Neutral Citation Number: [2022] EWHC 2866 (Comm)

Case No: CC-2021-CDF-000008

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN WALES
CIRCUIT COMMERCIAL COURT (KBD)

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 11 November 2022

Before:

HIS HONOUR JUDGE KEYSER KC
SITTING AS A JUDGE OF THE HIGH COURT

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Between:

BRYAN EDWARD EVANS	**Claimant**
- and -	
(1) GEOFFREY WILLIAM MUXWORTHY	
(2) JASON MARK EVANS	**Defendants**

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The Claimant as a litigant in person
Barnaby Hope (instructed by **IBB Law**) for the **First Defendant**
The Second Defendant as a litigant in person

Hearing dates: 24, 25, 26 and 27 October 2022

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Approved Judgment

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This judgment was handed down remotely by circulation to the parties or their representatives by email and by release to The National Archives. The date and time for hand-down is deemed to be 10.30 a.m. on Friday 11 November 2022.

His Honour Judge Keyser KC:

Introduction

1. In these proceedings, the claimant, formerly an entertainer and latterly a businessman and company director, seeks damages and equitable compensation from the first defendant, an accountant, and the second defendant, an accountant and insolvency practitioner in the same accountancy practice. In briefest summary, he makes two complaints against them: first, that they negligently failed to advise him to challenge the lawfulness of a creditor's decision to place companies of which he was a director and co-owner into administration; second, that thereafter, in breach of agreements and of fiduciary duty, they acted so as to take largely for themselves the benefit of transactions with the creditor to acquire the assets of the companies in administration. In words that he repeated like a refrain throughout his written and oral evidence and submissions, he was "the victim of a confidence trick." The defendants deny both parts of the claim.

2. I reject the claim in its entirety. My reasons for reaching this decision are based on the facts of the case as I find them to be.

3. The principal evidence at trial was given by the parties themselves; the claimant called evidence from his wife and also relied on two witness statements from other persons, but that evidence was not central to the case. The particular reasons for the various findings of fact will appear from the narrative below. In general, those findings rest on an assessment of the probabilities inherent in the circumstances and appearing from the documents, rather than from subjective evaluations of the oral evidence. At this stage I make only some broad remarks about the parties as witnesses.

    - The claimant, who had been represented by lawyers in early stages of the proceedings, conducted the trial himself. He is an engaging, perhaps even charismatic man. He also has, as might be expected, a detailed grasp of much of the history of events that have assumed a major role in his life. But, even when he tries to be truthful, his memory is not infallible. And there are other reasons why, on important points, what he says cannot be accepted unless it is confirmed by documents. First, he appears to have a need to blame others for his own misfortunes: he cannot accept that they are his, or even no one's, fault. Second, more seriously, in order to achieve his own ends he is willing to behave badly in full knowledge of what he is doing: this includes distortion of events to give a misleading impression, outright lying, and making unwarranted allegations against others or unjustified threats to their reputations.

    - The first defendant did not make a good impression as a witness. He seemed generally unwilling to give clear and forthright answers to questions, and his manner was surly and evasive. It is difficult to draw useful conclusions from this. The explanation could lie with a lack of candour, a wary suspicion of the claimant's questions, or simple annoyance at being interrogated by the claimant in person. I have come to the conclusion that suspicion and annoyance, coupled with an ungracious manner, are the reasons for his presentation and that he was a basically honest witness, although not always an accurate one.

- The second defendant presented as a calm, thoughtful and straightforward witness. I have not assumed that his evidence was therefore either accurate or truthful; it too falls to be assessed in the light of the documents and the inherent probabilities of the case. That assessment leads me to the view that he was an honest witness and, allowing for the passage of time, broadly reliable.

4. In the rest of this judgment, I shall adopt the practice used at the trial and refer to the parties by their forenames: the claimant is "Bryan", the first defendant is "Geoff", and the second defendant is "Mark". I do this for convenience, not least because two of the parties have the same surname, and it is not intended to show disrespect.

5. There was originally a third defendant in these proceedings, Mr Stephen Quinn ("Mr Quinn"). By a Tomlin Order dated 15 March 2022 Bryan's claim against him was compromised on the terms of a confidential settlement agreement, which I have not seen. He has played no further part in the proceedings, and therefore I shall not discuss the allegations formerly made against him, but he does loom large in the story that follows.

6. As this case turns on the facts, I shall set out an extensive narrative, which however will omit a lot of matters referred to in the evidence but of little or no relevance to my conclusions. The narrative will contain a great deal of quotation from the documents, which are the most assured way of following events. After setting out the narrative, I shall address the component parts of the claim in turn.

Narrative

7. Bryan was the sole director of Listmark Limited ("Listmark"). He also owned 50% of the shares. The other 50% of the shares were owned by Mr Robert Sullivan; he has no part in the issues in the case and I shall not explore the references to him in the documents.

8. Listmark owned 100% of the shares in two companies: E.P. Leisure (Blackpill) Limited ("EPL Blackpill") and E.P. Leisure (Mumbles) Limited ("EPL Mumbles") (together, "the EPL Companies"). Bryan was a director of each of the EPL Companies and, from October 2013, its sole director. Each of the EPL Companies was formed to hold a single piece of land in or near Swansea, the former a piece of land in Blackpill ("the Blackpill Land") and the latter a piece of land at Oystermouth Square in Mumbles ("the Mumbles Land") (together, "the Properties"). The Blackpill Land was a vacant site with planning permission for development, but its location on a floodplain made it doubtful whether development was feasible. The Mumbles Land was the site of a former bus station and had since around the turn of the century been operated as a car park generating significant income. It was considered to have development potential.

9. From about 2008, the accountants to Listmark and the EPL Companies were a Swansea practice trading as HR Harris & Partners ("HRH"). Geoff and Mark were members and directors of HRH. Geoff had the main dealings with the companies and he and Bryan got to know each other and developed cordial relations. Bryan describes their relationship as one of friendship and, although Geoff has been reluctant in these proceedings to accept that description, there is an email in which he refers to them in those terms. Geoff was never Bryan's personal accountant. Mark had no dealings personally with the companies or with Bryan until October 2013, as described below.

10. In July 2009 Barclays Bank demanded repayment by the EPL Companies of a little over £2,000,000 due under a loan facility. No repayment was made, and in November 2009 Barclays Bank appointed two members of the Cardiff office of Lambert Smith Hampton ("LSH") as Law of Property Act receivers under fixed charges that it held over the Properties. According to Bryan, the bank's decision to appoint receivers was due to the receipt of a valuation from LSH, which valued the Properties at about £1,000,000, whereas they had previously been valued at £4,000,000 to £6,000,000. (The evidence at trial indicates that the former valuation is more likely to have been accurate than the latter ones.) In his witness statement Bryan says that the receivership "was based on a tissue of lies motivated by LSH wanting to 'get their hands on the site' to receive a commission from the bank". He makes little of the fact that the EPL Companies had defaulted on a loan from the bank and that the bank was entitled to enforce its security, though he says that "it could be argued" that the true level of the debt was only £350,000. (In view of the terms of settlement subsequently reached, as to which see below, it appears that it could be argued with more conviction that the true level of the debt was very much more than £350,000.) Bryan made a complaint to the police of fraud on the part of LSH, Barclays Bank and even the bank's solicitors; this is typical behaviour on his part. He was later to rely on the supposedly ongoing police investigation to explain his actions in 2013, and at trial he referred to the investigation as still ongoing. Even so, after thirteen years nothing has come of it. (Bryan says that he has made a formal complaint against the police for their failure in carrying out their duties properly, and I do not doubt that he has.) That is not to say, however, that Bryan's manner of dealing with the bank did not bear fruit; it seems to have led to an impasse of some years and eventually to the negotiation of quite favourable terms.

11. By a Settlement Agreement dated 31 May 2012 and made between (1) Barclays Bank, (2) the Law of Property Act receivers, (3) EPL Mumbles, (4) EPL Blackpill and (5) Bryan, Barclays Bank agreed to waive about £1,000,000 of the outstanding debt on condition that the EPL Companies paid £1,300,000 by 30 April 2013 (later extended until 30 June 2013) and monthly interest in the meantime. In the event of default of those payments, the bank was to be entitled to claim payment of the full debt. Clause 3 provided for the resignation of the receivers. Clause 10.1 of the Settlement Agreement provided:

> "The terms of this Agreement are in full and final settlement of, and each party hereby releases and forever discharges, all and/or any actions, claims, rights, demands and set offs, whether in this jurisdiction or any other, whether or not presently known to the parties or to the law, and whether in law or equity, that it, its Related Parties or any of them ever had, may have or hereafter can, shall or may have against the other party or any of its Related Parties arising out of or connected with [the loans, security and Appointments of the Receivers] and including any action taken by the Receivers in contemplation of the Appointments (including all and any agreements made by the Receivers pursuant to the Appointments). 'Related Parties' is defined as a party's parent, subsidiaries, assigns, transferees, successors in title, representatives, principals, agents, officers or directors. For the avoidance of doubt, Related Parties does not extend to include Lambert Smith Hampton Limited."

12. The EPL Companies continued to make the monthly interest payments to Barclays Bank, but they failed to repay the debt by 30 June 2013. Bryan and, in support of him, Geoff wrote to the bank explaining that the ongoing fraud investigations by the police into Bryan's original matter of complaint made it difficult to obtain the refinancing that would be necessary in order to repay the bank. I am sceptical of this explanation. The allegations of fraud had been made by, not against, the EPL Companies, and it is much more likely that normal commercial considerations made the refinancing problematic, as they were later to do in 2014.

13. On 14 October 2013 Barclays Bank made a formal demand for repayment of £2,190,732.49.

14. In his witness statement Bryan states, "The letter [of demand] seemed fairly standard and did not raise any alarm bells at that time as they were fully aware of all the circumstances." That is untrue. Bryan was very alarmed. Upon receipt of the demand he wrote to Mr Kevin Reed, Senior Recoveries Manager at Barclays Bank, and for good measure to the bank's Chief Executive. Geoff, too, wrote to TLT Solicitors, who were acting for the bank, stating that EPL Mumbles "believe the demands are on the [settlement] agreement which is fundamentally flawed." His (not entirely coherent) letter complained of certain actions taken by the receivers, of which EPL Mumbles had been unaware, and said that, if it had been aware, the Settlement Agreement would not have been signed. Bryan now says that he knew nothing of Geoff's letter before it was sent and suggests that it worsened the position of the EPL Companies vis-à-vis the bank. However, I accept Geoff's evidence that Bryan not only knew of the letter but asked him to write it.

15. On 17 October 2013 Barclays Bank appointed two partners in Begbies Traynor as administrators of each of the EPL Companies. Later that day, Mr Irvin Cohen, a director of Begbies Traynor, met with Bryan and Geoff by prior arrangement at the offices of HRH. At the meeting, Mr Cohen informed them for the first time that the EPL Companies had been put into administration. Bryan protested that the companies had not missed a payment. He repeated this point at trial and maintained that the bank had no justification at all for appointing administrators. It is typical of Bryan to ignore the point that although the companies had continued to make the interest payments they had failed to repay the principal amount either in June 2013 or in response to the demand.

16. In the course of the meeting with Mr Cohen Geoff left the room, and he returned some minutes later with Mark. Mr Cohen began asking questions of Bryan as a director of the EPL Companies and Bryan began to give answers. There is some difference of evidence as to what then happened. According to Bryan, Mark told him not to cooperate or answer; Mr Cohen asked why he was giving that advice, and Mark replied that they were going to challenge the administration; Mr Cohen enquired as to the grounds of the challenge, and Mark replied, "That's for us to know." However, Mark says that he simply advised Bryan to seek advice before providing information in response to Mr Cohen's questions, because he was concerned that Bryan's efforts to give answers off the cuff were putting him at risk of providing misleading or inaccurate information to the administrators; he said nothing in the meeting concerning a challenge to the administration. Geoff's recollection of Mark's involvement was vague but consistent with Mark's account. His brief manuscript note of the meeting, which I find was written up in or shortly after the meeting, does not record what Mark said.

