct, have actually agreed. Would it conflict with the promises which they appear to have exchanged? In *Blisset v. Daniel* the limits were found in the "general meaning" of the partnership articles themselves. In a quasi-partnership company, they will usually be found in the understandings between the members at the time they entered into association. But there may be later promises, by words or conduct, which it would be unfair to allow a member to ignore. Nor is it necessary that such promises should be independently enforceable as a matter of contract. A promise may be binding as a matter of justice and equity although for one reason or another (for example, because in favour of a third party) it would not be enforceable in law.

13. In Mr McDonnell's submission the August Resolution was a collateral agreement binding between the parties, or else (because the court might take the view that the parties' understandings were so different that there was no agreement) evidenced the Respondents' view of the relationship in accordance with which they acted. As to the last point, although it would no doubt be a point going to the discretion in the court under s.996(1) as to whether to grant relief, or the terms of it, even if it were to deem the Petition well-founded, that a respondent acted in accordance with its own belief as to the material arrangements would not without more preclude a petitioner from proving that those acts were unfair: put another way, unfairness is not a mere matter of the state of a respondent's mind.

14. Neither side has addressed authorities on the other statutory provisions cited in the Petition.

The parties, and their evidence

15. I have already sketched shared deficiencies in the parties' evidence. None gave the court a full and unadulterated account of the facts. Each gave evidence in accordance with their case, unencumbered by concessions.

16. That does not mean that the degree of failing is the same for each.

The Petitioner

17. The points of claim aver that the Petitioner is a "successful and wealthy businessman". That is not admitted by the Respondents, but it is how they perceived him at the outset, as a man with a Rolls Royce and driver and the bearing to match. He left college aged 18 as he was unable to pay for the finance and social sciences course at Hunan College of Finance and Economics. Between 2004 and 2010 he worked in an eyewear manufacturing business with his brothers-in-law, whose products are certainly durable as he is still proudly wearing a pair. He left upon his marriage to Yuting Li, and followed her on her move to Japan, where he informally attended courses while she pursued a masters in media design at Keio University. He had from 2005 invested in properties around the Shenzhen area of Guangdong, which had risen significantly in value, and on his return to China in 2011 set up with his father-in-law, a "very successful businessman", a pawn shop and auctioneer business, the two going together in China. In 2013 he moved to China International Futures Co Ltd (usually known as CIFCO) as a futures trader, and in 2014 set up his own company, Binfa Capital, specialising in fund management. He estimated his current wealth at around £30m.

18. The Petitioner's written evidence was translated from Chinese, and he gave his evidence through an interpreter. While he says his English has improved subsequently there was no indication of that when he gave his evidence, and all

agree that at the time of the relevant events it was poor. He was unable to communicate directly with the Third Respondent, who acknowledges his knowledge of Chinese as "very basic", and dealt with the First Respondent and, though dealings were fewer, the Second Respondent in Chinese. He was unable to read English.

19. The Petitioner's evidence was given in a business-like manner, swiftly and, where he wished, to the point. I have already described the common failings of the evidence of each party, and avoiding undesired questions was a feature of each. The question on which the Petitioner was particularly pressed, and repeatedly failed to answer, was when the purchase of the Business was actually agreed. I am unconvinced that that question was ever susceptible to a definite answer, albeit that view is conditioned by the reluctance of any witness to say all that they knew about the terms and timings of the Petitioner's involvements.

20. The Petitioner also has particular difficulties with the document on which the Respondents' defence turns, the August Resolution signed by himself and the First Respondent on 10 August 2019. It was raised in the points of defence. His points of reply averred that he did not recall seeing or signing the document, and noted that his signature appeared different from that on a share purchase agreement between himself and the Fourth Respondent of around the same date. His witness evidence came after there had been an expert report on the point from Dr Kathryn Barr, commissioned jointly by order of the court of 1 December 2021, and concluding that there was "strong evidence" to support the signature being his. "On further consideration", he says, he thinks he may have signed, but was not shown the relevant first page. In cross-examination he confirmed that the signature was his, but he did not know he was signing a board resolution, or the contents of the document.

21. So the Petitioner's evidence must be subject to careful scrutiny.

The Respondents

22. The same is true, and to a considerably greater degree, for each of the Respondents.

23. They are now represented by the same counsel and solicitors and have put forward a unified position despite their different roles and, at times, different factual cases: points of defence came from the First Respondent and the Company in one document, and from the Second and Third Respondents in another. They, too, have difficulties with documents.

24. The First Respondent acted as the liaison between the Petitioner and the Second and Third Respondents. The Third Respondent was reliant on the Second Respondent when translation was required from Chinese, but otherwise when he was present they would deal with each other in English.

25. Although neither the First nor Second Respondent had filed any statement other than one in English, they each gave their oral evidence through a translator, protesting that in a case of such importance to them they would rather deal with it in their native tongue. Mr Mayes very fairly took no technical point on this, but underlined that one need only consider the CVs of each man to conclude that their English must be of a sophisticated order.

26. The First Respondent was born in China in 1982, and first came to the UK in 2007 holding degrees from the University of International Business and Economics in China and Fort Hays State University in Kansas. He obtained a masters in development finance from Reading University in 2009 before working as a clerk at Bank of China in London between 2010 and 2012, then in food and catering in Basingstoke and Portsmouth. He became a British national in November 2014. After returning to China briefly in 2016 he returned to London the same year as assistant to Ms Ye Wang, CEO of UCF Holdings Group ("UCF"), which in part involved working as manager at a hotel, golf course and spa known as the Old Thorns, Liphook.

27. He knew the Second Respondent from about 2014, who introduced him to the Third Respondent in about February 2019.

28. The Second Respondent was also born in China, graduating in road and bridge engineering from the University of Foshan in 2002. He then pursued post-graduate study in the UK until July 2013 when, as he revealed in cross-examination, he obtained a doctorate in civil engineering in a course conducted

in English. He stayed in Portsmouth, working in real estate and operating a Chinese supermarket which he owned. He was introduced to the Third Respondent by a friend, as he was thinking of opening a bubble tea shop in Portsmouth; "the two of us hit it off right away".

29. The Second and Third Respondents relied on the First Respondent in strategic business decisions, and trusted him to look after their interests in the Business. The Third Respondent, much younger than the others and of different background, could also turn to his father for advice (another available potential witness from whom nothing was heard). He has spent his short business life promoting Bubble City and building the Brand. His enthusiasm and love for the product and brand he has developed was plain. Clear as well from cross-examination was his ongoing dislike of the Petitioner, who by the summer of 2020 he had come to perceive as racist. Although he was never a director of the Company, he has made common cause with the other Respondents.

30. Again, the Respondents' evidence was marked by gaps and avoidance. In his nervous account, marked by pauses, the Second Respondent repeatedly refused to say what he was now doing by way of business. His points of defence, shared with the Third Respondent, refused to advance any positive or negative case as to whether he had received funds from the sale of Bubble Portsmouth, although he, and not the Third Respondent, was prepared to state his understanding that those funds were paid on behalf of the Company. Neither the Second nor Third Respondents, who were directly affected, nor the First, who negotiated the deal on their behalf, tried to give any precise account of, for example, how the sale proceeds of Bubble Portsmouth were divided or accounted for between the two of them. The Second Respondent gave spirited evidence that the 19 August 2020 memorandum of understanding between the Third Respondent and Bubble Opco (the "Memorandum of Understanding") was justified because it settled "a bigger problem", but could not then identify that problem. The account of the August Resolution, critical to their case, was in the oral evidence of each subject to large inflation from what they had proffered in writing.

31. At both written and oral stages, the First Respondent's evidence was deficient and untrustworthy. The seemingly obvious plea that it was agreed that the

purchase of Bubble Portsmouth should proceed while negotiations for Bubble City were ongoing was met by a bare denial. In his points of defence the First Respondent would not go beyond agreeing that Bubble Opco and Bubble Tea Supplier Ltd ("Bubble Supplier") were incorporated on 17 June 2019; there was no pleading to their functions within the Business, although well-known to him. His account of the June Agreement and the August Agreement (which we will come on to), shared by his fellow Respondents, is contrary to commercial commonsense.

32. At trial, in answer to the complaint about the allotment of 10,000 shares in the Company in June 2020, the Second and Third Respondents have also adopted the First Respondent's reliance on a set of articles purportedly approved on 3 June 2019 but filed only on 8 September 2020 (the "Purported Articles"), which in their points of defence they had not pleaded to save to say they were beyond their knowledge. In his points of defence the First Respondent merely said that the failure to file the Purported Articles for 15 months was an "oversight". His statement said they were filed after he found them "when I was clearing the admin backlog". In cross-examination he maintained the position that these were genuine, and had permitted the allotment. As we will see, that is inconsistent with contemporary WeChat evidence, and with near-contemporary correspondence from his solicitors.

33. The Purported Articles are a concoction, designed to promote the First Respondent's case and adopted by his fellow Respondents. While I acknowledge that documents are occasionally created to bolster an otherwise honest and good case, and that here the Second and Third Respondents were largely reliant in affairs concerning the Business and the Company on the First, the ongoing reliance on this document cannot but tarnish significantly the view to be taken of the Respondents' evidence as a whole.

