

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

BL-2020-001343

BETWEEN:

- (1) LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION)
(2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS, COLIN HARDMAN AND GEOFFREY ROWLEY (JOINT ADMINISTRATORS OF LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION))
(3) LONDON OIL & GAS LIMITED (IN ADMINISTRATION)
(4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN AND LANE BEDNASH (JOINT ADMINISTRATORS OF LONDON OIL & GAS LIMITED (IN ADMINISTRATION))

Claimants

- and -

- (1) MICHAEL ANDREW THOMSON
(2) SIMON HUME-KENDALL
~~(3) ELTEN BARKER~~
(4) SPENCER GOLDING
(5) PAUL CARELESS
(6) SURGE FINANCIAL LIMITED
(7) JOHN RUSSELL-MURPHY
(8) ROBERT SEDGWICK
(9) GROSVENOR PARK INTELLIGENT INVESTMENTS LIMITED
(10) HELEN HUME-KENDALL

Defendants

Transcript of proceedings made to the court on

Day 6 - Tuesday, 27 February 2024

The claimants are represented by Mr Stephen Robins KC, Mr Andrew Shaw & Mr Philip Judd

Michael Andrew Thompson (D1) appears in person

Simon Hume-Kendall (D2) & Helen Hume-Kendall (D10) are represented by Mr Warwick KC & Mr Russell

Elten Barker (D3) settled and is not appearing

Spencer Golding (D4) is debarred from defending the claim

Paul Careless (D5) and Surge Financial Limited (D6) are represented by Mr Ledgister & Mr Curry
Russell-Murphy (D7) and Grosvenor Park Intelligence Investments Limited (D9) appear in person

Robert Sedgwick (D8) appears in person

Opening submissions by **MR ROBINS** (continued)

MR ROBINS: My Lord, purely by way of recap, we saw yesterday, for the second time, the Golding-SHK agreement which Mr Sedgwick circulated by email on 16 July 2015. My Lord saw that the parties to that agreement were Mr Hume-Kendall, Mr Barker and Mr Golding. We have seen previously a copy signed by them.

My Lord knows Mr Thomson and Mrs Hume-Kendall were not parties, but Mr Thomson was provided with a copy of it and referred to it subsequently.

My Lord saw it. It says that Mr Thomson and Mrs Hume-Kendall will sell the shares in Lakeview Country Club Limited to London Trading on terms which will produce £1.5 million for Mr Golding's share of 71.25 per cent, and it says also that there will be new ratios for everything after the Lakeview SPA -- 45:45:5:5. It says that Mr Thomson will be entitled to the shares in LCF and that LCF will be responsible for raising funds for London Trading and related companies. We saw yesterday also, subsequent to that, that Mr Thomson and Mrs Hume-Kendall did sell the shares in Lakeview Country Club Limited to London Trading. That took place on 27 July 2015 at a price of a little in excess of £2.1 million.

We also saw yesterday that almost immediately after the execution of that document, or certainly within a couple of weeks, there was discussion about increasing the price. Mr Sedgwick came up with the clause 3.4 mechanism, which we saw, in its first iteration, referred to Telos and the timeshare claim and, in its second iteration, referred also to Magante. We saw yesterday there was a new agreement where the price was increased to £3.5 million. It included clause 3.4 in its expanded form, and it was executed, backdated to 27 July 2015.

We also yesterday went through the substantial payments that were made from LCF to Leisure & Tourism Developments which then distributed the monies to Mr Thomson, Mr Barker, Mr Golding and Mrs Hume-Kendall. My Lord saw yesterday that those payments start before there is any facility agreement. The facility agreement was then signed in early April 2015. That's a facility between LCF and Leisure & Tourism Developments. It was then backdated to 27 August 2015 to create the impression that it had been signed before the commencement of any drawdowns.

My Lord saw the references to security. There were to be charges over The Hill, which we know was held on trust for the Sanctuary investors; The Beach, which hadn't been acquired yet; and Paradise Beach, which also hadn't been acquired yet.

My Lord also saw discussion of increasing the base price to £4.5 million in early July 2016. There were then further payments from LCF to Leisure & Tourism Developments and onwards to the recipients. I say from LCF. This was, of course, money from new bondholders. My Lord has been previously that Surge, by this point, was bringing in millions of pounds per month. I then mentioned the increase of the base price to £6 million, and we saw the emails showing that that document was signed by Mr Thomson and Mrs Hume-Kendall on 20 July 2016. I realised, after the end of the day yesterday, that I hadn't taken your Lordship to the signed version of that, so I will do so at this point. That's <MDR00005903>. We can see on the front that it's been backdated to 27 July 2015, although it was executed on 20 July 2016.

On page 7, at the top, we can see that the purchase price has been increased to £6 million. I'm afraid I don't know which page the signatures appear on, but this is a signed version.

My Lord saw that there were then further payments of money from new bondholders paid by LCF to Leisure & Tourism Developments to the relevant defendants. The payments above £6 million were distributed in the new ratio of 45:45:5:5, and we finished yesterday at the point where payments were continuing to be made by LCF to Leisure & Tourism Developments to the relevant defendants.

We were looking at our opening written submissions at <A2/1/75>, which was in the long section detailing the dates and amounts of the various payments. We saw, at E9.23, the first payment that was made in the new ratios. The payments were continuing. My Lord can see, at the end of E9.24, that after the payments detailed in that paragraph, the running total of payments under the Lakeview SPA by that point stood at a little over £9 million.