17. I accept Mark's account of what happened during the meeting with Mr Cohen. It is inherently unlikely that an insolvency practitioner would advise a director not to cooperate with an administrator, but it makes sense that he should advise the director to take steps to minimise the risk of misleading the administrator. It is also inherently unlikely that Mark should have told Mr Cohen that the administration would be challenged, in circumstances where Mark had had no prior involvement in the affairs of the EPL Companies, did not have any documents and had never spoken to Bryan, far less discussed with him the possibility of a legal challenge to the administration. (See below for Mark's more plausible account of the circumstances and nature of the conversation regarding a challenge.) On a generous view, Bryan has permitted his recollection to be clouded by emotion (his own evidence was that, on hearing that the companies had been put into administration, he was "in shock") and by a tendency to adjust events so as to make them more patient of an advantageous interpretation.

18. The meeting with Mr Cohen ended with an agreement that they would meet against on the following day. However, after Mr Cohen had left, Bryan, Geoff and Mark continued to discuss matters among themselves. The various accounts of the discussions differ in some details.

- In the particulars of claim, which Bryan signed, it is stated (paragraph 18) that Mark advised Bryan that there were good grounds to challenge the administration, though he did not state at that time what the grounds were.

- In his witness statement (paragraph 55) Bryan stated that they did not discuss in any great detail what the objections to the administration would be, but that Mark stated "that the administration was improper."

- Under cross-examination, Bryan gave evidence to the following effect. After the meeting he had a brief discussion with Geoff and Mark. They talked about challenging the administration, but Bryan's concern at the time was to contact the bank to find out "what was going on". Mark referred to "improper motive", which he quoted from his "bible"; this went over Bryan's head. Mark did not advise Bryan to take legal advice, and he did not advise him to challenge the administration.

- Mark's evidence was as follows. Bryan asked him if the administrations could be challenged; he was unable to answer, because he had no knowledge of the EPL Companies' affairs and because he had never challenged an administration; he went back to his room and, on looking at Schedule B1 to the Insolvency Act 1986, he found that paragraph 81 provided for an administration to be set aside on the application of a creditor; this would require an allegation of improper motive against Barclays Bank; he brought this to Bryan's attention but told him that he did not know what would constitute improper motive in this context and that he ought to take legal advice; he did not know what were the issues between the EPL Companies and Barclays Bank and did not give any advice that the administration ought to be challenged or that grounds existed on which it could be challenged. Mark's evidence was that he gave Bryan a photocopy of the page setting out the text of paragraph 81, though he could not recall whether he had done it on 17 October or afterwards.

- Geoff's evidence was that the photocopy was given on that occasion; in other respects his evidence was consistent with Mark's evidence. Geoff said that he himself had given no advice on the matter.

19. I make the following findings of fact. Nothing was said in the presence of Mr Cohen about challenging the administrations. The only discussion about a challenge came afterwards when, in response to Bryan's question as to whether the administrations could be challenged, Mark found that paragraph 81 provided a legal route to challenge an administration on the grounds of improper purpose. He did not advise that those grounds could be made out; he had been given no documentation or information relevant to such a challenge and had no personal knowledge of the case and no relevant experience of making such a challenge. He simply identified the legal basis on which a challenge could in principle be made and advised Bryan to get legal advice. Bryan could not reasonably have believed that Mark was in any position to give advice that a challenge to the administration would have merit, as he had not had any prior involvement in the affairs of the EPL Companies. Bryan's written accounts regarding a legal challenge, in the particulars of claim and his own witness statement, have the same complexion as his evidence regarding cooperation with the administrators: the advice that he take advice before providing information has been turned into advice not to cooperate; the information that paragraph 81 provided for a challenge on the grounds of improper motive has been turned into advice that there was merit in challenging the administrations on the grounds of improper motive.

20. In fact, there is not a shred of evidence that would indicate any basis for challenging the administration or alleging any improper purpose on behalf of Barclays Bank. When I asked Bryan about this at the trial, he insisted that the bank's appointment of administrators was improper because the EPL Companies were still making the interest payments and because the fact that they had been in receivership so recently meant that it was proving impossible for them to obtain finance with which to repay the bank. These answers do not disclose any arguable case that the administration was liable to be impeached on the grounds of improper motive. When cross-examined by Mark, Bryan said that the administrators were appointed "to silence [him]." There is no evidence to support that statement; it is typical of the wild way in which Bryan throws allegations around.

21. On 18 October 2013 there was a second meeting with Mr Cohen, who told Bryan that, if he intended making an offer for the Properties, he ought to do so quickly, as they were to be marketed the following week. Bryan says that this was the first mention of the possibility either of a sale of the Properties or that he might make an offer for them. He says that he was shocked that the administrators should intend selling the assets of the EPL Companies. In fact, Geoff's manuscript note of the meeting on 17 October recorded, "Offer for property from B. Evans awaited." That is probably an accurate record of what was said. Even so, it is quite likely that Bryan was shocked that the Properties were to be marketed, because it seems to me that his nature was to be shocked that any creditor of those companies could envisage taking action to protect its position, whether by demanding repayment or by appointing receivers or administrators or by seeking to realise security.

22. After this second meeting with Mr Cohen, there was a further discussion between Bryan, Geoff and Mark. Bryan was keen to acquire the Properties and prevent them being sold to third parties. I do not have confidence in the detailed recollections of the

witnesses as to the contents of this discussion; in my view the parties have tended to conflate things discussed on different occasions. Some things that were certainly discussed on Monday 21 October may perhaps have been mentioned on this earlier occasion on Friday 18 October. However, I find that on the earlier date Bryan expressed to Geoff and Mark a wish to buy the EPL Companies in their entirety, because he thought that they owned valuable rights of action against LSH and, possibly, against Barclays Bank, and that he was told that this would be difficult to achieve and that his better course was to seek to purchase the Properties immediately and, later, to ask for an assignment of the causes of action. Bryan's evidence at trial was that on 18 October there was no discussion about Geoff or Mark coming in with him on the purchase of the Properties. It seems to me to be likely that anything said at that time was in the broadest of terms; there was probably no discussion of the details of property ownership, but the possibility that Geoff would assist in obtaining, or even providing, finance was doubtless in the parties' minds and was probably mentioned. (The parties' agreed position at trial was that no suggestion of Mark's involvement arose until later.)

23. After the second meeting with Mr Cohen, Bryan quickly made contact with Mr Reed, who indicated that, although the decision rested with the administrators, it might be possible to do a deal if there were payment of a substantial non-refundable deposit.

24. Bryan and Geoff met to discuss the matter on 21 October 2013. (Mark was not directly involved in the discussions, but I find that Geoff spoke to him about the matter later on the same day.) Bryan said that he could not come up with the money for the deposit, which was then anticipated to be £150,000, and Geoff said that he could do so. In trying to work out the further details of the discussion on that day, the most convenient starting point is an HRH file note dated 21 October 2013, which will have been prepared by Geoff (GWM) or Mark (JME) or both of them together. It reads in part:

> "HRH/GWM/JME have been approached by BE to assist in raising finance to purchase the land and Oystermouth Square and Blackpill from the Administrators. GWM and JME have discussed commercial and ethical considerations over supporting BE.
>
> *Commercial Considerations*
>
> The administrators have advised that they have met with RJS [Mr Sullivan] and invited him to make an offer to purchase the land.
>
> A non-refundable deposit needs to be paid. GWM and JME agreed that this should not be provided to BE as a personal loan. We should consider star[t]ing a new company, and lend to the company that will own the land. This should safeguard the advance."

This file note would tend to suggest that, as at 21 October 2013, the contemplated involvement of Geoff and Mark was merely as the source of a loan for an acquisition by Bryan; the new company was not proposed as a vehicle of a joint venture but rather as a mechanism by which Bryan could both acquire the Properties and obtain the necessary finance to do so. However, Bryan's evidence was that Geoff offered to pay the deposit and said that he could also arrange the rest of the finance for the purchase, and that he (Bryan) replied that on that basis he would go 50:50 with Geoff and, as a

gesture of goodwill, offered a charge over his family home ("72 Higher Lane") to "cover the non-refundable deposit".

25. I make the following observations and findings.

1) No equity share is mentioned in HRH's file note, which appears to indicate that Geoff's and Mark's involvement was to be as lenders. If an equity share had been discussed or agreed at this stage, it would probably have been mentioned in the file note. Some form of equity share had clearly been discussed by the end of the week (see the facts set out below), but it was probably not discussed at this stage.

2) I reject Bryan's evidence that he volunteered a charge over his house after an equity share—specifically, a 50:50 division—had been agreed and as a gesture of goodwill. The promise to give security was the nearest thing to a financial contribution that he was capable of making (though in fact it appears that he was not even in a position to give valuable security). His claim that an agreement was made for him to have a 50% share even before he agreed to give security is plainly false, in my view.

3) Although it is quite likely that a 50:50 division was mentioned when first it was proposed that Bryan and Geoff would buy the Properties together, this must have been premised on Bryan giving a charge to secure the non-refundable deposit. Both at this early stage of discussions and later as the discussions progressed, the actual division of shares was dependent on the final financial input of the various parties.

4) Although a 50:50 division might have proved to be fair as the financing of the purchase became clearer, at that time it is hard to see why Bryan should have been automatically entitled to an equal share or why the others should have agreed to it. He was unable to provide the necessary deposit. He was already in debt to Geoff and facing serious financial problems (see below). He had been unable to obtain funding to keep the EPL Companies afloat. In short, the position was not that he simply needed the assistance of others to come up with the purchase price; he had no personal ability to fund the purchase price at all.

5) Bryan's response to this point, in his skeleton argument and at trial, was that it was only his personal involvement, as the sole director of Listmark, that made the Properties available at a heavily discounted price: he was, in effect, providing a 50% discount from the price of the Properties on the open market. I unhesitatingly reject that contention: first, there is no evidence to support it; second, the administrators would have been in breach of duty if they had knowingly sold the Properties at an undervalue; third, the administrators' remuneration was based on a percentage of realisations of the EPL Companies' assets, so their own interests were served by achieving the highest possible price; fourth, Mr Cohen subsequently confirmed to the police, who were investigating a complaint made by Bryan, that the contention was untrue.

6) In the particulars of claim, however, Bryan based his claim to have made the equivalent of a financial contribution on the implicit contention that the price of the Properties was discounted to reflect his agreement not to sue Barclays Bank

(particulars of claim, paragraph 26; cf. Geoff's email to Mr Cohen on 24 October 2013, below). I accept that the offer not to sue was made, and I accept that Bryan thought the offer had some value: the fact that he constantly threatens to take proceedings against just about everybody suggests that he regards it as a useful tactic. But I do not accept that even Bryan thought that the offer was anything more than a bargaining chip with possibly some value; he did not seriously believe that it was worth anything like a 50% reduction in the price, as is indicated by the fact that he did not raise the point at trial. Further, I see no reason to suppose that anyone else—including Geoff, Mark, the administrators and the bank—attributed more than a nuisance value to it. As I have explained, the EPL Companies had settled their claims in relation to the bank debt and had defaulted on the settlement agreement, thereby becoming liable for the full amount. Bryan has given no reason to think that he had any further arguments to raise, other than frivolous ones. It is just possible that in accepting the offer put to them by Geoff the administrators attributed some nuisance value to the offer not to sue. Perhaps this is why Bryan, who had made no financial contribution at all to the purchase, ended up with a 10% shareholding in the company. It is also possible that some discount was accepted for the convenience of a quick agreement without the need for putting the Properties on the open market, although that is not a value that can be attributed to Bryan personally any more than to anyone else who was in a position to make a prompt offer.

26. After speaking to Geoff, Bryan approached Mr Alun Williams, the Chief Executive of the Swansea Building Society, to act as intermediary in negotiations with the administrators. Mr Williams made an offer of £1,250,000 for the Properties, with a non-refundable deposit of £150,000. Mr Cohen rejected that offer and indicated that he would be minded to accept an offer of £1,500,000 with a non-refundable deposit of £200,000.