The facts, and findings

34. The Petitioner first travelled to the UK in August 2018. Mr Jinghua Zhang, a significant investor in UCF, had asked the First Respondent to assist the

Petitioner with "help and hospitality". The First Respondent arranged golf for him at the Old Thorns, where they first met. Not speaking the language, the Petitioner came to rely on the First Respondent and the relationship progressed quickly. The Petitioner says they had several "in depth" conversations. The First Respondent appeared to him "a simple and righteous person" whom he "could trust implicitly". They were soon communicating over WeChat, the Chinese equivalent of WhatsApp, the Petitioner asking for a variety of advice and assistance, and the First Respondent suggesting business and investment ideas.

35. The Petitioner soon formed the view that he wished to move to the UK, although he was not to do so until early 2020, when he came first on a Tier 4 Student Visa and then on an Innovator Visa. Later in 2018 he acquired for £1.35m the show flat in a London development which is now his home. He says that just as he had a PA in China to manage his daily activities from laundry to flight arrangements, so he required one here; and that the First Respondent "effectively acted" as his PA, including driving him around, leading to "a strong bond of trust" between them such that the Petitioner gave him access to his bank account.

36. Whether the First Respondent can be characterised as the Petitioner's PA is something cross-examination only touched on. While agreeing that he "provided some assistance", the First Respondent denies he was, and points to the Petitioner having a driver already, Mr Sheng Xiao. There is no need to reach a conclusion on this, and it would be unsafe to do so absent, for example, the tax records which would justify or not the Petitioner's claim that he paid the First Respondent a salary, or the documents showing that the Petitioner bought him a car and paid the rent on his London property. While no doubt the Petitioner trusted and relied on the First Respondent into 2020, Mr Mayes has not pursued the claim that by virtue of his position and their relationship the First Respondent owed the Petitioner a direct fiduciary obligation of good faith. So far as one can gauge from the (translated) tone of the WeChats, the First Respondent treated the Petitioner respectfully as a boss and not as an equal. At least in September 2018 he was addressing him as "Mr Xie", which the

Petitioner's translator confirmed was not a casual but an honorific term, used by a subordinate to his boss.

37. In April 2019 the First Respondent approached the Petitioner about an investment opportunity in a bubble tea business: the Business. Unlike his earlier suggested opportunities, this was for a relatively modest sum: RMB 300,000, about £34,000. The Petitioner was interested. He was aware of bubble tea as it was popular in China, especially among the young, and had already researched its "huge potential" for expansion in other countries. In China, there had been substantial capital raised by two bubble tea firms.

38. The sum required was for the opening of a new outlet for the Business in a shopping centre in Basingstoke, which represented the first step in a planned expansion.

39. Bubble City had been incorporated on 19 August 2013 as the Third Respondent's vehicle for his initial outlet in Guildford.

40. Bubble Portsmouth was incorporated on 28 June 2018 as the Second and Third Respondents' company for the Portsmouth outlet. Like Guildford it traded as "Bubble CiTea", the Third Respondent's creation. The Second Respondent designed the shop, and dealt with its staffing and supplies and local marketing. The cost to open was about £35,000, the money coming from his parents. In 2019 a typical drink would sell for around £3.75, the base materials costing about £1.

41. On 17 January 2019 the Third Respondent applied, on behalf of Bubble City, to register the Brand as a trademark. On 5 April 2019 that was accepted, effective for 10 years following the application date.

42. On 18 March 2019 the Company was incorporated as Jing Holdings Ltd with a single issued £1 share in the name of Mrs Jing Zheng, the First Respondent's wife, who also became its director. She held that position until 3 June 2019, when she resigned and transferred her share to her husband. Her resignation left him as sole director, as he had been appointed on 18 May 2019 following

the resignation of one Ge Song, who had held office since 18 April, and whose involvement is unexplained.

43. On the date the Company was incorporated, the Second and Third Respondents say in their points of defence that the First Respondent agreed on its behalf, with the Third Respondent on behalf of Bubble City, that the Company would pay the Third Respondent a fee for the use of the Brand. That is not an account which appears in their statements, and there are obvious difficulties on its face: the First Respondent had no authority on behalf of the Company to make such agreement; the Third Respondent could not properly receive a fee due to Bubble City.

44. What this supposed agreement does indicate is that the Brand was now considered to be a separate asset of value, hence the application to register, available for separate exploitation as part of the expansion of the Business.

45. The proposed Basingstoke outlet is subject to a conflict of evidence among the Respondents which need not be resolved. The First Respondent says that having known the Second Respondent for some years, in late 2018 he told him he was in business with the Third Respondent, and in about February 2019 he told him they were confident about making the Brand successful, and were looking to open an outlet in a shopping centre in Basingstoke; the Second Respondent thought it a good idea if the First Respondent joined them, with his experience in the catering business and living and working in Basingstoke. The Second Respondent's evidence concurs: he recalls showing the First Respondent some data, with the conclusion that the Respondents thought they should work together. The Second Respondent says that he was not keen on an outside investor, and wanted the three of them to have control of the Business at all times.

46. The Third Respondent does not deal with this, but his points of defence, shared with the Second Respondent, put forward the recollection that actually it was the First Respondent who had approached them about expanding the brand into Basingstoke, as he had good connections in shopping centres and had heard of a vacancy.

47. The other area of non-unanimity is the role of Ms Ye Wang of UCF. The First Respondent states that there was no need for the Petitioner's money to open Basingstoke: had money been needed, they would have gone to Ms Ye Wang. His fellow Respondents say that actually funding had been sought from her, but the First Respondent told them that the Petitioner was also interested.

48. Whatever, by March 2019 there was a desire between the Respondents to expand the Business. The Company was the vehicle for that, being intended to act initially as the holding company for Basingstoke. The First Respondent says that were that successful the Company was then intended to acquire Bubble City and Bubble Portsmouth. Bubble City owned the Brand, and further expansion would be by bank loan or franchising. The Second Respondent confirmed that once there were healthy figures over two business years, a bank loan would be available. It follows that, as Bubble Portsmouth only commenced trading in summer 2018, expansion by bank loan was a little way off, yet the Basingstoke opportunity beckoned.

49. One of the wide gaps in the Respondents' evidence is what was agreed between them, in March 2019 or later, as to how the First Respondent was to be recompensed for his involvement in what was up to then their business. The First Respondent says the intention was that he own the Company, with the Second and Third Respondents receiving a shareholding in it to reflect their involvement. The question seems not what they should receive, but what he should, and why. That remains unanswered. At the least it may be observed that despite, on the Third Respondent's part, short acquaintance with the First Respondent, he was willing to give up control of what was primarily, and originally, his business.

50. In April 2019 the First Respondent took the Petitioner to visit the Portsmouth and Guildford stores. He told him that the Second and Third Respondents wanted to open Basingstoke but required investment. That was right, and I reject the First Respondent's recollection that he had only mentioned the Business to the Petitioner casually: expansion was intended, and money was needed from somewhere. The Petitioner and the First Respondent agree on the Petitioner's enthusiasm for the venture, not just for his own profit, but to help

the First Respondent in a business, as a return for the assistance which the First Respondent had afforded him. The Business had the attraction of a healthy cashflow and a product with potential. The Petitioner told the First Respondent that he need not worry about funding. The First Respondent recalls he said it would be easy to find other investors, so that its expansion would not be dependent on the success of Basingstoke. It "would not be a problem to open 200 outlets in Europe". He says that all the Petitioner wanted was 60% of the net profits of the new outlets.

51. The Petitioner says he told the First Respondent that he was interested not just in investing in the Business, but buying it. "Even from the start, I never viewed the venture just as an investment opportunity". As came out in cross-examination, this was intended as a distinction between a role as a one-off minority investor and a role as owner. "I bought the business to try", he said; "this is my own business". It was because he owned and had control of it, making the strategic decisions, that he was willing to make what became the Loan. Ownership is the primary issue dividing the parties.

52. The Petitioner asked the First Respondent to negotiate with the Second and Third Respondents on his behalf.

53. They confirm the attraction to them of his offer. The First Respondent told them that, in the Second Respondent's words, "he could fund us to open 200 outlets in Europe in return for 60% of the net profits of the Business regarding the new… outlets". As the Third Respondent saw it, this readily-available fund promised rapid expansion. They say they agreed between themselves that if his investment could enable opening of 100 UK outlets, the price for the existing sites could be net profit, which would be "way below market value": according to the Second Respondent, market value would be 5 times pre-tax profit, or 1.5 times turnover. They had not yet met the Petitioner, so these were "high level" discussions only, but in a WeChat of 25 April the First Respondent told the Petitioner that the price for Bubble City and Bubble Portsmouth would be £100,000, in line with annual profit. The Petitioner wanted more data before agreeing the price. On its face, and despite the Second Respondent saying that

he was keen not to lose control (which only extended to Bubble Portsmouth anyway), this offer was for the purchase of both companies.