27. Owing to personal commitments, Mr Williams was unable to take any further part in negotiations. Bryan and Geoff agreed that Geoff would take over negotiations. He attempted to persuade Mr Cohen to accept the terms proposed by Mr Williams, but to no avail.

28. On 24 October 2013 Geoff wrote to Mr Cohen by email with an offer that he, Bryan and Mark would purchase the Properties for £1,400,000 with a non-refundable deposit of £150,000. "Part of this offer is that Bryan Evans will not take legal action against the Barclays bank [sic] plc or the named receivers and Barclays bank [sic] will release all claims against EP Leisure (Mumbles) Limited and EP Leisure (Blackpill) Limited." Further communications took place throughout the day, and at 5.15 p.m. Geoff wrote to Mr Cohen by email, saying that "we increase the offer to £1,500,000 with a non refundable deposit of £200,000. All other points per my previous emails." Shortly afterwards Mr Cohen confirmed acceptance of the offer. As I understand it, the non-refundable deposit operated as the price of an option to purchase the Properties; the option had to be exercised by notice by 3 March 2014, and completion of the purchase was required by 31 March 2014.

29. In cross-examination of Geoff, Bryan put it that Mr Cohen believed that the offers for the Properties were on behalf of him alone; however, the emails on 24 October confirm Geoff's evidence that Mr Cohen knew that the offer came from Bryan, Geoff and Mark.

They also confirm, therefore, that by that date not only Geoff but also Mark was to be involved on an equity basis.

30. Bryan's evidence was that, at a date which he does not specify but cannot have been later than 24 October, Geoff told him that he intended "to give 15% of his 50%" to Mark (by which is to be understood that the shareholdings would be 50% to Bryan, 35% to Geoff and 15% to Mark), though he went on to express second thoughts about letting Mark have such a large share. Geoff denied that specific figures were discussed for shareholdings. I accept that at this point in time no specific figures were discussed; Geoff had merely mentioned that Mark would be involved on a lesser basis. Bryan also gave evidence that on 24 October, after the offer for the Properties had been accepted, Geoff told him that the new company, called BGM Leisure Limited ("BGM": the initials stand for Bryan, Geoff and Mark) had been incorporated with the shares held in the proportions 50:35:15. I do not accept that evidence, as regards what Geoff said either as to the fact of incorporation or as to the shareholdings. I also find that, as at that date, it was intended that the non-refundable deposit be provided as to £136,000 by Geoff and as to £64,000 by Mark.

31. Another event on 24 October 2013 was unconnected with the acquisition of the Properties. Geoff, who in 2012 had made a personal loan to Bryan of £25,000 to assist him in the face of financial problems arising out of a wine bar that he owned in Mumbles, lent him a further £55,000 for the same purpose. As the principal of the first loan had not been repaid, the total debt now stood at £80,000. The documentation in respect of the further advance was signed on 25 October 2013, when Bryan and his wife, Tracy Evans ("Mrs Evans"), attended on Geoff at HRH's offices and signed a Loan Agreement bearing the date 24 October 2013. By clause 2 Geoff agreed to lend to Bryan £55,000 at a rate of interest of 10% p.a. Repayment was due "[w]hen the refinancing of [the Properties] takes place", though the agreement appeared to countenance regular payments in the meantime. By clause 7, Bryan agreed to secure the repayment of the loan "by executing those Security documents attached hereto as Schedule 2 and [to] deliver the security Documents on the commencement date" (the date of the agreement). Schedule 2 identified only one Security Document, namely, "An option to place a fixed charge over the property known as 72 Higher Lane …" There is no evidence that any such option was exercised, and I infer that it never was. The agreement was signed by Bryan and Mrs Evans, purportedly in the presence of a witness who worked at HRH and who also signed it, though it is common ground that the "witness" was not present and signed later.

32. Bryan and Mrs Evans gave evidence that they believed the document they were signing on 25 October 2013 was the security he had offered to give in respect of the non-refundable deposit. I reject their evidence on this point. First, it was clear from the document itself that it related to the separate loan of £55,000. Second, evidence of subsequent events, mentioned below, shows clearly that Bryan was well aware that he had not given a charge over 72 Higher Lane to secure the non-refundable deposit or any other moneys relating to the acquisition of the Properties. Third, the evidence at trial indicates that Bryan was well aware that there was insufficient equity in 72 Higher Lane to secure payment of the amount of the non-refundable deposit. Fourth, Bryan's own witness statement had made clear that the document he signed related to the personal loans made to him by Geoff: see paragraphs 154 to 157. (He goes on, in paragraphs 158 to 162, to assert that the document he signed was not the one now produced. I

reject that assertion. For present purposes, however, the important point is that the statement makes clear that Bryan's own understanding was that the document he was executing related not to the non-refundable deposit but to personal loans given by Geoff.)

33. There is a lack of detailed information as to what was taking place over the next fortnight. It is clear, though, that Geoff sought advice from Rosemary Morgan, a partner in the solicitors' firm of Morgan LaRoche in Swansea.

34. On 7 November 2013 Geoff, Mark and Bryan met; there is a manuscript file note of the meeting in Geoff's hand:

> "Initial shareholding to reflect financial risk taken by all parties.
>
> ∴ B Evans to have 10%, to increase post [?] funding subject to certain conditions being met. B Evans to provide security over non refundable deposit, this is to take place immediately. Deposit and security to be dependent on one another.
>
> Shares held in trust[;] documents to be drawn up by solicitor, BE to sign immediately, within 2 weeks at latest.
>
> BE can't be a director due to his lack of credit worthiness and business track record. Preferable from a funding point of view for BE to have no shares. Advised by Rosemary Morgan of MLR [Morgan LaRoche].
>
> BE shareholding to remain in trust, after security given for non refundable deposit + BE shares to increase post obtaining funding subject to [?] agreement.
>
> Shareholding to reflect financial input and be taken on an ongoing basis.
>
> Initial shareholding: M Evans 15
>
> G Mux 75
>
> B Evans 10
>
> 100
>
> Directors to be GWM &/or JM Evans, possibly easier initially if one director only as simplifies paperwork."

35. Geoff and Mark say that this file note accurately reflects their discussions and agreement with Bryan after Geoff had taken advice from Rosemary Morgan: Bryan would have a 10% shareholding and, provided he gave security for the non-refundable deposit, would be the beneficial owner of a further 40% of the shares; those further shares would, however, be held on trust for him, because BGM would find it harder to raise finance if he were shown as a person with significant control. Bryan says that he was not given a copy of the file note at the time (this is not disputed) and that it does

not represent anything discussed or agreed by him. According to him, the agreement was simply that he would be a 50% shareholder in BGM. I find that the file note accurately reflects the gist of the preliminary advice that Geoff had received from Rosemary Morgan and the basis on which Geoff and Mark said they would be willing to proceed. I find that Bryan reluctantly accepted the proposal. His reluctance did not concern the condition on which his shareholding was to rise to 50% but rather the facts that the greater part of his shareholding (that is, after provision of security) would be held in trust and that he was not to be a director; he saw both of these features of the proposal as an unjustified slur on his business reputation. I also find that the discussion on 7 November shows that Bryan was perfectly well aware that he had not executed security for the non-refundable deposit (which, of course, had not yet been paid).

36. On 11 November 2013 Bryan, Geoff and Mark met Rosemary Morgan. The meeting had been arranged by Geoff. Rosemary Morgan's file note of the meeting was obtained by those acting for Geoff in the course of these proceedings and has been disclosed. It records the client as BGM Leisure Limited and those in attendance as Rosemary Morgan (RM), Geoff (GM), Mark (ME) and Bryan (BE). Because it is a particularly important document in this case, I shall set out most of its terms:

> "GM explained that a company known as BGM Leisure Limited (Company Number 08769912) was being formed that day for the purposes of dealing with [the acquisition of the Properties from the EPL Companies]. GM was to be appointed as Director of the Company and the registered office would be at his address at … The Company had an authorised share capital of 100 ordinary shares of £1 each which had been allotted as to 75 such shares to GM, 10 such shares to BE and 15 such shares to ME.
>
> It was a term of the acquisition of the properties that a deposit of £200,000 would be payable which would be forfeited in the event that the acquisitions were not completed within an agreed timescale or if prior to the expiry of that timescale there were a breach on the part of the Company of its obligations to the Sellers. Following a considerable debate about the risks attached to paying such a substantial deposit under such circumstances, the three shareholders, notwithstanding that risk, were of the view that the Company should proceed on the basis of the Administrator's terms.
>
> It was therefore accepted that the shareholders would need to ensure that the Company were put in funds to the sum of £200,000 to enable it to make payment of the deposit. It seemed that BE was not in a position to make monies available but that GM and ME would probably be able to raise these from various sources that they could access.
>
> BE expressed concerns that albeit that the development of the two sites had been something that he had been working on for many years, and into which he had put a lot of effort, he had only a minority shareholding in the Company. It was explained to him though that based on the proposals discussed, it was GM and ME who were taking all the risk and could, between them, lose £200,000.

> GM explained that he had agreed a compromise with BE in this respect pursuant to which GM would agree to grant BE an Option to purchase, or to require the purchase by his wife or daughter of 40 of GM's shares at par. This was subject, though, to BE first either:-
>
> (i) Raising £200,000 and repaying GM and ME in the event that they had previously advanced this sum to the Company; or
>
> (ii) Providing acceptable security for £200,000 which GM and ME would have recourse to in the event that the monies became forfeited. BE indicated that he would be prepared to provide a Charge over his matrimonial home at 72 Higher Lane, Langland. RM pointed out potential problems with this, namely that:-
>
> (a) If the property were in the joint names of himself and his wife, his wife would need to be a party to the Charge; and
>
> (b) GM and ME would need to be satisfied that there was sufficient equity in the property;
>
> (c) Inevitably, the consent of any prior mortgagee would be required before a further Charge could be created. BE countered this by suggesting some sort of Trust arrangement in favour of GM and ME which he would be prepared to sign. RM expressed some concern about the merit of this given the points raised above but it was agreed that BE would pursue this possibility."

37. There is also a brief note of that meeting in Geoff's handwriting. It refers to "Security – BE house" and, next to the initials "BGM", as the figures 75, 15 and 10; presumably those are the intended shareholdings recorded by Rosemary Morgan. A further entry reads, "B. Ev. sceptical of having his shares held in trust. Subject to security."

38. Bryan did not serve a notice challenging the authenticity of either of these notes of the meeting on 11 November 2013 pursuant to CPR r. 32.19. However, at trial he suggested that Rosemary Morgan's file note was probably written up much later on the basis of instructions given by Geoff, and that Geoff's file note was a deliberate falsification of what had been said at the meeting. In fact, the scope of dispute is narrow. Bryan's evidence was that he had made it clear at the meeting that he did not agree to the proposal as to his shareholding and that the meeting had accordingly broken up.

39. In my judgment, the file notes are the best evidence of what was said at the meeting. It is likely that Bryan did express unhappiness at the proposal, for the reasons already stated. But the simple fact was that he was not in a position to proceed with the deal that had been struck with the administrators, because he had no money and was heavily in debt; he was dependent on Geoff and Mark providing the non-refundable deposit. If he wanted to pursue the option to acquire the Properties, he had no practical alternative. I am satisfied that the agreed position on 11 November was as recorded in the file notes.

40. BGM was incorporated on 11 November 2013. Geoff was the sole director (Mark was appointed as a director the following month) and the 100 issued shares were allotted in accordance with the record in Rosemary Morgan's file note: 75 to Geoff, 10 to Bryan, and 15 to Mark.

41. Rosemary Morgan did subsequently prepare a Call Option Agreement, which provided for Bryan to have an option to acquire 40 of Geoff's shares for nominal consideration. That document was never executed. By email on 22 November 2013, Geoff informed Bryan, "Rosemary has contacted me this afternoon re security and your agreement for the shares which means she is working on it today." Under cross-examination, Bryan accepted that he had never responded to that email. He said that the reason for his failure to respond was that he knew he had already provided the security, namely the charge over his home to secure the non-refundable deposit. Even on its own terms that is an unconvincing reason. However, the reason given is false, because Bryan well knew that he had not given any security in respect of the non-refundable deposit or otherwise in respect of the acquisition of the Properties.

42. Efforts were then made to raise the necessary finance to complete the purchase of the Properties. Geoff and Mark instructed Mr Gary Cosgrove, a financial planner with expertise in arranging corporate finance, to assist in raising the moneys required for completion. They and Bryan had a meeting with him on 25 November 2013. Geoff's note of the meeting shows that they were discussing the need for a bridging loan for an 18-month term and that it was thought (perhaps by Mr Cosgrove) that it would be "preferable" (presumably, advantageous) to be able to provide additional security for £750,000, being half of the purchase price.

43. Bryan is highly critical of the efforts not only of Geoff and Mark but of Mr Cosgrove. He says that it was eventually on his initiative that an approach was made to Lloyds Bank, which agreed to provide funding (see below): "The point being, I could have gone to Lloyds Bank and obtained that loan myself, therefore introducing that revenue into BGM, along with the ability to buy back the land with an instant £1 million profit" (witness statement, paragraph 104). That assertion is clearly false: from the fact that a bank was willing to lend money to BGM, it does not at all follow that it would have been willing to make to Bryan a personal loan with which he could either purchase the Properties himself or make an equity investment in BGM. All the evidence indicates that Bryan had no borrowing power but was dependent on loans from friends (such as Geoff) or family (notably his father-in-law). Some of the difficulties encountered by the EPL Companies in obtaining finance are mentioned below.

44. Meanwhile, an email dated 3 December 2013 from Bryan to his constituency MP shows that he was actively pursuing his complaint against, among others, Barclays Bank. This was not a case of merely cooperating with a police investigation. The context shows that Bryan had asked his MP to get an explanation from the police of why they had not investigated, or investigated adequately, his complaint of fraud.

45. On 6 December 2013 the joint administrators of the EPL Companies produced their Statement of proposals. It recorded that the directors had failed to deliver up a statement of affairs in relation to each of the companies and that the joint administrators were continuing to chase them in that regard. The joint administrators said that they considered that the most appropriate statutory objective to achieve was the realisation of the companies' property in order to make distributions to creditors. Page 10 of the

proposals said that, in furtherance of that objective, the joint administrators had entered into an Option Agreement with BGM, "in which Mr Bryan Evans is a 10% shareholder", for the sale of the Properties. Bryan received this Statement of proposals and I am sure that he read it.

46. There are several emails from Geoff to Bryan on 6 December 2013. If there were any written responses, they are missing, though it is more likely that the responses were oral. Anyway, the tenor of the communications is fairly clear. Geoff invited Bryan to a meeting with Mr Cosgrove the following week. It may be that there was a telephone conversation, and a little later Geoff emailed again:

> "I would prefer if we discussed directorships etc when with Gary Cosgrove then there can be no confusion.
>
> The share agreement info is waiting with Rosemary for you & Tracy to sign remember, but you haven't wanted to go in."

That evening, probably after a further telephone conversation, Geoff wrote:

> "I believe that things have been misinterpreted and taken out of context.
>
> If you don't trust me then I don't know who you can.
>
> As said previously the share trust transfer form is waiting to be signed and you don't appear to want to sign.
>
> Bryan if you are nervous about giving security with the knowledge you have then how do you think that makes me feel about giving security.
>
> Don't get paranoid please, I am on your side and want this to work for everyone.
>
> Had an awful day so it was probably better we hadn't spoken earlier, I only had a short time to speak also.
>
> We will get this loan and all we can do to reduce the interest rate the sooner the better and cash can be taken to relieve everyone's anxiety."

47. It appears, therefore, that Bryan was now expressing reluctance to execute the documents prepared by Rosemary Morgan and to give security over 72 Higher Lane. At this stage the security was, I think, only to have been in respect of the non-refundable deposit, though within a few days more extensive security was being discussed.

48. On 13 December 2013 Mr Terry Melia, FRICS, of E.J. Hales produced for the directors of BGM a valuation of the Mumbles Land in the amounts of £2,000,000 on the basis of its existing use and £2,500,000 on the basis of development potential for a major regeneration project. I find that both Bryan and Geoff asked Mr Melia if he might produce a higher valuation, but that he said that the figures he had given were sufficiently generous.

49. On 16 December 2013 Mr Cosgrove sent to Geoff an email, copied to Bryan, with the subject line "Bridging Finance": "Have you received the report back from the surveyor [Mr Melia] yet? I also still have no details from Bryan so I cannot move any further forward." Geoff replied that he had received the report: "maybe ok for lenders however we think it can be approved [improved?], as not all adjustments have been made. Are we within the lending criteria that Voltaire prescribe, presuming Bryan's house goes in." This is perhaps the first express indication in the documents that Bryan's house was envisaged to be security for bridging finance. Bryan acknowledged in cross-examination that he had received this email and that he had not responded to it, though he said that he had told Mr Cosgrove and Geoff orally that he was not willing to give security over his house. In my judgment, that cannot be right. Although Bryan expressed misgivings, he must have led the others to believe that security over his house would be available; that was the basis on which funding was sought. (See further below.) It is important to note that, at this stage, Geoff, Mark and Mr Cosgrove all believed that there was a large amount of equity in 72 Higher Lane—a belief in which Bryan had encouraged them.

50. Also on 16 December 2013, Bryan emailed Geoff with an urgent request for a further loan of £20,000. That loan was forthcoming; the total debt was thereby increased to £100,000.

51. On 23 January 2014 a prospective lender with whom Mr Cosgrove had been in discussions indicated that it was not prepared to proceed.

52. On 29 January 2014 Mr Cosgrove received an offer of finance for BGM from Enterprise Finance. The gross amount of the loan was £1,305,000. On the following day he forwarded the offer to Geoff, Mark and Bryan and explained the basis on which Enterprise Finance had arrived at its figures:

> "Land @ £1.5m 55% = £825,000
>
> Brian house with second charge paid off and a value of £950,000 leaving £800,000 @ 60% = £480,000
>
> Total £1,305,000".

This makes little sense if, as he claims, Bryan had made clear that he would not give security over his house. Plainly, Mr Cosgrove had sought funding on the basis that he would do so. Further, the figures set out by Mr Cosgrove regarding the equity in 72 Higher Lane can only have come from Bryan.

53. The documents show that on 30 January 2014 Bryan spoke to Bank Park, with a view to obtaining finance through them. In cross-examination he said that this was because he feared that time was running out for the exercise of the option. In my view, the reality was that he was reluctant to give security over 72 Higher Lane.

54. On 31 January 2014 Mr Cosgrove spoke to someone at Lloyds Bank (as I have already mentioned, Bryan says that it was he who suggested an approach to the bank), and he was promised a decision by Monday 3 February 2014. In fact, not until 5 February did the bank respond that the transaction was "too speculative for [them] to fund, primarily on the basis [that their] appetite for Property Development is very Low Risk with

definitive exit routes and timeframes for repayment." However, efforts to get Lloyds Bank to provide funding continued; the tactic was to persuade the bank that the Blackpill Land had significant value for residential development.

55. An indication of where things stood on 10 February 2014 is provided by an email that Mark sent to Bryan on that date:

> "I was somewhat taken back by our telephone conversation this morning.
>
> It is disappointing that you feel that we cannot proceed, especially as I believe we are very close to achieving finance.
>
> If we can obtain a bank loan from Lloyds, it will be on the basis that Geoff, me and H R Harris & Partners are involved. H R Harris will have to move their business to Lloyds, despite being loyal customers of Natwest for decades. In this deal, you will not be required to put up any security. All of the additional security for this element will come from H R Harris.
>
> There will be a shortfall, which has to be met. If we can raise as much as possible on the value of Blackpill, then we will need less security from your house. In the process we would need to clear the second charge on your house. This should ease some of your financial pressure.
>
> If we can sell Blackpill within a reasonable timescale, then it will clear the bridge funding. we would be left in a position where we have a modest loan on Oystermouth (circa £1m), and no time constraints to achieve full planning permission and turn you[r] hard work and vision on Oystermouth into reality.
>
> …
>
> We are all very interested in your discussions with SQ. We offered to attend a meeting with you, but understand and accept that you wanted a less formal chat with him.
>
> History has demonstrated that when others get involved in Oystermouth, they want to take over. We do not believe that this would be in your best interest. The original offer from SQ meant that you may have lost control. … This of course may have changed following your discussion with him. If you believe that you can achieve a better deal with him, then we can discuss this. …"

56. On the following day, Mark asked Bryan to advise on his "concrete proposals" for "moving forward."

57. In mid-February 2014 Bryan again asked to borrow a further £10,000 from Geoff in respect of the wine bar. On 15 February Geoff sent him an email, implying agreement but making proposals regarding the future of the wine bar. The email continued:

> "[P]lease confirm you are willing to put your house up as temporary security against the BGM loan/s . Mark and I have between us already put £300k cash between BGM and helping you.
>
> Lloyds are keen but nervous usually with property so I think that is 50/50. [I take this to mean that there were even prospects of Lloyds Bank making or refusing to make an offer.]
>
> The finance can be raised we now have to move heaven and earth to get the funds in place by 3rd March. Gary has come up with a 5 year loan at around 7% interest only, this with a bridge to be replaced with the sale of Blackpill isn't a bad option.
>
> Lloyds may then come in slightly cheaper and longer term, could replace the 5 yr loan Gary has, they are slow however probably too slow for 3 March now."

Bryan replied, "All the things in your email have been agreed before, but will unfortunately become academic if I do not get that £10,000 in the bank YESTERDAY." Geoff's further response read in part:

> "You have already said you would if necessary put your house in as collateral to both myself and Gary more than once, this point alone does require confirmation from you Bryan.
>
> Once up and running with the car park I think lloyds would then come in (If they don't know), that would give us all security, as they would loan against the car park at a competitive rate of interest. Meaning the security (2nd charge) on your house could then be released. Leaving you with the small interest only mortgage you have, significantly reducing your monthly liability to the bank. If the Oxford street house sale goes through, looking better again for you."

58. The further £10,000 was advanced on the following day. Bryan's debt to Geoff then stood at £110,000.

59. An offer of funding was received from Lloyds Bank, but it was insufficient to enable BGM to exercise the option. On 21 February 2014 Mark wrote to Bryan by email: "Unfortunately Lloyds are not prepared to offer all of what we asked for. As a consequence we need to look at the alternative offers. We need to know ASAP (by 2.30 today if possible) if you are prepared to offer part of your house as security. If you are not prepared, then the remining options will probably involve diluting our equity in the development."

60. By now, time was running short. Bryan decided that it would be worth approaching a friend and former business associate of his, Mr Quinn. He did not tell Geoff or Mark that he was doing so, and he did not confirm his position regarding security over his house.

61. On 25 February 2014 Mr Cosgrove sent an email to Enterprise Finance, seeking their proposal for finance. Part of the email read:

> "[T]here are two quotes [i.e. being sought] the first one is pure development land and the second is a 2nd charge on one of the Directors houses.
>
> …
>
> 2. This is the private residence of one of the Directors of B G M Leisure Ltd, the value I would put down as a minimum of £800,000 with two mortgages first charge approx. £100K with Santander and 2nd charge with Nat West for £120K. The second charge will be removed before completion and confirmed by the solicitors to give you second charge, please issue terms to the maximum please.
>
> Please also note Mr Evans has a good credit history apart from his on-going dispute with Barclays which is with his solicitors as discussed in January. I have an Experian report if you wish to see it."

That email clearly reflects, first, Mr Cosgrove's assumption or at least hopes regarding security over Bryan's house and, second, information about the equity in the house that can only have come from Bryan. It may be noted that Mr Cosgrove did not understand there to be a further charge over the house to secure the non-refundable deposit.