54. The next day the parties met for the first time at The Ned hotel in London. The Petitioner was just off an aeroplane. He concurs with the First Respondent that nothing was agreed at the meeting, in part because the Third Respondent's father needed his say, but also because while the Third Respondent was willing to sell the Brand, he did not want to sell the Guildford outlet as it was his income. The Third Respondent was something of a bystander, not understanding most of what went on, and requiring a post-meeting translation from the Second Respondent. The Petitioner introduced himself, and the Second and Third Respondents introduced the Business. He said he wished to help the First Respondent start a business. The First and Second Respondents' statements remember he said that he wanted 60% of the net profits for new outlets. In cross-examination, the Second Respondent remembered the Petitioner saying that he would not get his return unless 100 shops were opened, and at later meetings that "he did not want the profit to be returned to him so quickly, and that he would wait until the 100 shops to open because he didn't need this money, for he has a lot of money. For him this profit is little, it's like pocket money". The last point sounds like the mixing of two ideas. Given that the Respondents' case is that the Petitioner later bound himself to accepting, as return for his loans, no capital return but instead 60% of the profits of new outlets opened with his money, it can be observed that even on their updated evidence that was not proposed at this initial meeting.

55. The First Respondent obtained financial records for the Petitioner and discussions ensued. On 1 May he sent the turnover for the Portsmouth outlet. The top of the WeChat print out refers, without context, to 30 stores. The Petitioner then says that "If we open 100 shops the total profit will be considerable if each shop has this profit: net profit of GBP£6m": he is just multiplying up.

56. The points of claim aver that the Petitioner and the First Respondent agreed on about 2 May that "any sums provided… to the corporate vehicle… would be in the form of loans to the business". It is not said how the First Respondent agreed

this with his fellows, and it is the Petitioner's case that at this point the Company was not the intended vehicle anyway: that was to be the Petitioner's own Enno Global Ltd ("Enno Global"). The Petitioner does not mention such agreement in his evidence. There is a WeChat from that date, the First Respondent asking "Shall I tell them that the funds are loaned to the company", but we have no reply. That question was in response to a message from the Petitioner which one translation has as "Do they really want to buy back the shop?... the funds paid to them can be used for expanding, right? Because they are shareholders themselves". Negotiations remained incomplete, and this seems to contemplate that the Second and Third Respondents would reinvest sums they had received for their interests in their companies.

57. The Respondents had a meeting around 14 May, although they deny that the result communicated to the Petitioner can have been that they would start the acquisition process the next week. The Third Respondent remembers only a meeting, not its content. The First Respondent says there were discussions, but his fellows were not willing to transfer an interest to the Petitioner. The points of defence of the Second and Third Respondents state that in May the First Respondent proposed expanding the Business, each outlet under a separate company, with the holding company under his control, but their having a shareholding; and this was agreed in principle, as they relied on his financial experience and qualifications. That sounds right, and is in essence no different from the original purpose behind the Company's incorporation as a holding company initially for Basingstoke, later acquiring the other companies. Its ownership and control, though, would remain a matter for negotiation.

58. By later in May the proposed £100,000 purchase price had been divided, £30,000 as to Bubble Portsmouth and £70,000 as to Bubble City. On about the 23 May the First Respondent sent a draft agreement to the Second and Third Respondents (no copy of this has been referred to). The latter discussed it with his father, who was concerned that once the Business expanded his son might be treated as dispensable, and thought that Bubble City was worth £300,000. On about 26 May there was a WeChat group call between the parties, in Chinese so translated for the Third Respondent afterwards by the Second Respondent.

During it, the Petitioner proposed purchase through Enno Global and that the Respondents take no salary but instead receive dividends as shareholders. The Second Respondent recalls him saying that that would be 1-2 years after the investment for 100 outlets, the First Respondent just that it would be 1-2 years before the company made a distributable profit. The First Respondent also remembers a statement that he would be put in charge of Enno Global.

59. On 1 June the Respondents had a meeting in Portsmouth. The First Respondent says they agreed a pause on the acquisition until the holding company issue could be resolved, as they were uncomfortable with using Enno Global. The Third Respondent in particular thought the proposal not to take salary was totally unacceptable. The First Respondent says the next day he talked with the Petitioner, who was very angry. They spoke again on 3 June, when the Petitioner agreed to use the Company and not Enno Global, which he relayed to the Second and Third Respondents. They then agreed to sell Bubble Portsmouth for £30,000 plus £11,031 for cash and stock, and had the First Respondent appointed director in their stead. The First Respondent says it was also agreed that if the Company did not make profits of more than £30,000 in each of the first 2 years of trade, then it would transfer the shareholding back to them for £30,000.

60. The Second and Third Respondents adopt that last arrangement in their points of defence, but, if it is meant to refer to the Company's business as a whole, it does not stand either with the anticipated first dividend date, or with the arrangement the Respondents say came to be contained in the August Resolution, or with the fact that no agreement had yet been reached for the purchase of Bubble City with, presumably, the right to the Brand attached. Even if it is intended to refer to the Portsmouth outlet only, the last point stands: what would the cost be to it of a licence to the Brand?

61. But these vagaries are typical of the Respondents' position. They say nothing about what salaries were agreed; nor what use of the Brand was permitted, whether by Bubble Portsmouth or the Company or otherwise; nor, critically, as to what the shareholdings in the Company would be upon the purchase of the operating companies or either of them.

62. Although it is possibly only a timing issue, neither do they depose to why on their case their resignations and appointments as directors of Bubble Portsmouth were said to have taken place on 1 June, albeit filed at Companies House on 4 June; nor why it was on 3 June that the First Respondent took from his wife the issued share in the Company; nor why the Company's articles were supposedly changed on that date, a change which, had it happened, would have needed a degree of preparation.

63. The Petitioner's evidence on this is the more convincing. He says that, having agreed to proceed with the Bubble Portsmouth acquisition while the Bubble City position was resolved, on 30 May the First Respondent told him that was agreed, the price being £30,000 plus stock and cash. He says that the First Respondent asked him who should be the director of Bubble Portsmouth, and the Petitioner nominated him, as he would be responsible for the day-to-day management, a role which the Second and Third Respondents also seem to have envisaged for him. It is therefore possible that the shifts in directorships were in anticipation of agreement, the First Respondent being then trusted by all sides. The First Respondent says the Petitioner had "no influence" over who should be director. That seems nonsensical when it was his money, and there were either concluded or ongoing negotiations, including over the acquiring vehicle, within which, as the Third Respondent says, they were keen not to upset the Petitioner .

64. There is disagreement over why the vehicle changed from Enno Global to the Company. From the Respondents' point of view it was a matter of perception, while the Petitioner says it was because Enno Global could not open a bank account, as he held only a tourist visa; he therefore followed the First Respondent's suggestion that the Company's name could be changed afterwards to reflect that of his second son, Enno. That name change, which was effected on 4 September 2019 when it adopted its present style, is consistent with the Petitioner's evidence that the Company was intended to be a family company. It is also inconsistent with the Respondents' perception point; notably so, if they are right that the Petitioner never became the true owner.

65. It is also the Petitioner who provides such evidence as we have as to when it was agreed that, as occurred on 17 June, 95 shares in the Company were issued

to him, and 4 more to the First Respondent: the First Respondent's 5 were a fair recognition of his efforts for the Petitioner and this company, which was intended to be a commencement of business together.

66. On that same date Bubble Opco was incorporated as Enno Management Limited (notably), changing its name to Bubble Citea Ltd on 21 September 2019; and Bubble Tea Supplier Ltd ("Bubble Supplier") was incorporated as a company to make supplies to the Business and in time more widely to UK third parties. The First Respondent was appointed director of each on incorporation, the Company taking the issued £1 shares.

67. By then the agreed monies for the Portsmouth acquisition had been paid, on 5 and 7 June by the Petitioner's wife on his behalf to the Second Respondent and his father-in-law, Mr Lai Chang Cai. The First Respondent confirms that the Company's bank account had yet to be opened, and that these payments, as the Petitioner says too, were made on its behalf. The Respondents do not explain what out-turn the Third Respondent was to receive for his equal shareholding in Bubble Portsmouth, nor what agreement there was as to use of the Brand.

68. The August Resolution is said by the Respondents to reflect the agreement made between the First Respondent and the Petitioner on 14 June 2019 (the "June Agreement"), notwithstanding that the First Respondent also says that "To my deepest regret, the June Agreement was not recorded in writing".

69. He says that on that date he held a meeting with the Petitioner at the Royal Lancaster hotel in London to "discuss his future role in the Business". The Petitioner demanded a significant shareholding in the Company, and to be a director, so that he could attract outside investors, even though he would have no control in reality and the Company could adjust his shareholding at any time at its discretion.

70. As pleaded, the June Agreement is this.

    70.1 "The Petitioner's role would be limited to finding investment capital for the Company but… he would have no management responsibilities".

70.2 "In return for making the investment in the Company, the Petitioner would be entitled to receive 60% of the net profits after tax from each outlet opened with the use of such investment capital".

70.3 "The entitlement to such profit share would be contingent upon the Company having a minimum of 100 new outlets".

70.4 "In order to allow the Petitioner to represent the Company for the purposes of raising investment capital, he would be allocated shares in the Company and be appointed a statutory director of the Company".