62. On the evening of 25 February 2014 Geoff and Mark called on Bryan at his home, without prior arrangement, and spoke to him and Mrs Evans. The defendants have produced "minutes" of the meeting—I am not sure which of them produced the document—though it was not provided to Bryan and he does not accept its contents. Geoff and Mark's evidence about the meeting was to the following effect (quotations are from the minutes). They referred Bryan to the email sent by Mark on 21 February, to which they had received no response, and asked whether Bryan and Mrs Evans were now prepared to offer their home as security for a bridge funder (that is, short-term lending to make up the shortfall left by the Lloyds Bank financing). "It had been assumed that he would offer his house as security as an offer in principle had already been received from Enterprise Finance on 29 January 2014." There was discussion about the need to pay off the second charge on 72 Higher Lane, as a funder would not accept a third charge. Bryan then disclosed that the debt secured by the second charge was about £189,000 rather than the £120,000 that Geoff and Mark had understood it to be, and that the annual repayments on that charge were about £10,000 more than Bryan had led them to believe. Bryan agreed to provide a list of his business and personal debts so that a solution to the problem could be found. He also said that he believed that a deal could be done with Mr Quinn, although he had not discussed the matter with him. In broad terms, the suggested deal would be that, in return for a 12-month loan of £750,000 at a commercial rate of interest, Mr Quinn would receive the Blackpill Land, which (Bryan said) was just a distraction: the real profit was to be made on the Mumbles Land. This would leave BGM requiring a loan of £830,000 from Lloyds Bank over a 15-year term. Geoff and Mark thought that the suggested terms were unduly favourable to Mr Quinn; they thought that the Blackpill Land might have a value in excess of £800,000 in view of its development potential, and that the profit to be achieved from

it might cover much of Bryan's debt. "GWM and JME reminded BE that the option had to be exercised by 3 March 2014. If the option was not exercised, then the £200k non-refundable option fee paid by GWM and HRH would be lost."

63. I find that the "minutes" are a substantially accurate record of the meeting on 25 February 2014. However, contrary to what Bryan told Geoff and Mark, he had already discussed the potential deal with Mr Quinn. Bryan's witness statement makes clear that he had originally asked Steve Quinn for an interest-free loan to BGM of £1,500,000 for 12 months in return for receiving the Blackpill Land; the figure of £750,000 had actually been mentioned by Mr Quinn, who said it was all he could conveniently lend at that moment. I find that the different attitudes shown towards the Blackpill Land were explained by the fact that, whereas Bryan knew that the presence of a flood plain made it doubtful that the land had significant value, he had omitted to tell Geoff and Mark this but had left them with the belief that it had considerable value as a potential development site.

64. Bryan's evidence was that the only offer he had ever made to give security over 72 Higher Lane related to the non-refundable deposit being advanced by Geoff and Mark: he had never agreed that he would give security for a bridging loan required to meet a shortfall in the Lloyds Bank lending. In his witness statement he stated: "The repayments for the loan to Lloyds for £830,000 were £2,275 per month. The repayments for the bridging loan of £142,905 were £2,025. This would have been financially unsustainable." I find that, although the initial mention in October 2013 of a charge over 72 Higher Lane concerned only the giving of security for the non-refundable deposit, Mr Cosgrove's efforts to obtain funding were premised on a belief that Bryan would be prepared to give security also for at least some of the further funding; that this understanding had been produced by Bryan's expression of willingness to Geoff, Mark and Mr Cosgrove; but that Bryan never had any intention of giving such security and, as is shown by the communications already mentioned, ultimately refused to commit himself to giving a charge over his house. This is reflected in subsequent communications.

65. On 6 March 2014 Geoff sent an email to Bryan, copied to Mark, which read in part:

> "We are just about there with raising the finance and getting ownership of the site back in safe hands.
>
> We have been desperately trying to fill the gap left by you not putting your house in to raise finance and also informing us last minute (during our meeting at your house last Tuesday 25 February 2014) of the quantum of the loan against the house which had to be displaced, for the bridge.
>
> You have put the whole deal in a very precarious state by throwing this at us right towards the end of the time frame with the option agreement.
>
> You had previously agreed to put your house in to both myself, Mark Evans and Gary Cosgrove and during meetings with Mark and myself, at no time previous to last Tuesday 25th had you indicated that you would not be prepared to put your house in to raise finance and at no

> time had you indicated to any party an accurate level of the loans secured against your property, these facts have damaged the situation.
>
> We tried contacting you after the meeting last Tuesday however you ignored both my and Marks calls and did not get back to us as you usually would.
>
> The reason we came over to your house for the meeting was because you were not communicating with ourselves, we had been trying in vein [sic] for approximately a week to contact you at a time when the option had to be exercised and you ceased communicating with Mark and myself, which seems inexplicable, so we made the effort to come and see you and Tracy at Higher Lane which was productive in terms of exchange of accurate information.
>
> Bryan perhaps you should be grateful we are putting in the effort to raise the money, without which everybody has lost the effort put into this, businessmen do not appear to want to deal with you, bankers certainly, unfortunately because of your lack of financial credibility, something you struggle to accept but nevertheless is a fact. You continuing to discuss the past with any business associates is counterproductive and may put off investors."

66. Bryan says that the contents of that email are untrue, in particular with regard to his alleged prior agreement to give security over his house and providing false information about the extent to which debts were already secured on his house. However, he accepts that he did not respond to the email. I find that the email is a substantially accurate record.

67. On 7 March 2014 Geoff wrote to Bryan by email: "Although you said when at your house you would not put your house in the pot, have you and Tracy now had a change of heart? Might be worth having a quick chat over the weekend." Bryan did not reply to that email.

68. On 10 March 2014 Geoff wrote to Bryan by an email with the subject line "Declaration of Trust":

> "Just reminding you that the declaration of trust is still sitting on Rosemary Morgan's desk waiting for you to sign, surprisingly you have declined to sign this despite it giving you legal comfort in respect of your shareholding in BGM.
>
> The documents were drawn up at the start of the option agreement as you are aware, you have decided not to sign for reasons unbeknown to me and Mark."

In a further email on the same day, Geoff complained to Bryan of a lack of communication:

> "We all need a meeting, Tuesday pm if possible. (Tomorrow).

> Deadline to exercise the option is fast approaching.
>
> You don't seem to want to communicate positively (with me) without which we cannot move forward. This can be thrown at me I accept that too Bryan.
>
> Anyway we all need to pull together if we want this deal to work and move forward to the next stage at which point it can be restructured and re evaluated.
>
> It appears as if you do not want the land back Bryan as you have withdrawn your house and also stopped Alan Seagar making the pre planning application. No logic with this in my mind. You will have your take on this no doubt, but no speak me no understand ....."

69. Although it does not appear that Bryan replied to those emails, he and Geoff must have spoken at some point, because on 12 March 2014 they met Mr Quinn to discuss the terms of a potential deal. Bryan's evidence as to the meeting was as follows (witness statement, paragraphs 124 to 127):

> "In the meeting it was accepted that SQ would lend BGM £750,000 for nine months, interest free, and in return would receive the land at Blackpill gratis. If BGM could not pay SQ back after the nine months, then he would have step-in rights. D1 [i.e. Geoff] would have his deposit returned and the only person at risk in this deal was myself. I was however confident of being able to refinance in nine months. SQ stated that this was a good deal for him. He said this was a 'no-brainer', for if he developed Blackpill he would make a profit and if he could not develop Blackpill he had not lost anything. It was a 'win, win' deal.
>
> 126. It was at this point that D1 unexpectedly 'moved the goalposts' and killed the deal. Out of the blue, D1 said to SQ that, if he developed Blackpill and made a profit, then BGM should share in that profit. Suffice to say, neither I nor SQ were pleased at this outburst and the meeting ended in disarray."

Bryan's evidence was that Geoff apologised to him after the meeting and that he, Bryan, arranged to meet again with Mr Quinn on 14 March to try to salvage the deal. Geoff's evidence was that he had not demanded a share of the proceeds for BGM but had said that the proposed terms were very good for Mr Quinn. I think that the truth lies somewhere between these two accounts, neither of which gives me great confidence in the witness's recollections. No agreed position was reached at the meeting. Mr Quinn probably did not say—at least, at this stage of negotiations—that the terms under discussion were excellent for him (a "no-brainer"); he said that they were the minimum he would accept, because of the risks involved in financing the deal otherwise. Geoff thought that the terms were favourable to Mr Quinn, and he was reluctant to lose the Blackpill Land entirely.

70. At this point, however, Bryan dropped "out of circulation for medical reasons" (email to Geoff on 17 March 2014); his evidence at trial was that he was suspected of having

a heart attack, though this proved to be a false alarm. In his absence, Geoff and Mark held discussions with Mr Quinn on 14 and 17 March. The upshot of those meetings was that Mr Quinn changed his position and made the loan of £750,000 conditional on receiving shares in BGM, not on simply receiving the Blackpill Land. On 17 March Geoff wrote to Mr Quinn "to clarify matters" in the following terms:

> "1. Shareholdings to be 45% SQ and 45% GM/JME, you to loan £400,000 to the company with or without interest being charged to be agreed.
>
> 2. It was agreed that no action would be taken without SG[scil. SQ]/GM/ME being in unanimous agreement, there could be an agreement between ourselves to bind this or an idea I had this morning was that a companies owned 50% by you and 50% by myself and Mark and that company owns 90% of the company owning the land. that protects all our position[s] Steve if you agree to this.
>
> 3. We give BE the option to purchase a third of the development if he matches our investment now or at a future point in time at a valuation at that point in time, minimum level at our investment.
>
> 4. There is a £100,000 joint and severable guarantee with Lloyds, if you would come in equally on this Steve.
>
> 5. You to become a director immediately.
>
> We would like this drawn up ASAP, with exchange of the share transfer form, with you having the 45%, would you then place £400,000 with Rosemary Morgan at Morgan La Roche, subject to your instructions?
>
> The option needs to be exercised by Wednesday [presumably, 19 March] at the latest, we would like the share transfers to happen before then. The end of March is the completion date."

71. Lengthy minutes of a board meeting of BGM held by Geoff and Mark on 17 March 2014 record the following position:

- Geoff and HRH had paid the £200,000 non-refundable deposit, and a final payment of £1,300,000 plus costs was required to complete.
- The shareholders had previously agreed that the completion moneys would come from (i) a loan secured on the Mumbles Land, (ii) cash from Geoff and/or HRH, (iii) bridge funding secured on the Blackpill Land, (iv) bridge funding secured on 72 Higher Lane.
- As to (i), Lloyds Bank was only prepared to advance £830,000.
- As to (ii), the funding from Geoff and/or HRH was still available.

- As to (iii), there were two main problems. First, Bryan had prevented a pre-planning application being made; that would have made it possible to attribute significant value to the site, if the response had been favourable. Second, it was now apparent that there would be costs of about £1m in respect of moving a stream; this is a reference to the location of the Blackpill Land on a flood plain. "It is believed that B Evans was fully aware of these costs but did not make [Geoff and Mark] aware."

- As to (iv), "[D]uring the meeting on the 25th February 2014, significant doubt had been raised over the equity in 72 Higher Lane being used to raise finance. On this basis, it would not be possible for sufficient funds to be raised to complete the option."

- "It was resolved that the company should seek additional investors with a view of obtaining loan finance in exchange for equity in BGM. It was noted that B Evans had already been advised that the introduction of new investors would dilute the current shareholders equity in the company."

72. On 17 March 2014 Bryan wrote to Geoff and Mark by email, explained his lack of communication over the previous days, and asked them to contact him. Geoff replied: "We will email you in detail, been very busy trying to salvage the situation which you put us in and due to the lack of contact from you over the last few weeks." That evening he wrote further on behalf of himself and Mark:

> "We have been forced to make contact directly with Steve Quinn due to there being no other option available as you have been unavailable. To protect the company and its shareholders we have had to act in a timely fashion. We have met with Steve Quinn this morning, with a view of [sic] salvaging all of our interests. Without action we would have lost everything, something we are sure you would not have wanted. … We apologise if you are at all frustrated, however please put yourself in our shoes."

In a subsequent email that evening Geoff wrote, "You pulled your house from the raising of finance, no one else, that is my fault is it? It's a fact that's all. This obviously affects the raising of finance significantly. … I actively encouraged you to meet Steve Quinn and explore all options. Mark and I didn't want to give Blackpill away as it doesn't make commercial sense."

73. These exchanges did not make clear what agreement Geoff and Mark had reached with Mr Quinn. They did, however, indicate that it did not involve BGM parting with the Blackpill Land. Bryan's evidence was that on the morning of 18 March he spoke by telephone to Mr Quinn "and agreed the previously discussed deal of a £750,000 interest free loan in exchange for Blackpill etc" (witness statement, paragraph 132). Although it is possible that that is what happened, I think it unlikely that any firm (even though non-binding) agreement was reached in those terms, because such an agreement would have been directly contrary to what had been agreed with Geoff and Mark. On the afternoon of 18 March Bryan sent an email to Geoff and Mark:

> "I find your behaviour reprehensible and duplicitous. You have no right to offer anybody shares in BGM that do not belong to you. If

> you want to test that in a court of law go for it. You have shown me thus far that you cannot be trusted. The deal that I offered you both was more than generous for an investment of virtually nothing. You have been accused by RJS [Mr Sullivan] of 'insider dealing'. Just take a step back and reflect on how you trying to 'shaft' me would be construed. I have spoken with Steve Quinn today and I have agreed a deal with him. This is the only deal that I am prepared to make. If this is not acceptable then I will inform the bank that, as far as I am concerned, the deal is off. If however you persist with the purchase by BGM I put you on notice that I own 50% of that company in perpetuity. I am meeting Steve Quinn later today but as aforementioned no other option will be considered. I strongly suggest you email me or phone me urgently."

74. On 19 March 2014 Geoff, after speaking to Mr Quinn, sent an email to Bryan, in which he said:

> "First step is to secure the Land with Steve's involvement. He may be open to the £750k deal, and will restructure however logistically no time to do so now(today). We can all sit down asap once the land is secured and restructure, which Steve suggested this morning, he is an early bi[r]d !!!"

Later that day, Bryan and Geoff spoke by telephone. Geoff made it clear that Mr Quinn was insisting on a shareholding in BGM. Bryan's evidence was that he told Geoff that he would agree to this only on the following basis: the shares in BGM would be held as to one third by Bryan, as to one third by Geoff and Mark, and as to one third by Steve Quinn; Bryan would receive the net income from the car park at the Mumbles Land; and Bryan would have an option to buy Mr Quinn's shares. Bryan says that he insisted that Geoff contact Mr Quinn immediately to secure his agreement to those terms, and that Mr Quinn's agreement to these terms was confirmed to him by an email from Geoff sent that afternoon: "SQ agreed to your proposal Bryan."

75. However, on the following day Mr Quinn emailed Geoff in the following terms:

> "After carefully looking at the deal on the table with all its complexities I can only proceed on the following conditions:
>
> 1. Own Blackpill outright as I am putting more cash into the business and don't really want to do the deal but feel if there is at least some chance of recouping some of the investment then it's worth tying up 400k indefinitely.
>
> 2. 45% of Oystermouth
>
> 3. Giving Bryan the option to come in as an equal 1/3 partner when he puts his 300k into the business. Without this structure I'm afraid I am not interested in proceeding."

76. Any suggestion that there was understood to be a clear, let alone binding contractual, agreement on 19 March as to how to proceed would, apart from any other difficulties,

be belied by the documentary evidence of what the parties were doing on 21 March. On that day, Bryan sent the following email to Mr Alan Seager, a local architect:

> "Further to our discussions I propose the following:
>
> For an investment of £600,000 your contacts would get a 20% shareholding in the company and therefore 20% of the freehold of Oystermouth and Blackpill. The proposal of voting rights is acceptable. I further propose, for your introduction you to have a 5% stake in the company with equal voting rights. We have a bank loan of £800,000 offered which will be serviced from the car-park income. Suffice to say the investment must stay until the project comes to fruition. This offer, however, is on the understanding that the money would be available immediately as deadlines are looming. We could have a legally binding document drawn up by Rosemary Morgan of Morgan Laroche immediately and I suggest that Rashid gives you power of attorney on his behalf and represent him in his absence. Please ring me at your earliest convenience to discuss this matter.
>
> If however they want to find the £1.6m required in total then I propose that £600,000 is taken as an investment and the £1,000,000 would be serviced from the car-park. They would obviously have first charge over the sites. Whether this is done now or at a later date can be discussed."

77. On the same day, Geoff and Mark had a meeting of the board of BGM. The minutes record that Lloyds Bank had obtained a valuation of the Mumbles Land at only £1,100,000, which meant that the funds likely to be forthcoming from Lloyds Bank would be reduced by about £150,000 and that as a result there were serious concerns over BGM's ability to raise sufficient funds to complete the purchase. The minutes continued:

> "It was evident that GWM/JME/HRH were not able to complete the option without a third party investor being brought in. Unfortunately, with the severe time constraints in exercising the option, it is likely that equity will need to be offered to an investor.
>
> It was noted that various meetings and discussions had taken place between GWM/JME and private investors.
>
> It was decided that Steve Quinn would be the preferred investor as he already had some working knowledge of the site. It is understood that many years ago he had an equity stake in the land. it was understood that Bryan Evans had previously contacted Steve Quinn with a view of investing in this project. However, no concrete proposals or terms had every been agreed upon. It was agreed that negotiations with Steve Quinn should progress and Lloyds Bank be advised over the possibility of there being an additional potential investor."

78. In fact, on 21 March 2014 Lloyds Bank made an offer to lend £830,000 for 15 years, secured by a first charge over the Mumbles Land, a charge over a nominated bank account with a minimum balance, a debenture over BGM's assets, and personal guarantees from Geoff, Mark and Mr Quinn for £150,000. (See also the entry for 24 March, below.)

79. On 23 March 2014 Geoff wrote to Bryan by email (I have corrected the punctuation and spelling in a few instances to improve its intelligibility):

> "Assuming the land is retained with the BGM offer, Mark and I would be happy for you to take over our shareholding. If you can find other funders, if that's what you want. We would also be happy to stay in.
>
> Could put in a clause that the transfer of shares to you has to be accepted, if you request this, subject to money invested returning. That's over and above the 1/3 share. If Steve agrees this, which I have not discussed precisely, then you have the option to own the site in its entirety in the future, as it is your long-term project. Steve has briefly mentioned something like this to provide you with a level of comfort.
>
> That positive clause helps alleviate any worries you could then have of being excluded. You owning % of Oystermouth would then be in your hands Bryan.
>
> What do you think Bryan?"

80. Bryan responded at length; the tone of his email is at least as significant as the content.

> "I have taken legal advice and if you proceed with any deal that I have not agreed to I will take the necessary steps. I am extremely disappointed in yours and Mark's behaviour over this deal and I am fed up of having to speak to third parties to find out what is going on. I have alternative funding which does not involve you attempting to give away shares that you do not own. I put you on notice that if this behaviour continues I will inform the bank and do my utmost to stop the deal on behalf of EPL. [After expressing disapproval of any course that does not give Mr Sullivan something out of the deal, he continues] If this situation continues it will result in not only a substantial financial loss for all parties but also loss of business reputation.
>
> … I formally put you on notice that I will do all that is in my power if its required, legally and publicly to stop this deal in its tracks. I will not allow you to ruin my life's work for your profit and my loss. May I remind you that in the beginning I suggested you became my partner by buying out RJS [Mr Sullivan]. We all know that this administration is questionable and unless a more equitable solution is immediately agreed to I will either unilaterally or with RJS contest the administration. As you know, I have a meeting with the police

> on April 10th … The situation is retrievable if there is a reality check and you stop attempting to do deals with my shares. If anything is signed without my complete agreement I promise you things will become extremely unpleasant. …"

Geoff replied with a denial that he and Mark were trying to profit at Bryan's expense. "We are trying to salvage a deal and keep it alive, simple as that. Element of paranoid behaviour here." He invited discussion to try to sort things out.

81. Minutes of a board meeting of BGM on 24 March 2014 record:

> "Following receipt of the £1.1m valuation, Lloyds Bank were prepared to offer new loan terms. The full loan of £830k would be provided, however the joint and several personal guarantees would need to be increased from £100k to £150k. The bank would also require a formal legal charge in the Bank's standard form over a bank account in the name of BGM Leisure Limited Re Lloyds Bank with a balance of not less than £150k. Any Director or Investor loans had to be postponed in the Bank's favour.
>
> Steve Quinn was made aware of the revised terms.
>
> It was decided that negotiations with Steve Quinn be continued with a view of agreeing heads as soon as practicable."

82. Minutes of a board meeting on 25 March 2014 record:

> "Following the revised bank terms, Steve Quinn advised that he was prepared to offer as follows:
>
> - SQ to provide a loan of £550k
> - GWM/HRH to provide funds totalluing not less than £340k (to include deposit and option fee already paid)
> - 45% of the share capital be transferred to SQ
> - Parties enter into a shareholder agreement
> - Interest to be charged on loans made by SQ, GWM, HRH at a rate of 10% per annum
> - SQ to acquire the Blackpill Site.
>
> It was agreed that the SQ offer be accepted for the following reasons:
>
> - SQ has liquid cash to enable the deal to be done quickly.
> - No other feasible options available that would facilitating [sic] completing the deal by the completion deadline.

> - SQ has a connection with Bryan Evans having already discussed potential deals.
>
> - SQ has currently owns [sic] a car park site in Mumbles and may provide assistance in maximising future revenue.
>
> - The interest rate of 10% per annum is reasonable …
>
> - Blackpill would appear to have a low value due to the lack of planning permission and potential difficulties in obtaining alternative use.
>
> It was agreed that JME transfer 5 of his shares to GWM to reflect loans made by GWM.
>
> It was agreed that if Bryan Evans could raise his own finance, he be entitled to increase his shareholding in BGM. (Subject to SQ's approval) It was noted that BE had not provided any finance or guarantees in respect of the deposit, option fee [or] to the balance required to complete."

That day, Mr Quinn was appointed as a director of BGM, and Geoff transferred 45 ordinary shares in BGM to Mr Quinn

83. By emails on 25 and 26 March, Bryan said that he had taken legal advice and that there was a "serious problem looming", which Mr Quinn would not want to be involved in, though the situation was "retrievable". He complained of their silence and demanded that they speak to him urgently. He wrote:

> "I will telephone Steve Quinn to explain the situation before calling the bank and the administrator. You are heading for a fall and I will not let myself and Steve Quinn be brought down with you. Do not think that RJS and Huw Hitchcock can not make serious trouble for you …"

Geoff replied to the effect that he had made more than ten telephone calls to Bryan in the last week but had received no response. I find that the facts asserted in the response were true.

84. Geoff and Bryan spoke by telephone on 27 March, and later that day Bryan sent an email to Geoff, complaining that he was being kept in the dark and setting out his case:

> "[A]t the outset of this deal it was to be 50/50 between myself and you and Mark. You and Mark assured me that you would arrange the funding for the deal. This you failed to do. The honourable thing at the time should have been for you to admit defeat and allow me time to find an alternative partner. I was later presented with a fait accompli that you had reduced both mine and your shareholding to 1/3 in order to give Steve Quinn 1/3 share in the company, which I had not been consulted on. The last correspondence I received from you was to propose that Steve Quinn was now to get all of Blackpill

> for himself and 1/3 of Oystermouth Square. This I only agreed to if it was accepted that the residual income from the car park on Oystermouth Square … would be my salary. I received an email from you on 19 March confirming that Steve Quinn had agreed to this. Today however and somewhat out of character I could not get a straight answer from you as to whether the 'goalposts' have been moved again. Let me assure you, that deal is non-negotiable. …
>
> I would like by return a factual statement of what you and Steve now perceive my shareholding to be and if it is anything other than the agreed 1/3 without strings and including the above income, I will take the necessary steps. … If it is your intent to sell your shares to me, I would like it stated and on what terms. …"

Geoff responded that Bryan's email took things out of context and contained many falsehoods. He repeated that the directors had simply attempted to solve the funding difficulty caused by Bryan reneging on his agreement to provide security. He expressed his own willingness to sell his shares for a nominal consideration, provided Bryan came up with the necessary funding for the purchase of the Properties. Geoff also complained that he had made more than ten unanswered calls to Bryan in the last six days. In cross-examination, when it was put to him that he had been ignoring attempts to communicate with him, Bryan said that he could not comment and could not remember. I did not find that a satisfactory response.