71. The Second and Third Respondents' defence says that in about June 2019 the First Respondent, acting on their behalf, made an agreement with the Petitioner that, as he "informed" them, the "Petitioner would invest in and/ or raise investment capital for the Company"; as an investor "he would be entitled to receive 60% of the post-tax profits made by the Company in respect of the new… outlets that had been opened as a result of the Petitioner's investment only… entirely contingent upon the Company opening at least 100 new… outlets"; he would have no managing or controlling role; to assist in the obtaining of investment only, he would be allocated shares and registered as a director". That accords with the June Agreement.

72. In his evidence the Second Respondent says that while he was not keen on the Petitioner acting as director or shareholder, it was acceptable provided it was "for purely presentational purposes". The 100 new outlet provision also gave him reassurance. For the Third Respondent, it was "key" that the investment resulted in a minimum of 100 stores. He says the First Respondent reported to him that the Petitioner "wished to become a significant shareholder and director in the Company in order to look good in front of potential investors. I was hesitant due to my concerns over [the First Respondent] losing control over the Company", but put those aside given the First Respondent's professed trust in the Petitioner. His is therefore a rather different slant: notional powers to the Petitioner coupled with a promise not to exercise them.

73. These are extraordinary matters to be discussing when the Petitioner has just caused the agreed price to be paid for Bubble Portsmouth. The Petitioner denies any such agreement, in June 2019 or later. He says that there were discussions about opening 100 outlets, but that was never a condition of return.

74. Leaving aside the August Resolution, the June Agreement is reflected neither in any contemporary document, nor in the parties' evidence as to their earlier negotiations. It does not explain, save in general terms, why 3 days later the Petitioner was issued with 95 shares and the First Respondent with 4 more, as opposed to any other numbers. It is posited on a wealthy man, at that time respected by the Respondents, using these entries to tell untruths to potential investors, for the immediate benefit of the Respondents, and for his own only conditional benefit.

75. Neither does the June Agreement make internal sense. It does not prescribe the use of any investment capital, such that it is directed at acquisition and opening of new outlets, rather than (say) keeping them or existing outlets stocked with the necessary materials or labour. The condition is triggered whether all, some, or any of the new outlets have been opened with money deriving from the Petitioner or his investors.

76. Nor does the June Agreement make commercial sense. The Petitioner would never get his capital returned; neither would his investors: effectively, all capital invested would be gifted. His and their return would depend on an arbitrary threshold being met at some open-ended time and after open-ended expenditure. He and they would have no direct control over the application of their monies, or any aspect of the Company even though a decision as to, say, employees' hourly rates, or the price to be paid for the Brand, might have direct monetary effect. Until the opening of 100 new stores, the Company and its subsidiaries could use turnover in any way thought fit.

77. I reject the Respondents' case that the parties' dealings were governed by the June Agreement. There was no such thing. Instead, the 17 June actions of the appointment of the Petitioner as director of the Company, and the issue of shares such that he held 95 and the First Respondent 5 were intended to be of effect.

The loan which he made for the acquisition of Bubble Portsmouth was just that (nobody suggesting that it was the price of his share capital). Bubble Opco and Bubble Supplier were incorporated the same date because the Company as holding company was now properly constituted.

78. The Petitioner says that on 18 June the First Respondent told him that he had finally agreed with the Third Respondent the terms of purchase of Bubble City: the Company to pay £1 for its shares; the Company and/ or the Petitioner continuing to invest for the next 2 years for the opening of new outlets; were that not to occur, then at the end of that period the Third Respondent could re-purchase his shares for £1, or else he would be paid £70,000 and receive 5% of the Company's shares. The Petitioner says he was content, except that he said the 2-year period should be reduced to 1-year, which was later agreed.

79. While both the First and Third Respondents agree there were discussions about the terms of the Bubble City purchase on 18 June, including as to the 1-year period, they point out that these were in the context of a draft business purchase agreement, which the First Respondent had created through the online service LawDepot. That draft, in a detail which remained in the final agreement executed on 11 August 2019 (though by its heading professing to be made on 10 August) (the "Purchase of Business Agreement"), contained a completion and execution date of 18 June. The 1-year period which it (in fact) contained was not linked to any investment obligation, and the only consideration specified to transfer was £70,000. So, although professing to be a complete agreement, neither side views it as such.

80. The Petitioner also points out that as the Brand was owned by Bubble City it would transfer with its purchase.

81. On 19 June the First Respondent made a funding request from the Petitioner which itself demonstrates the unlikelihood of the June Agreement: it was for £500,000. In his evidence the First Respondent says this was for materials for the new outlets, which makes little sense as the food products had limited shelf life, the only new outlet on the immediate horizon was Basingstoke, and the Company had yet to acquire Bubble City and therefore the Brand. The Second

Respondent's evidence agrees, but his points of defence do not: suppliers needed to be paid. For his part, the Petitioner thought the lending was both for the acquisition of new outlets, and the buying of raw materials and renting of warehouse space for the various shops. On both 26 and 27 June the Petitioner made a transfer of £250,000 from a Honk Kong account.

82. In the meantime, on 24 June the Company had acquired the shares in Bubble Portsmouth for the £30,000 plus stock and cash already paid. Although nobody has gone into details, it also seems likely that there was an agreement that the Second Respondent should have an interest in the shares of the Company. Unlikely, though, is that there was an agreed buy-back of the Bubble Portsmouth shares, not only for the reasons already identified, but because the buy-back contained in the draft agreement for Bubble City was specific to that company: it was the Third Respondent's bread and butter.

83. On 13 July the Petitioner met the Respondents and three others from the companies' management team at the Mandolay Hotel, Guildford. He proposed a share option scheme for the management team: 20% of the shares in the Company would be transferred to a share option pool, the Respondents to take options over 5% each, with 5% available for others; the Petitioner would be left holding the other 80%.

84. Looking forward, on 16 July the Fourth Respondent was incorporated with the First and Second Respondents as its directors, and each holding 5 £1 shares; they were joined as director and equal shareholder by the Third Respondent on 12 August, the same day as the Petitioner transferred 15 shares in the Company to the Fourth Respondent, and the First Respondent his entire 5-share holding. This would correlate with the proposed share option scheme, but that is nobody's case.

85. What is clear is that the share option scheme was not agreed on 13 July, and the Petitioner proposes no later date, merely saying that it was agreed "between the Petitioner and his management team" that options would issue after the meeting of financial targets which the Petitioner would decide and which are never specified. The Petitioner recalled the Second Respondent's objection as being

that he was being reduced, when the Petitioner viewed him as preserving his 5%, which indicates that at some unidentified earlier point that had been agreed (and, it seems, was effected by the 12 August transfers); and thus there would be a dilution of rights, as the scheme was that the Second Respondent should only have an option over those, as yet untransferred, shares. Despite its rejection on 1 June, the Petitioner also repeated the suggestion that the Respondents rely only on the share option dividends and not salary. Unsurprisingly, for the Third Respondent "this was never a serious possibility for me".

86. The next day, after the Second Respondent had briefed the Third Respondent and ascertained his opposition, he convened a meeting of the Chinese-speakers at the Tokenhouse Pub in London. The Respondents say that the Petitioner was told the scheme was unacceptable, and agreed. More, they say that the Petitioner agreed that relations were governed by the June Agreement.

87. The Petitioner's actions, though, were wholly inconsistent with there being any June Agreement: he would have no interest in proposing any of this. Moreover, at the Mandolay, the short answer to what he was proposing would have been: as you know, this is nothing to do with you. The First Respondent refers to an agenda which he circulated before the Mandolay meeting, which had the Petitioner speaking only on items 8, with himself on the Company's "current division of labour and cooperation and [its] department structure", and 10, the concluding summary. The First Respondent complains that the Petitioner did not follow the agenda. That itself tells a story, but so too do the matters on which the Petitioner was down to speak: the structure of the Company: nothing to do with him under the June Agreement; the concluding summary: why would a mere investor give that? More, it is notable that while the agenda refers to the First Respondent as Max, the Second as Ekin, and the Third as Sunny (the names by which they were generally known), the Petitioner remains the honorific Mr Xie.

88. The Respondents say that the Fourth Respondent was incorporated on 16 July as their means to control the Company, by its holding shares. It was, says the Third Respondent to "exercise effective control of the business without any

involvement from the Petitioner at board or members meetings"; his fellows say the same; and each says they were to have an equal shareholding in the Fourth Respondent, and this was in accordance with the June Agreement.

89. As already mentioned, that account fails to explain why it was only the First and Second Respondents who became directors and members on incorporation, the Third Respondent only joining after the Company had acquired Bubble City; and why shares in the Company were not immediately transferred to the Fourth Respondent. Moreover, what was transferred on 12 August were 20 shares with identical rights to those retained by the Petitioner.

90. The Petitioner's transfer of 15 of those shares was effected under a share purchase agreement, which he agrees was signed by him although he has no recollection of signing it, probably on 10 August. It is another LawDepot document generated at the First Respondent's inputting, and provides for transfer at par with a closing date of 18 July 2019. Nothing in that agreement restricts the use of the shares in the Fourth Respondent's hands, and there are no recitals as to the transfer being pursuant to a share option scheme. Mr Mayes has not pursued an elaborate argument in the points of claim (not drafted by him) that as the Fourth Respondent had only 3 shareholders, so they effectively owned one-third of 20 shares in the Company each, so the Third Respondent received more shares in the Company than the agreed 5%, so he has lost any right to reclaim the shares in Bubble City under the executed Purchase of Business Agreement.