85. Geoff replied that evening:

> "Bryan I have not got time this evening to reply fully to this email which is out of context and contains many falsehoods. You agreed for SQ to have Blackpill, in fact it was your idea.
>
> I will state once more all the directors of BGM have done is protect a situation and raise the necessary finance which you have frustrated by removing your house as equity. That is completely of your doing Bryan. I will always be fair to you with this whole scenario.
>
> You are not worse off now as EPL had debt to many parties over and above the £2.3 million loan to Barclays.
>
> Besides matters will be agreed I believe and all parties will be happy in due course.
>
> Replace the funding in place and costs and I believe all parties would sell their shares for the nominal £1. Reasonable behaviour indeed. This would of course have to be agreed by all parties, however I would certainly consider this and in fact probably welcome it personally.
>
> Bryan I had thought we had become more than business associates and in fact friends."

86. There were further emails in each direction, to much the same effect, over the next couple of days. I need cite only the following passage in Geoff's email on 29 March:

> "You carved up the deal so that you took no risk and you want substantial reward without any financial input and without taking any financial risk, that is not commercial. …
>
> We only helped finance matters and never had an intention of profiting from the scenario. Also then once completed to divi up with RJS [Mr Sullivan] and we would walk away after costs. Your uncontrollable, non commercial and unreasonable behaviour has undermined this intention significantly. By this I mean in the main, frustrating exist [scil. exit] strategies for no logical reason and withdrawing your house as security in order to raise finance at the last minute. However as far as possible that is still Mark and my intention to be as equitable to all parties as is reasonably possible. Steve I would believe has the same intention.
>
> If the £200,000 is lost through your actions, direction will be taken against you as soon as possible. That money was put on the line in good faith, with the agreement you would secure the money personally and also that you would provide your house as security against the £200,000. You and only you broke that legal agreement."

87. On 30 March Bryan responded; this is the first document in which he claims to have given security for the £200,000 non-refundable deposit.

> "Your statements of me taking no financial risk in this deal are nothing short of manic fantasy and in the main I will not dignify at this time such fantasies with a response but I certainly will at the appropriate time. Tracy and I signed documents in your office in good faith to give a charge over our house to secure the £200,000 non refundable deposit to the bank. If you are now intimating that these documents are invalid why are you constantly threatening to pursue me for any financial loss based on these documents. That is what I believe is called a conundrum. Furthermore, and for the record, both Tracy and I were under the impression that the signing of the document giving me 40% more of the shares in BGM for £1 should be signed after the deal had been completed. Serious questions will be asked if there is a denial of the existence of this document."

I find as a fact that Bryan's claim in that email to believe that he and Mrs Evans had signed documents for security in respect of the non-refundable deposit was a lie. He knew perfectly well that he had not done so. The final sentence that I have quoted is, I find, a calculated attempt to set up a false case that Geoff has done something to conceal the existence of security that was in fact never given.

88. On 31 March 2014 Geoff circulated to Mark, Steve Quinn and Bryan a motion for written ordinary resolutions and a special resolution of BGM. It is signed in approval by Geoff, Mark and Steve Quinn, but not by Bryan. I find that he received the

document; he admitted as much in his witness statement, though in cross-examination he denied ever having seen it. The ordinary resolutions were that each of the ordinary shares held by Geoff and Mark (respectively, 35 and 10) was converted into one B Share, and that each of the 45 ordinary shares held by Steve Quinn was converted into one A Share. The special resolution was to adopt new articles of association in place of the previous ones. Bryan says that it was on receipt of this document that he realised he had been "deceived by [Geoff and Mark] for their own personal gain" (witness statement, paragraph 144).

89. I accept that it was on the strength of those resolutions and the shareholdings fixed by them that Steve Quinn advanced £750,000. The Properties were acquired by BGM.

90. On 1 April 2014 Geoff emailed Bryan, copying in Mark and Steve Quinn, to inform him that completion had taken place. Bryan replied:

> "Well I hope you're pleased with yourself. It would appear from the correspondence I received yesterday from Mark (long overdue) that I have been carved up. You have sold my shares to Steve Quinn, which I will challenge, in order to raise the shortfall for the deal. … [Y]ou had no business transacting my shares for your personal gain. …"

Geoff replied at length:

> "You were aware of the shareholdings prior to completion. There was no other option as you withdrew your house from the funding scenario. You provided no alternative funding solution. You placed us in an envidious [sic] position altering the funding situation at the last moment. Why did you do this? In some way to enhance your position? Were you attempting to defraud BGM in some way or other shareholders of BGM?
>
> …
>
> There is no personal gain at this point for any shareholder bar you probably, only cost, in terms of time expended and money expended. The EPL co[mpanie]s had over £3 million of debt, so as you have said countless times those companies had negative value, BGM is closer to having a positive value than the EPL companies were, so your position has been enhanced by the efforts of the directors of BGM for no reward. With work and co operation [sic] value can be added possibly over and above the cost, only possibly. So Mark and I have looked after your best interests. …"

91. That evening, Bryan sent an email to Geoff and Mark: "Would you please send immediately, by email and post, a copy of the documents which Tracy and I signed in your office in regard to the charge over the house for the non-refundable deposit paid to Barclays." When Geoff sent him the document that had been signed on 25 October 2013 (see above), Bryan challenged its authenticity. Geoff's response (in an email sent in the second week of April 2014) was forthright and, in my view, on point:

> "I am surprised and shocked that you and Tracy are prepared to lie on oath. The documents you received by email are what was signed and witnessed in our office. You secured the debt lent to the wine bar. So stop making up stories to suit your current scenario as you continue to do, that is fraudulent misrepresentation which you appear to be adept at.
>
> Discussions are not agreements Bryan you seem to get confused over this matter regularly. A discussion where your view is expressed is not an agreement. An agreement is where everyone agrees on a matter, not when Bryan expresses his view on what he wants, others disagree, yet Bryan then concludes there is an agreement."

92. On 4 April 2014, in the course of acrimonious email exchanges, Geoff asked Bryan for proposals for the repayment of total loans of £100,000. He also wrote, "We would also welcome a meeting with you with regard [to] BGM." Bryan responded by saying that, pending a comprehensive response, he "[felt] it appropriate to table the issue with the police"; he also threatened to report Geoff to his "governing [that is, professional] body" for breach of confidentiality.

93. Enough has been cited from the largely repetitious emails passing between the parties in March and April 2014. However, in April Bryan was attempting to get information from Rosemary Morgan, who reminded him that she acted for BGM, not for one of its shareholders, and required instructions from directors. Eventually she replied on 14 May, saying among other things:

> "The only Declaration of Trust that I have is a draft document which was prepared by me in the very early stages of this transaction and which I forwarded to the Company. I understand that it was a condition of this being completed that an agreement was to be entered into between you, your wife and your then co-shareholders in connection with the non-refundable deposit of £200,000.00 which needed to be paid to the Administrators of E.P. Leisure (Mumbles) and E.P. Leisure (Blackpill). In this respect I am instructed that my client company, on a number of occasions, asked that you attend at these offices to sign that agreement which of course, you never did."

94. There is no need to recite the lengthy post-completion communications any further. However, two matters concerning Bryan's financial position have some relevance.

95. First, Bryan has disclosed a document dated 5 September 2014 and headed "E.B. Wiles claim against Bryan Evans of 72 Higher Lane, Langland, Swansea", which showed a claim for repayment of advances in excess of £239,000 after allowing for modest repayments. E.B. Wiles is Bryan's father-in-law, Mrs Evans' father. The claim includes more than three years' payments on Bryan's mortgage, funded in part by equity release on the part of Mr Wiles. In cross-examination, Bryan admitted receiving financial assistance from Mr Wiles, though he denied that these included a full three years' mortgage repayments. He said that the money was gift rather than loan, though of course he would have repaid it when able to do so. Whether it was gift or loan, it shows the extent of Bryan's financial difficulties.

96. Second, Bryan did not repay Geoff for the loans made to him. (I calculated these in the sum of £110,000 but the parties have referred to a total outstanding of only £100,000.) On 14 December 2014 Geoff obtained judgment in the county court for a total sum in excess of £100,000. On 22 December 2014 Bryan made an application for the following relief: "Judgment set aside because paperwork presented to the court is forged. It has been given to South Wales Police." The evidence in section 10 of the application notice in support of the application was:

> "We believe the paperwork presented to the court for this order is forged. All evidence has been given to the South Wales Economic Division who are looking into this matter. Mr Muxworthy was my accountant and I have reported him to the police and his governing body (ACCA) along with his partner for the criminal act of 'misfeasance'."

Bryan did not attend the hearing of his application, which was dismissed. Geoff obtained a final charging order against Bryan's interest in 72 Higher Lane.

97. The house at 72 Higher Lane was ultimately repossessed by National Westminster Bank as chargee. Geoff made an offer to buy the house from the bank. Bryan learned of this and intervened with the bank by making an allegation of fraud against Geoff; as a result, the transaction did not proceed and instead the house was sold at auction in December 2016. In an email to Mr Quinn at that time, Bryan wrote, "Muxworthy has conned me in order to obtain my house." As Geoff had enabled him to keep afloat by lending him £100,000, which had not been repaid, and had a charging order on the house to secure that money, this is bold. When at trial I asked Bryan about his intervention, he made no real attempt to justify it. His position appeared to be that any steps were permissible to protect his own interests. The email to Mr Quinn is of further interest, because it records that debts of about £686,000 were secured against 72 Higher Lane (including only £80,000 attributed to Geoff) and states that the value of the house was £650,000 to £750,000.

98. It is right to record that neither the police nor Geoff and Mark's respective professional bodies found grounds for taking any action against either of them. The police's Economic Crime Unit explained its decision in a lengthy letter to Bryan in 2017. Part of that letter undermines Bryan's claim to have made a real financial contribution to the acquisition of the Properties:

> "Within your complaint you state that the agreed purchase of the land at the agreed price was due to your involvement and that the purchase price was significantly lower than market value as a result. This part of your complaint is undermined by the statement of Irvin COHEN of BEGBIES TRAINOR who will state that the price paid was significantly higher that he had been prepared to accept and your involvement had no bearing on the sale or the price. The statement of Gary COSGROVE details the purchase of the land and your involvement and does not provide supporting evidence for your complaint. It is understood that you could not contribute financially to the purchase of the land and were not in a position to provide your home as security as initially agreed. It is further understood that following the agreement to purchase the land for £1.5 million that

> the land was valued at £1.1 million and a mortgage could not be obtained for the full purchase price and further investment/financing was required to reach the agreed purchase price, this ultimately led to the involvement of Mr Steve QUINN. Mr QUINN has been spoken to by the investigating officer and does not provide supporting evidence for your complaint."

Claims and Issues

Negligent advice

99. The first head of Bryan's claim against Geoff and Mark appears in paragraphs 79 and 86(a) of the particulars of claim: that they owed him contractual and common law duties to act with the degree of skill and care reasonably to be expected of accountants specialising in accountancy and insolvency advice, and that they were negligent in breach of those duties by (a) advising him not to challenge the administration of the EPL Companies or (b) failing to advise him to seek legal advice on the prospects of challenging the administration or the underlying demands for payment. The particulars of claim aver that a challenge to the administration would have stood a realistic prospect of success and that "no reasonably competent firm of accountants would have advised the claimant to enter into negotiations with the administrators whilst there was a viable challenge to the administration." The particulars of claim expressly rely upon "the advice given by [Geoff] and [Mark] at the time as to the prospects of such challenges." That advice is alleged in paragraphs 18 and 20 of the particulars of claim: that on 17 October 2013 Mark advised Bryan "that there were good grounds to challenge the administration", though he did not explain what they were; and that on 18 October 2013 Geoff and Mark "suddenly changed their advice and told the claimant that he should instead seek to purchase the Properties from the administrators."

100. I reject the first head of claim, for the following short reasons.

1) Geoff and Mark were not retained by Bryan to act as his accountants or to give him professional advice, whether specifically in respect of challenges to the administrations or at all, and neither of them did anything that could reasonably be understood to amount to assuming responsibility to give him such advice.