91. That was part of a series of actions around 12 August 2019 which apparently constituted the Company's mode of operations, culminating in the 4 September adoption of its present style with its reference to the Petitioner's second son, and by when its directors were the Petitioner and the First Respondent; its ordinary voting shareholders the Petitioner with 80 and the Fourth Respondent with 20, and with a further 30 non-voting shares held by the Fourth Respondent (which now had the First to Third Respondents as directors and equal shareholders); and Bubble City having been acquired by execution of the Purchase of Business Agreement on 11 August.

92. On 10 August the parties had met in London, at a café near Bank. This meeting is said by the Respondents to have "affirmed and extended" the June Agreement to generate the August Agreement, and to have ended with the signing of the August Resolution. The Petitioner says the June Agreement was never discussed, so there was no agreement; and while he now accepts his signature on the August Resolution, he did not know what the document was and never approved its contents. He says the meeting was just discussion of normal day-to-day operations, such as they held regularly over the coming months, but was also as to the commercial development of the Business, including the First Respondent's authority.

93. Even if one considers only the Purchase of Business Agreement, the matters consequential on this meeting do not bear out its mundanity. Instead, the Petitioner seems right in his characterisation of it as the start of regular operational meetings, in the sense that this was the meeting which set the terms of operation.

94. The August Agreement is said to be:

    94.1 The First to Third Respondents would be shareholders in the Fourth, which would be the operational controller of the Company, with the First Respondent as managing director.

    94.2 The Petitioner would have no management responsibility.

    94.3 The Petitioner's position as shareholder and director was to assist him in raising investment capital for the Company.

    94.4 "It was reiterated that any entitlement to profits in accordance with the [June Agreement] was contingent upon the Company having a minimum of 100 new outlets opened using the funds provided by the Petitioner".

    94.5 The First Respondent had sole authority to appoint and remove directors, and issue and allocate shares, in the Company and the Fourth Respondent.

95. The Second and Third Respondents say it was also a part of the August Agreement that they were to be directors of the Fourth Respondent, which was to be under their "ownership and control" only.

96. The First Respondent's role as managing director of the Company is not controversial. It is, though, odd that at a meeting with the Petitioner the Respondents should be agreeing their position in respect of the Fourth Respondent, in which on their case the Petitioner had not the slightest interest. Moreover, to make the point once again, they must surely already have agreed these matters when they incorporated the Fourth Respondent and determined who should be its initial shareholders and directors, to the immediate exclusion of the Third Respondent.

97. Another extension to the June Agreement is as to the Petitioner's return, although neither in their pleadings nor in their statements do the Respondents seem to recognise the change: the 100 shops now have to be opened with funds provided by the Petitioner. The commercial unrealities of the June Agreement remain. This time it was the Third Respondent who sought to justify the provision by the Petitioner's wealth: the money to open these stores was nothing to the "billionaire" Petitioner, who did not care about any return. That statement effectively recognises the commercial unreality. It also ignores the fact that it was anticipated that the Petitioner's monies might not be his own. That shows that the other extension, giving the First Respondent power to issue and allocate shares as he wished, is most unlikely: the June Agreement was, said the Respondents, posited on the Petitioner being able to show other potential investors that he had a significant holding in the Company; yet he would now have to tell investors honestly that his interest was not only nominal but subject to dilution at any point.

98. Again, I cannot find that there was such a consensus as the August Agreement.

99. That conclusion is not shaken by the August Resolution.

100. This was another LawDepot document generated by the First Respondent's inputs. It states it is a written resolution of the Company's board, albeit the date is not completed either at the top or bottom of the first page. The second page

is the signatures, also undated. There are three material recitals: that the Petitioner and First Respondent "are the shareholder [sic] of the company"; "are the directors of the company"; and that they "agree to clarify the company's control rights, the principle of the company's benefit distribution, the principle of issuing shares in the company and the power to point [sic] or dismiss directors in the company".

101. The five material resolutions are these.

> "1. Only [the First Respondent] has full director power in the company and has the right to represent the company to make decisions.
>
> 2. [The Petitioner] own 60% of the company's profits which generated by the fund that [he] invest into the company, or from another investors brought into the company by [him] ('Mr Shichuang Xie's profits').
>
> 3. Only [the First Respondent] has the right to issue shares in the company at any time as long as it does not violate 'Mr Shichuang Xie's profits'.
>
> 4. Only [the First Respondent] has the right to point or dismiss directors in the company.
>
> 5. Any one director or officer of the Company is authorised to sign all documents and perform such acts as may be necessary or desirable to give effect to the above resolution".

102. For a document presented as the beginning and end of the Respondents' case on unfair prejudice, there are a number of difficulties.

> 102.1 It does not purport to affect the Petitioner's rights as shareholder.
>
> 102.2 It contains no 100-outlet condition, in any form.
>
> 102.3 It links the 60% return to shareholding.
>
> 102.4 If shares are issued, it does not purport to override pre-emption rights.

102.5 It contemplates the Petitioner retaining certain directorial powers, albeit limited.

103. Although the Petitioner's account of this document has been poor, so has the Respondents'.

104. The First Respondent's statement referred to the meeting and the August Resolution being signed subsequently. He says that at the end of the meeting the Petitioner recognised that the Business was the Respondents' and that he was only an investor who had no interest in holding shares or a directorship. He cites in support a WeChat message of 14 August, which appears of no relevance. His cross-examination, which the others heard as they were in Court and they gave their evidence in order, divulged that actually he remembered explaining the clauses of the August Resolution in detail to the Petitioner.

105. The Second Respondent's statement said "I am aware that Max and Mr Xie later signed a written resolution of the Company" confirming the key terms. He improved that under affirmation to being present when the Petitioner signed, and remembering that was after the First Respondent signed; all this at the meeting of 10 August. The First Respondent "read the document back to him, translated it for him, every clause". He said that the First Respondent had drafted this at his request, since the Tokenhouse meeting.

106. The Third Respondent's statement confirmed that he had seen the Petitioner sign the document, but no more. By his cross-examination, he recalled a line-by-line translation (at least, that is what he assumed), the First Respondent going down them with his Montblanc pen and seeming to translate.

107. The August Resolution was therefore a pre-prepared document, unaltered by the discussions at the meeting. It included the right of sole appointment and removal of directors vesting in the First Respondent, although there is no evidence that had been specifically agreed before. Even leaving aside my rejection of the August Agreement which immediately preceded this, the difficulty which the Respondents have, even accepting their new account, is that the line-by-line exposition would not have told the Petitioner the terms of the August Agreement such that he could agree to it.

108. In the event, I anyway reject that line-by-line account as a later and expedient account. It seems to me much more likely that the Petitioner was not told the true nature of this document: he says he thought it was something about registration at the bank and allowing the First Respondent to effect transactions. Staring at the English in which (perhaps curiously) the August Resolution was written would have told him nothing, as he could not read it.

109. Aside from the execution of the Purchase of Business Agreement the next day, two other events were consequent on the 10 August meeting. On 12 August the First Respondent lodged at Companies House three documents. One was a new confirmation statement, reflecting the transfers by himself and the Petitioner to the Fourth Respondent, but also referring to the issue to the Fourth Respondent of 30 non-voting shares in the Company.

110. The Petitioner says he never approved this allotment. The First Respondent's points of defence, oddly, make no admissions save as to the issue, but his statement says it was agreed at the meeting, and that these shares were to reward employees in the future. The Second and Third Respondents' points of defence say he told the Petitioner about this at the meeting, and the Second Respondent's evidence says that it was for the Respondents to decide who was allocated these shares once in the hands of the Fourth Respondent. The Third Respondent agrees they were to be "awarded to those who made significant contributions as a form of motivation".

111. It is notable that this share issue occurred at a time when relations between the parties were good, and when the Respondents had particular respect for the Petitioner. But again the Respondents' evidence is lacking. They do not disclose what discussions between themselves led to this being proposed at the meeting, apparently for the first time. They do not say when they decided to adopt in different form the Petitioner's desire that there be a share option scheme. Nor do they say why at this stage they could not just rely for any option scheme on the surplus 5 shares of the 20 which the Petitioner and the First Respondent were about to transfer to the Fourth Respondent. Nor do they explain why this transfer was not part of the August Agreement, nor the supposedly comprehensive August Resolution. Nor do they explain why it was

necessary at all, not only because of the extra 5 shares held by the Fourth Respondent, but because if they were right about their, and not the Petitioner's, control of the Company, they could issue these shares as and when needed.

112. I therefore find that whatever the motivation behind the issue, there was no appropriate resolution of the shareholders, or of the directors, authorising the issue of these shares of a different class.

113. The other two documents the First Respondent lodged on 12 August were reflective of each other. They were a notification that he was no longer a person with significant control; and a notification that the Petitioner was a person with significant control, as one holding, directly or indirectly, more than 75% of the shares in the company. Although they could have been lodged earlier, those filings are not compatible with the Respondents' case. We also know from a WeChat the First Respondent sent the Petitioner on 13 August that on 12 August he had "spent most of my time on the milk tea project. According to the contract, the structure has been changed in the company registration bureau. The application has been submitted and needs three to five working days for approval". The reference to "the contract" does not assist the Respondents. What this does show is that the First Respondent had considered the filings with care.

114. I have not lost sight of the fact that if the Petitioner held 80 of 130 issued shares then his holding was 61.5%; and one reading of the August Resolution, which would be supported by earlier conversations, is that he was to have a 60% shareholding. That, though, is nobody's case.

115. I return to the Purchase of Business Agreement executed on 11 August. The Third Respondent said he was paid the £1 consideration for his shares by coin. The signatories were himself and the First Respondent. Considering the earlier draft, it remains an imperfect document: no mention that he is to receive 5 shares in the Company as well as the consideration price (although the Third Respondent said that had been in a yet earlier draft); nor any obligation on the Petitioner to fund the Company for 1 year or otherwise; nor is there any specific provision as to the Brand.

116. It has been pointed out that the signed document was not provided to Simon Blake for his expert valuation report, issued on 13 April 2022 and under the order of 14 June 2021 being available for use at trial but not binding. I do not, though, doubt the authenticity of this document: there were earlier versions, and the share was transferred.

117. Clause 22d is that "The purchaser will offer the seller to recall this deal after one year or when the seller give up the option of recall this deal will receive £70,000 for the option value" [sic]. That is a change from the earlier draft, which had tagged onto the end (and with the correct "gives", not "give") "This deal can be recalled within up to three months before the end date (9/8/2019)".

118. I do not regard that change as accidental. It extends the Third Respondent's time in which to recall the deal from three months before the end date to "after one year", which must mean a reasonably short time thereafter. I do not consider that that period can refer to the time at which any recall would take effect, as that would put the right to recall initially in the purchaser's hands. Neither on the face of this document, nor the earlier draft, is there any condition to the ability to recall: it is a free choice for the Third Respondent. That may be thought to contain a perverse incentive, in that the more successful the Company was, the more likely a recall; but I would not for that reason imply a condition, where that is not specified and where many of the terms between these parties have not been attested to. The Petitioner recognised in cross-examination that the clause was inserted deliberately, albeit on the basis that it was there to protect the Third Respondent's livelihood if things did not go well.

119. The Purchase of Business Agreement does not speak to the Brand either, but the parties are agreed that it was intended to pass as an asset of Bubble City.

120. Shortly after these engagings, on 23 August the Petitioner made a further substantial loan to the Company of £250,000. All his subsequent loans, bringing the total to RMB4,318,670 and £750,000, were made in RMB in 12 transactions, the last being 21 April 2020. No terms of repayment were ever discussed.

121. The First Respondent says the name change of 4 September was further justified by the Petitioner on the ground that "Enno" sounded more English than Jing,

and the insertion of the word "Capital" was more likely to attract investors: together, they "sounded like a proper English company". Again, this is involvement beyond a mere investor's.

122. The Petitioner says that from the acquisition of his stake in the Company onwards, he provided not just finance but strategic direction to the Company, albeit that the Second and Third Respondents were running the day-to-day operations full-time, with the First Respondent as managing director on 20-30% of his time. He recalled his direct involvement in the "refurbishment, opening and operation of 9 outlets", working physically sometimes late into the night. By the end of 2019 not only was the Basingstoke outlet open, but also those in Plymouth, Brighton, Uxbridge, Bromley and Crawley. With the advent of Covid the first outlet to open in 2020 was Croydon in July, followed by Redditch, Leeds, Leicester and, in December, Norwich. All opened under the Brand. The Third Respondent said that Bubble City held most of the leases, while Bubble Opco held the staff, dealt with the day-to-day running, and received the daily takings from all outlets. The Second Respondent said that Bubble Supplier would buy materials and refurbish the outlets, invoicing Bubble Opco without any profit margin.

123. I accept that the Petitioner was involved on a strategic level, albeit that the WeChats he exhibits to evidence this consist in the main of aphoristic advice to the First Respondent. There is also a 13 June 2020 business plan, of A3 size, which although along similar lines- "Be practical and realistic", "a sense of crisis is the way to survive"- shows a degree of involvement incompatible with a mere investor.

124. He was not the only investor. The silent Mrs Kun Ding put in £1m on 31 October, and £500,000 on 26 November 2019. The contemporaneous terms of that investment are unknown, as is the use to which it was put. The sides' mutual silence is neutral (save in its pointing up, for both, the incompleteness of their evidence). Without more, it both undermines the Petitioner's case that this was his company of which he was the boss, and the Respondents' that there was ever a condition of 100 shops opened with the Petitioner's and his investors' money.

125. There is other evidence, though, of the Petitioner taking a strategic role. From late 2019, the First Respondent tells us, he wanted Mr Xinran Zhao appointed as director: the Petitioner said he had "substantial business management experience". The First Respondent was not keen, as in his view the latter's experience was limited to selling e-cigarettes in the UK to Chinese students. The Petitioner wanted him as the Company was expanding and he did not want it to be reliant on the Second and Third Respondents who in his view lacked the necessary experience. So, while on the one hand the Petitioner was not imposing his choice, on the other he was pursuing a different board: something he had no right to do under the June or August Agreements, or the August Resolution.

126. In February 2020 the Second Respondent told the First that he would resign from 21 June. "Quit again? Why?". The answer from the WeChats is that during a call, the Petitioner had asked him who could do his job better. The Second Respondent remembers the reason as being that the Petitioner had told him (wrongly) that the First Respondent had approved Mr Xinran Zhao's joining, but that the First Respondent had set his mind at rest by referring to the June and August Agreements and the August Resolution; yet he resigned.

127. By late April 2020 the Petitioner was also introducing to the Respondents Mr Weilong Xie, a senior designer at Zaha Hadid, who could help upgrade brand design.

128. The Second and Third Respondents recall a meeting over a drink in the Petitioner's London apartment in early June at which he reiterated the desire he had expressed since late 2019 of involving Mr Xinran Zhao and Mr Weilong Xie. The Second Respondent was "extremely unhappy" at this. By the meeting between the Petitioners and the Respondents in Portsmouth on 6 June 2020, matters were becoming fractious. Mr Xinran Zhao and Mr Weilong Xie were both present. The meeting was to discuss the expansion of the management team, and the reopening of stores post-covid. Not only did the Petitioner wish to appoint his nominees, but he wanted to remove the First Respondent so that he could come to work for him. The Petitioner announced this at the meeting, as he now took the view that the others had no authority to object. He also had

a vision including setting up a large warehouse for the kiosks to be shipped from China, but none of the Respondents had warehousing experience.

129. The Respondents recollect that it was at this meeting that the Petitioner said he had secured $100m funding from Stanford University for the Company. In cross-examination the Petitioner denied he had "secured" this money, from which I infer that he did make the statement, which would be in keeping with his earlier expansive statements as to opening 100 or 200 shops. The Third Respondent could only judge the mood of the room after the Petitioner's final speech in Chinese: all were excited except his fellow Respondents.

130. The next day there was a board meeting of the Fourth Respondent, attended by the First and Second Respondents and Ms Fanzhi Yang as secretary, where it was decided that the Second Respondent would seek to negotiate a shareholders' agreement with the Petitioner. The Petitioner says that possibility was raised, and he agreed to it.

131. On 8 June the parties met again for 5 or 6 hours in the Company's Portsmouth warehouse. The Petitioner says they discussed the original intentions for the Business, its prospects, and the understandings between them and where they had come from, and a shareholders' agreement which he rejected as the Second Respondent, always touchy about his position, wanted a veto. The Respondents agree that the Petitioner rejected the idea of a shareholders' agreement. The First Respondent says the Petitioner acknowledged his roles were nominal, and his monies were not loans but that (one may wonder why, after these acknowledgments) the meeting ended in deadlock. The Second Respondent is more circumspect: he says the Petitioner "seemed to acknowledge that he was simply an investor and that his directorship and shareholding… were purely window-dressing". The Third Respondent understood (somehow) that the Petitioner wanted out.

132. There are post-meeting WeChats from the Petitioner to the First Respondent. "Come to my house at 9 o'clock tomorrow morning. You must speed up the proper disposal of these assets and sell them as soon as possible. I don't want to waste my energy on this matter. With this kind of thought, it's impossible to

continue the cooperation. You can't continue to participate in the business". A little later was this: "…I said that I would support you to do business and I will definitely do it to the end. But I will never let go no matter who stands on the opposite side". By the evening of 9 June it was "Get everything sorted out. A real start, and a brand-new stage, I hope we can work together to be successful in this business".

133. While there is reference to the disposal of assets, these are not the messages of someone wanting to leave the business. As the First Respondent says, when he met the Petitioner in London on 9 June he was treated to a presentation from a leading accountant on how to list on the London Stock Exchange. The new start mentioned in the WeChats probably refers to the Petitioner's desire to remove the other Respondents from the Business.