2) Geoff never purported to give anything that could be described as advice in respect of a challenge to the administrations, and Bryan does not even say that he did.

3) Mark did no more than identify the legal basis on which challenges to administrations could be made, namely on the grounds of improper purpose, but he did not give any advice as to whether or not such a basis could be established in the case of the EPL Companies. On 17 October he also told Bryan that he would have to get legal advice on whether the basis could be established.

4) There was accordingly no change of advice on 18 October.

5) There is no evidence to support the contention that all reasonable accountants or insolvency practitioners would have acted differently. No expert evidence in that regard was adduced.

6) There is no evidence to support the contention that a challenge to the administrations would have had a realistic prospect of success. Everything that I have seen indicates that such a challenge would have been hopeless. I have said enough already to indicate that the evidence does not even hint at the presence of improper motive on the part of the bank.

7) This part of the claim would anyway be doomed to fail on grounds of lack of causation. On 18 October Bryan was concerned not with a challenge to the administrations but with obtaining the Properties. He said in cross-examination that Mr Cohen's warning that the Properties would be marketed almost immediately meant that "the rules of engagement had changed"; by this he meant that his focus had to be on ensuring that the Properties were not sold to a third party, not on thinking about a challenge to the administration. The only—and very sensible—advice given on that occasion by Geoff and Mark was that, rather than try to negotiate the purchase of the EPL Companies (which was Bryan's immediate thought), he should rather concentrate on trying to negotiate the purchase of the Properties.

8) As this negligence claim is completely hopeless on the merits, I shall not discuss the question of whether it is anyway statute-barred. Similarly, it is unnecessary to ponder the question what loss and damage could have been suffered by Bryan by reason of a failure to challenge the administration.

101. Paragraph 87 of the particulars of claim alleges that "the reason the claimant was advised not to challenge the administration, but instead purchase the Properties from the administrators, was [Geoff's] (and/or [Mark's]) desire to acquire an interest in the Properties." This allegation is relied on as the basis for an allegation of breach of fiduciary duty. As any advice regarding challenges to the administrations could only have come from Mark, and as there was no suggestion of him having an interest in the purchase of the Properties as at 18 October 2013, this allegation makes no sense. Anyway, in view of the reasons set out in the last foregoing paragraph, it is unnecessary here to say anything further, save that the allegation has no substance or basis in fact.

Negligent failure to obtain adequate finance

102. Paragraph 80 of the particulars of claim alleges that, "in agreeing to undertake and undertaking the task of seeking to arrange finance for the purchase of the Properties, [Geoff] and [Mark] assumed [to] the claimant a duty of care to act with reasonable care and skill in the performance of that task." In paragraph 88, which itself sets out numerous different allegations of wrongdoing, it is alleged that Geoff and Mark were in breach of this duty of care by "[f]ailing to obtain funding for the purchase of the Properties either (i) generally or (ii) on terms that would allow the claimant to remain a 50% shareholder in BGM" or alternatively by "failing to exercise reasonable care and skill in obtaining such funding, in particular by failing to carry out reasonable enquiries with commercial lenders (who, it is averred, would have been prepared to lend the full £1.5 million required to purchase the Properties) or alternatively with investors who would not have sought such onerous terms as [Mr Quinn]."

103. This second head of claim is linked in the particulars of claim with a suite of wider allegations (see below), but it is analytically distinct and I deal with it separately. I reject it for the following short reasons.

1) This basis of the claim relies on a contractual obligation or a common law duty to exercise reasonable care and skill in obtaining funding. However, in my judgment, if Geoff and Mark owed any such duty of care they owed it as directors to BGM, not to Bryan.

2) Even if Geoff and Mark owed a duty of care to Bryan in respect of obtaining funding, they were not in breach of it. They engaged Mr Cosgrove to provide professional assistance in that regard and, although Bryan has been critical of Mr Cosgrove, there is no basis for concluding that he was not a suitable person to be engaged. Further, no serious attempt has been made to show that the efforts of Geoff, Mark and Mr Cosgrove not only were imperfect but fell below the standard of reasonable care and skill.

3) There is no evidence that funding was available on more advantageous terms than were obtained by Geoff and Mark, at least without financial input from Bryan.

104. Bryan's complaint concerning funding is also advanced in a slightly different way. He alleges that Geoff and Mark had an absolute obligation to arrange the finance necessary to complete the purchase of the Properties, or alternatively that they had a duty to use their best endeavours to obtain such finance (particulars of claim, paragraph 28). He says that Mr Quinn offered to advance £750,000 interest-free for 9 months in return for the Blackpill Land, which would have enabled BGM to purchase the Properties (particulars of claim, paragraphs 56 and 57), that Geoff vetoed that proposal without reasonable commercial justification (paragraphs 58 and 59; and see the entry for 12 March 2014, above), and that Geoff thereby "breached his express obligation to obtain (alternatively, to use his best endeavours to obtain) [the necessary] funding" and/or put his own interests above those of BGM and the other interested persons. I reject this way of putting the complaint.

1) Geoff and Mark did not assume an absolute obligation to Bryan, BGM or anyone else to procure funding. In the circumstances of the case, very clear words would be required before it could be supposed that they guaranteed their ability to obtain funding. The evidence falls short of that. Any obligation they undertook was at most to exercise reasonable care and skill.

2) Geoff and Mark did in fact procure funding. That is why the purchase of the Properties was completed. The complaint is rather that they did not obtain funding on the terms that were achievable with the exercise of reasonable care and skill. So the complaint of breach of contractual undertaking comes down to one of negligence.

3) There is no good evidence, and I am not satisfied, that it was unreasonable of Geoff to be reluctant immediately to accept the proposal that Mr Quinn made on 12 March 2014.

4) It is probable that as at 12 March 2014 Geoff and Mark believed that the Blackpill Land had development potential, but in the days following they discovered the problems with the flood plain that made retention of the Blackpill Land less important (cf. the board minutes for 17 March 2014).

5) Mr Quinn never committed himself to the proposal made on 12 March 2014; he later changed the terms on which he was willing to proceed. I find that nothing said or not said by Geoff on 12 March 2014 had any effect on the terms on which Mr Quinn ultimately proceeded. There is no evidence at all that it did and no reason to suppose that it should have done.

Breaches of agreement and fiduciary duty in respect of shares

105. The main part of Bryan's claim is that he has been the victim of what he has called "a premeditated fraud", by which he was cheated out of his entitlement to either one half or one third of the shares in BGM. The particulars of claim do not in terms allege fraud; the pleaded allegations are of breach of contract, breach of fiduciary duty and breach of trust. But in his conduct of the trial Bryan was unequivocal in alleging dishonesty on the part of Geoff and Mark.

106. The basis of these allegations is one or other of two alleged agreements:

i. The Joint Venture Agreement: this was an agreement between Bryan and Geoff (and, later, Mark) that Geoff would incorporate a company to purchase the Properties, that the shares would be held 50:50 between Bryan and Geoff (with Geoff expressing an intention to give Mark a 15% shareholding from his own shares and Mark thereafter agreeing to that), that Geoff would pay the non-refundable deposit, that Bryan would guarantee the repayment of the deposit to Geoff (and by way of security he offered a charge on 72 Higher Lane), and that Geoff and Mark would procure the necessary finance to complete the purchase (particulars of claim, paragraphs 26 to 28). This, accordingly, is the agreement that according to Bryan was made between 21 and 24 October 2013.

ii. The Revised Agreement: this was an agreement made between Bryan, Geoff and Mark, and Mr Quinn on 19 March 2014, to the effect that Mr Quinn would lend BGM the necessary funds to complete the purchase and the shares in BGM would be held as to one third by Bryan, as to one third by Geoff and Mark, and as to one third by Mr Quinn, but on the conditions that Bryan would receive the net income from the car park on the Mumbles Land and would have the option to buy shares back from Mr Quinn in order to bring his shareholding up to 50%. Bryan's case is that he agreed to the Revised Agreement because he understood that there was an existing Joint Venture Agreement and that the revision was necessary to complete the purchase.

The nub of Bryan's complaint is that, when he was supposed to be a 50% shareholder in BGM, Geoff and Mark went behind his back and caused him to be allotted only a 10% shareholding, to which he would never have agreed. They ought to have allotted him a 50% shareholding and procured funding to enable BGM to purchase the Properties, or at least given him the opportunity to do so. Alternatively, they ought to have proceeded on the basis that was purportedly agreed on 19 March 2014, so that he had a one-third shareholding in BGM. In his submissions to me he said: the deal was mine from the outset; I was lied to and excluded from the discussions and arrangements; I have been left with nothing.

107. I reject this claim, in whatever precise manner it is formulated.

1) At the risk of repeating material that has been set out several times already, it is worth standing back for a moment. Bryan had no proprietary interest in or entitlement to the Properties; his position in respect of them was no more privileged than that of anyone else. He had no money of his own. He never evidenced any borrowing power, except to the extent that Geoff and his own father-in-law were willing to lend him more and more money (which he has signally failed to repay). For all his ambition, and maybe even vision, he failed in his wine bar business, failed to save the EPL Companies, and survived on the money of others before his house was repossessed. He put not a penny into the purchase of the Properties. He did not even provide any security for the moneys that were advanced by others to exercise the option or complete the purchase. The original plan agreed with Geoff was that he would give security over his house to secure the non-refundable deposit, but he never did so (though he falsely claimed to have done so) and was in fact unable to do so. When it became clear that it was difficult to obtain funding to complete the purchase without security over his house, he (falsely) told Geoff, Mark and Mr Cosgrove that he was willing to provide security (and, moreover, falsely led them to believe that he was able to provide that security) and then resiled. In all these circumstances, Bryan says that he is entitled to a one-half or a one-third shareholding in BGM.

2) On the facts that I have found, the alleged Joint Venture Agreement did not exist. The parties proceeded on the basis that the shareholdings would reflect the financial risk. By the time of the incorporation of BGM this was agreed to mean that Bryan would have a guaranteed 10% shareholding (possibly reflecting the unquantifiable input of his offer not to sue Barclays Bank: he had not actually put in anything of quantifiable value) and that he would have beneficial ownership of 50% of the shares if he provided security for the non-refundable deposit. Rosemary Morgan drafted the relevant documents, but Bryan never provided the security and the documents were never signed. On this basis he was entitled to a 10% shareholding.

3) The claim based on the Revised Agreement rests on the supposition that the Joint Venture Agreement existed, which it did not. Even if Mr Quinn ever expressed agreement with the terms that Bryan relies on—and the communications on 19 March 2014 indicate that he may have said something to that effect—, there was no binding agreement and Mr Quinn, who is a hard-headed businessman, insisted on different terms thereafter. The position remained, as it had always done, that Bryan, having made no financial contribution by money or by assumption of risk, had a 10% shareholding in BGM. His claim in the particulars of claim (paragraphs 75 and 76) and in evidence that he only learned that his shareholding was 10% on 31 March 2014 is deliberately untrue. (As a matter of fact, Geoff, Mark and Mr Quinn always made it clear that, if Bryan equalised the financial contributions to BGM, they would equalise the shareholdings. But he never took them up on that.)

108. Bryan's allegations are also framed in the particulars of claim in terms of the tort of unlawful means conspiracy. Perhaps understandably, this way of putting the case was not pursued at trial. Anyway, I cannot see that it would add anything to the other ways

of putting the case, and on the facts as I have found them it does not fall for consideration.

Conclusion

109. For the reasons set out above, Bryan's claims against Geoff and Mark are dismissed.

110. Geoff filed a counterclaim seeking rescission of the Joint Venture Agreement or any other agreement relied on by Bryan, if such were found to have existed, on the grounds of misrepresentation. In the circumstances, the counterclaim does not fall for consideration and will be dismissed.

111. If the parties cannot agree the appropriate terms of order consequent on this judgment, I shall hear them at a short hearing by Cloud Video Platform on a date to be fixed. I shall be grateful if Mr Hope will notify me of the position as soon as convenient, and in any event within 7 days.