134. Nevertheless, the Petitioner says that on 11 June he asked for the return of his loan from the Company, and told the First Respondent he wanted no more to do with it, because of their "non-sensical" proposals. He says he made the demand to secure his fund, and with the intent then to discuss the position. At the least the demand shows a belief that he was entitled to this money. The First Respondent recalls that he also said he wanted no more to do with the Company, and acknowledged there was no purpose in his continuing to hold shares or retain office. As just noted, that was not the Petitioner's position in the contemporaneous documents. It is a fillip for the Respondents' case.

135. The next day, presumably after some digging, the First Respondent discovered that the Petitioner was subject to a RMB5m fraud claim in China. He says he confronted the Petitioner with this and the lack of progress in raising finance, and warned him there was no expectation of receiving profit under the June and August Agreements. There is no issue with the Chinese claim which, the Petitioner told him, was common enough for any successful businessman. The other remarks are not consistent even with the Respondents' accounts of the meetings over the previous week. Neither do they accord with the Petitioner the day before having said he wanted no more of the Company.

136. On 15 June the First Respondent removed the Petitioner as director of the Company (although notice of this was lodged at Companies House only on 23 November 2021), and appointed one Abdul Khader Mohammed Ismail. The latter's appointment lasted only until 18 June, when he was removed and the Second Respondent appointed instead.

137. Also on 15 June the First Respondent issued 10,000 ordinary £1 shares in the Company to the Fourth Respondent.

138. The next day the Second and Third Respondents blocked their WeChat communications with the Petitioner, and the Second Respondent exited his two groups. On discovering this, the Petitioner immediately travelled to the Portsmouth office to confront them face to face. All three were there. They said to him "Why are you coming to our company? This is our company. We only speak English here".

139. The exclusion was obvious and deliberate, and the Respondents have not contested otherwise.

140. The First Respondent, as already outlined, says that it was what the Petitioner wanted. Had that been right, secrecy would have been unnecessary. He states the position, adopted by all the Respondents, that he was exercising his powers under the August Resolution: hence its being the beginning and end of their case. He asked the accountants about the share issue, at least as to whether they could be issued without further payment, in recompense for his or others' services: they said they could. The issue therefore came about through strategic planning.

141. The Second Respondent says the exclusion was because the Petitioner had told the First Respondent he wanted the return of all his money and nothing more to do with the Company. That may have been what the First Respondent told the Second, but it would not have been accurate; neither does it account for the secrecy and tone of the exclusion.

142. The Third Respondent agrees with the Second Respondent, and says the Petitioner had proved untrustworthy, and had gone back on his "clear

commitment to leave the management of the Business to us". The Third Respondent gave other details orally: every time the Petitioner came to Portsmouth he was "very rude to my team and very assertive"; he was racist; he "was not welcome in my office". His points of defence aver as well that actually he was unaware of the Petitioner's removal from office until pre-petition correspondence; but given his presence in the office on 16 June, I reject that.

143. There was no compliance with s.168 for the removal, nor with Regulation 17 for the appointments (there being no validly called or quorate directors' meeting, and no shareholders' resolution). There was no justification for the removal or appointments, or removal of their unjust aspect, through the August Resolution, which did not exist. As with the issue of the 10,000 shares, these were actions supported by each Respondent: that is why they presented a united front to the Petitioner in Portsmouth.

144. Likewise, the issue of the 10,000 shares failed to comply with the necessary formalities under the Act and Articles.

145. Their issue also gives the lie to the Respondents' position. The First Respondent says they were issued because the Fourth Respondent would be in operational control, and these shares "would provide the means by which [the Respondents] would have an expectation of dividend payments in lieu of their other remuneration". We can leave to one side that they say they never agreed dividends in place of salary. This recognises that, despite what they say about nomineeship, the Petitioner's original 95 shares held exactly the same rights as the First Respondent's original 5, including as to distributions. More: if the Petitioner's shares were held as nominee, then the person entitled could call from them. Only the Second Respondent, and that orally, gave evidence as to who that might be: the Fourth Respondent. On the Respondents' case there was no need for the complication of issue, which actually left the Petitioner with his holding, albeit much-diluted.

146. The Purported Articles were created to seek to justify legally this allotment by disapplying ss.561 and 562 of the Act. Their sudden appearance is phantastic, and their adoption on 3 June unattested. The best the First Respondent could

essay orally was that as by that date he was about to go into business with the Second and Third Respondents, he had approached a solicitor friend, Mr Zhang Ming, with whom he is still friendly, who suggested that he could provide an appropriate document. Doubtless, if it had been created at the time it would have been discussed between the Respondents; but none says that.

147. It is also remarkable that when King & Wood Mallesons, then solicitors for the First Respondent, wrote formally, and near-contemporaneously, on 16 July 2020 in response to the Petitioner's complaints which included breaches of legislation, they proceeded on the basis that the Articles were indeed the Model Articles.

148. They were right to. On 30 April 2020 the Petitioner and the First Respondents had WeChatted on that very subject. "Are there any Articles of Association", the Petitioner asked. The First Respondent replied: "The Articles of Association are the general articles of association in the UK".

149. So, to answer the issues so far, the allotment of the 30 shares in August 2019 and the 10,000 in July 2020 were invalid and ineffective; there was no June Agreement, August Agreement or August Resolution; and the Respondents had no entitlement to remove him as director in the way that they did.

150. The motivation for these acts was the dilution and destruction of the Petitioner's control over the Company through his directorship and shareholding.

151. The Respondents have chosen to make no distinction between their respective personal positions or responsibilities; and I make none: it was a joint scheme in which they all participated and which they all agreed.

152. The Loan was plainly just that. There being no other terms agreed, it can be implied that it was repayable on demand: if it were a loan, no other period is suggested by the Respondents. The Company's 31 August 2020 accounts were approved by its board (the First and Second Respondents) on 30 August 2021. The First Respondent agreed there was plenty of time to get them right. He said he "explained the situation" over the Loan to the accountants, being that the Petitioner's return would be 3-4 years away, that he would "get his return, and

also he will get 60% of the profit on each outlet". That, again, is different from the rejected Agreements and Resolution, and appears to concede a return of capital. That is how it was treated: the First Respondent agreed that the Petitioner's £1.2m was within amounts falling due within 1 year, together with Mrs Kun Ding's outstanding £900,000. By the time of sign-off, the Company could not afford repayment.

153. The remaining issues concern the Brand: to whom it belongs, and whether a transfer of the EU trademark to Bubble City, administered by the European Union Intellectual Property Office on 6 October 2020 on an application of the Company made about 30 September 2020, was effective. The Respondents give two answers to the second part: they rely on the June and August Agreements and the August Resolution, which we can put aside; and on the Third Respondent's exercise of his recall rights under the Purchase of Business Agreement. I have already found that its clause 22(d) permitted the Third Respondent to recall the deal within a reasonably short time of its 1-year anniversary on 11 August 2020.

154. The Petitioner's dilution and removal did not satisfy the Third Respondent. On 1 July 2020 he says he gave the First Respondent his notice of resignation from the Fourth Respondent as well as notice of his exercise of his recall rights under the Purchase of Business Agreement. That may not be quite right. Companies House records the Second Respondent as having resigned as director of the Fourth Respondent on 1 July 2020, the Third Respondent's resignation coming on 25 August 2020. Both resignations caused a cancellation of their shareholdings as well, such that by 6 September there were 5 issued shares in the Fourth Respondent, all held by the First.

155. For his part, the Third Respondent explains this deliberate shift in power as being that from 1 July "I wanted nothing to do with the [Company]"; "I wanted to recall my business. I wanted to take back my company". He had discussed it with his father. "Even by that point we had grown to more stores, but I didn't want anything to do with the new stores at that time. I just wanted to take my business back and go on operating my one store. I didn't want anything to do with the Company".

156. As I say, it seems to me that the Third Respondent was entitled to exercise that right which he had been given if he wished. There was no conditionality to its exercise.

157. There is also unanimity that, whatever exploitation rights may have been granted to Bubble Portsmouth, the Third Respondent had placed the Brand into Bubble City. There was nothing in the Purchase of Business Agreement which dealt with the Brand as a separate asset, or with its use by the Company or any of its subsidiaries.

158. So, on this evidence, the Company's rights to the Brand were no more extensive than what it obtained under the Purchase of Business Agreement, which permitted recall of Bubble City and therefore its assets.

159. Nor is there room to imply some separate dealing with the Brand on this evidence (which I repeat because I find it extraordinary that there were no other discussions as to use of the Brand through the different trading establishments; but nobody identifies any). While the Petitioner might exclaim in cross-examination "I own the Brand"- a proposition with no substance- he also said that it was "Sunny's brand… I could have used another brand. I didn't need to continue with his brand, but I respected him".

160. So, save insofar as Bubble City had granted rights to others, as to which the limit of the evidence is the Purchase of Business Agreement, the Brand was its; and, on this evidence, once there had been a recall under that agreement there was nobody with any other right to the Brand.

161. It follows that even if it can be said that following his improper removal the Petitioner as director ought to have been consulted about the transfer, and a decision made at a directors' meeting, the Company had no alternative but to give effect to the rights which it had negotiated. For the same reason, that such an action might further the Respondents in their wrongful desire to exclude the Petitioner from his rights is irrelevant.

162. On the issues, then, the Brand belongs to Bubble City; and the transfer to it of the trademark was valid and effective.

163. While those are the answers, the issue was canvassed more widely at trial, as the head of claim I have described at sub-paragraph 5.4 above complains about the unjustifiable transfer to the Third Respondent not just of Bubble City, but of Bubble Opco. In his closing note Mr Mayes described the documents which gave effect to that, a settlement agreement dated 12 August 2019 between the Third Respondent and the Company (the "Settlement Agreement") and the Memorandum of Understanding of a week later as a "sham". There is no pleading to that effect. Instead, the issue now is why the Third Respondent received more than his rights under the Purchase of Business Agreement.

164. The issue arises in this way because the explanation given by Keystone Law on behalf of the Third Respondent by near-contemporaneous letter of 17 September 2020 was that the transfer of Bubble Opco was, as the points of claim have it, "payment of (unparticularised) services and licensing rights which the Third Respondent and Bubble City… had purportedly provided", which was taken to include use of the Brand even though the Company had the benefit of its registration until 6 October 2020.

165. On 1 July the Third Respondent gave notification of recall. The formal transfer was effected on 25 August 2020 through the Settlement Agreement and the Memorandum of Understanding, as it happens the same day as the Petitioner's then-solicitors had sent a letter before action to the Company and the First Respondent complaining of his removal and the 10,000 share allotment.

166. The points of defence of the Second and Third Defendants state that from recall, the Company became liable to pay for its ongoing use of the Brand; absent other existing agreement (which is not identified), a proposition which can be accepted.

167. The Settlement Agreement is dated 12 August 2020. It is a professional document. It recites the Third Respondent's exercise of his clause 22(d) right and that the agreement is in full and final settlement of what is defined as the Recall under that clause. By its clause 3.1 it is also in settlement of the Purchase of Business Agreement, and of "any other matter arising out of or connected with the relationship between the parties including their Related Parties",

defined as a person within the meaning of s.1122 *Corporation Tax Act 2010*. Sold by the Company and bought by the Third Respondent are the shares in Bubble City and Bubble Opco, in consideration of the passing of the various rights. The Third Respondent also sells his 5 shares in the Fourth Respondent for £5, the Company to procure the First Respondent as purchaser; it is to do the same in respect of the Second Respondent's 5 shares, also to be sold for £5, the obligation to procure being on the Third Respondents. There is an entire agreement clause.

168. The Memorandum of Understanding is between Bubble Opco and the Third Respondent and is dated 19 August 2020 and is also a professional document. It recites the Settlement Agreement and states that the "MoU [sic] is to be considered a constituent part of the Settlement Agreement". What that means is not immediately clear as the parties are different. It is also recited that "Prior cooperation between [the Third Respondent] and [the Company] was formed on the basis that [the Company] through [Bubble Opco] would increase the number of stores to 100", which would "confer benefit" on the Third Respondent (and doubtless others as well). That expansion was not achieved "hence the enactment of the Settlement Agreement".

169. The Memorandum of Understanding is signed by the Third Respondent, and by the First Respondent on behalf of Bubble Opco: having been a director since its incorporation, he resigned a few days later, on 25 August 2020, to be replaced by the Second and Third Respondents, the Second Respondent resigning on 15 June 2021.

170. Under this Memorandum Bubble Opco agreed to pay the Third Respondent, once it had sufficient cashflow, £524,000: £40,000 brand fees for each of 7 shops (not including Guildford); varying management fees totalling £124,000 for the same; and a £120,000 "store fee" for Guildford. The brand fees were due from the opening of each outlet, and gave each store the right to use the brand for 5 years. The management fees "are charges for services rendered by [the Third Respondent] which include the identification, opening, training and marketing lead services. £30,000 per store, time adjusted in the fee calculation". The Guildford fee "was a charge agreed to gain benefit for the Guildford store,

the original flag ship founded and wholly owned by [the Third Respondent] that was operated by [Bubble Opco]".

171. These documents mark a shift in the Third Respondent's position from only wanting back his own company, which was, absent further agreement, all he was entitled to. He confirmed that the documents were indeed a week apart, but were the result of "many discussions" with the First Respondent "about how to organise this situation because I needed to be compensated for my time, and all of the effort that I put in to grow the business". The reason for the shift in position was his father, who had advised him to ask for "compensation" of at least £1m. The discussions had led to the figures in the Memorandum of Understanding, which he understood as an "extension" of the Settlement Agreement. As Bubble Opco could not pay those sums, the Third Respondent discussed the matter further with his father, and they decided that he should just take the stores and grow the Brand.

172. So, for the Third Respondent, the sweeping into his control of the Bubble Opco stores, which by now also included Bubble Portsmouth, was justified by the figures which he had himself negotiated with the First Respondent (albeit figures which appeared in a later agreement). Insofar as the figures were retrospective and (as seems to be the case) were not based on any prior agreement for remuneration or compensation, there was no obligation to pay them: they were a post-provision benefit. Insofar as they consisted of payments for a licence to use the Brand there could be no charge before 1 July as the Company owned the Brand, and no inter-group-company fees are said to have been agreed. The Third Respondent confirmed that the 5-year period included time going forward, so also included time passed; and that the £120,000 for Guildford was his estimate of the profit it had made over the time it had been an asset of the Company; as to which this agreement was therefore just an unjustifiable strip-back.

173. The First Respondent also gave oral evidence. He said that the £8,000 per annum for use of the Brand by each outlet was "the amount [the Third Respondent] would like to charge". The Guildford charge was apparently justified by its profit for the year being £70,000; so the agreed payment was in

excess. The £124,000 management fees was to recognise the "time and effort" the Third Respondent had put in. The Third Respondent himself said that "I put so much effort into this company, put blood, sweat and tears more than anyone else… and I deserve that compensation". His efforts are not to be doubted, but he had agreed the structure of the Company and of the Fourth Respondent, with his shareholding in the latter; and received not just salary but bonuses from the Company for his work.

174. The Second Respondent confirmed he had seen the £524,000 figure and had agreed to it. It "used less money to settle a bigger problem"; he was asked what that was: "this was a great deal according to the situation at the time"; asked again, he said the problem was "when the company didn't have enough money but have to pay [the Third Respondent], then this company would go bankrupt"; he then said the problem was if the Third Respondent "recalled his rent". Again, the problem was the very liabilities which had been loaded onto Bubble Opco.

175. The Second Respondent also agrees that on recall of the Brand the Third Respondent wanted "the value reflected and paid to him, including the work he's done there, the negotiation fees with the shopping centre, the time he spent there and the time he worked for marketing. And also the fees to use his brand". He did say that the £8,000pa fee for the Basingstoke licence had been agreed before it opened; but nobody else says so, he was not a director of the Company, and it does not appear in the Purchase of Business Agreement.

176. In the end what these documents further evidence, as Mr Mayes submitted, is the desire of the Respondents to empty the Company of any value, and to put that value away from the Petitioner. Although the Respondents did not appreciate the point at the time, strictly it is only the Settlement Agreement which does that because it is that which, without any commercial justification, passes to the Third Respondent not just Bubble City, to which he was entitled, but Bubble Opco, to which he was not. The Memorandum of Understanding is no more than a post-transfer agreement, of no direct interest to the Company. Whether the First and Third Respondents could validly rifle that company is a matter outside this trial's purlieus.

177. I should add that the Settlement Agreement is another aspect which would have benefitted from evidence from Ms Kun Ding. She must have had views on it, as on 16 July 2020 the Company had agreed a formal written facility agreement with her, covering the £1.5m she had already loaned. Although the agreement confirmed her lending was unsecured, it was registered at Companies House as a charge; and in August 2020 she was repaid £600,000. As the First Respondent said, frankly, she was paid that amount because that was the cash in the Company. Again, the policy to remove assets is manifest.

Conclusions on the issues

178. The Loan was repayable on demand.

179. There was no June Agreement.

180. There was no August Agreement.

181. There was no August Resolution.

182. The Brand belongs to Bubble City.

183. The transfer of the EU trademark to Bubble City was valid and effective.

184. The Respondents had no entitlement to remove the Petitioner as a director of the Company in the way which they did.

185. The allotment of the 30 shares in August 2019 and the 10,000 in July 2020 were invalid and ineffective.

Other matters

186. During trial, on 9 June 2022 the Company entered creditors' voluntary liquidation. No mention was made of this as neither side's legal advisers were aware until after closing. By letter to the court of 29 June 2022 the liquidator, Virgil Levy, says that notices were sent, including to the Petitioner with a debt

ascribed of £1, on 27 May. The letter says that the liquidator had no knowledge of the proceedings until 20 June, and asks that no costs order payable as an expense in the liquidation be made against the Company.

187. For clarity, no application has been made under s.112 *Insolvency Act 1986*. Nor would one succeed where the matter has been fully argued between the protagonists, and any consequent order can be made with notice to and mindful of the liquidator's position. Subject to the usual confidentiality, I give permission for a draft of this judgment to be passed to him.

188. The parties are to seek to agree the terms of relief, and further directions.