The footnote reference takes you to a spreadsheet. We don't need to go to it now. We have seen the complete set of spreadsheets attached to Mr Barker's email. But that's where those figures come from. The same in E9.25, which details a payment by LCF to Leisure & Tourism Developments, the money, or a large part of it, then being used for distribution to the named recipients.

Then, over the page, on the next page [<A2/1/76>], further payments are set out. We got to the point in E9.28, a further payment from LCF to Leisure & Tourism Developments resulted in the cash transfers from LCF to Leisure & Tourism Developments reaching a level of a little in excess of £19.6 million.

I made the point yesterday that, under the terms of the facility agreement, Leisure & Tourism Developments had to foot the bill for the commission payable to Surge, as well as LCF's lending fee. We mention in E9.30 that the gross sum owing by Leisure & Tourism Developments to LCF stood at £27 million, or thereabouts.

That is a number that comes from the document mentioned in the footnote. If we go to it, it's <MDR00071309>. This is the LCF ledger showing the balance in respect of the Leisure & Tourism Developments loan. My Lord will see the green column is headed "Funds sent to LTD less all funding costs". The first column on the left is the date. The second column is the gross borrowed. The funds sent over are grossed up to account for payment of Surge's commission and LCF's 2 per cent borrowing fee. So, for example, for the first entry on 28 August 2015, a sum of a little under £63,000 was sent by LCF to Leisure & Tourism Developments. That adds a sum of just under £87,000 to the loan balance because it has to be grossed up to account for the fees that I've mentioned. On page 3 of this document, we can see the final row has the totals in bold, and just above that is a row of the table not involved that shows that this table is up to date as at 10 January 2017. On that date, there was a sum of just under £196,000 paid over to Leisure & Tourism Developments, which increased the loan balance by £270,000 and resulted in the gross sum owing by Leisure & Tourism Developments to LCF being a little in excess of £27 million.

MR JUSTICE MILES: Is this a historical document?

MR ROBINS: This is a contemporaneous document, yes. Throughout its existence, LCF's admin staff, including Katie Maddock, Katy Eaves -- that's "Katy" with a Y -- and another lady called Chloe Ongley were responsible for maintaining records like this. Principally, I think, Katie Maddock. And LCF produced documents like this. It provided them to accountants and auditors and others. So, this is a contemporaneous record produced by LCF showing the position as at 10 January 2017.

Now, my Lord saw yesterday the facility agreement that was put in place between Leisure & Tourism Developments and LCF. It was signed, we saw yesterday, in early April 2016, but backdated to 27 August 2015, and it provided for a commitment, in other words, a facility limit, of £25 million. So, by

this point, on 10 January 2017, Leisure & Tourism Developments is significantly in excess of the facility limit. It exceeded it by over £2 million. As I say, that's 10 January 2017.

This is where the letters that I mentioned at the end of the day yesterday, that we have seen previously, fit into the chronology because it's six days after that final drawdown on this sheet, on 16 January 2017, that we see Mr Thomson providing Mr Sedgwick with the draft letters. The email is <MDR00071397>. Mr Thomson says: "Hi Robert.

"These are the letters I sent over last week." We can see the attachments are "Default notification and extension request letter to London Capital.docx; facility extension letter to London Capita1.docx" the first of those appears at <MDR00071398>. This is what Mr Thomson has sent over last week and he's sending them over again now. At the top, it says:

"Letter to London Capital & Finance Plc dated October 25th 2916". It should obviously be 2016. This is what Mr Thomson has drafted. It says: "Dear Andy.

"Accounts for Leisure & Tourism Developments Plc. "I regret that it is not going to be possible to finalise the accounts for Leisure & Tourism Developments Plc in time to file them by their due date on the 28th October. The major reason for this is that we are waiting for updated valuations on the company's portfolio of assets and there are some technical accounting issues to be resolved.

"We are working on these matters and firmly expect to be able to file the accounts within 3 months of the due date.

"I appreciate that this is a default under our facility agreement and would be grateful if you could agree to extend our time to file these accounts. I will keep you advised of progress."

So, clearly, backdated, designed to create the impression that a default has been notified way before it occurred.

The second attachment is <MDR00071400>. This is a letter -- at this stage, it doesn't bear any date, a draft letter that Mr Thomson has prepared to be sent by Mr Sedgwick to Mr Thomson with the subject "Loan facility for Leisure & Tourism Developments Plc". Mr Thomson has written:

"I refer to the current loan facility and our recent discussions, as you know we wish to consider with you reorganising the facilities so that the loans lie with the subsidiary companies which have the relevant assets. Presently, the current facility is close to its maximum limit and I would be grateful, in order to continue the successful progress of the various projects, if you could kindly consider a temporary extension of our current facility to say £30 million.

"In support of this request, I have set out the current values of the company's portfolio of assets." And then the words "Waterside", "El Cupey" and "Magante" appear but there are no values next to them at this point:

"I can confirm that the increase request and above valuation have been approved by the board of LTD and its parent London Group.

"I look forward to hearing from you but if you wish to receive any additional information please do not hesitate to contact me."

That's what Mr Thomson has provided to Mr Sedgwick. He says "last week", which would put it at something around 9 January 2017. He resupplies them on 16 January of that year.

Mr Sedgwick sends the first to Nicola, that's at <D8-0008772>. He says, we can see this is in respect of the default notification and extension request letter, he says:

"Please print this letter out on LTD notepaper and get it signed by Simon. It is important that the letter is dated 25th October 2015."

That's the letter notifying of the delay in filing the accounts and asking for the default to be waived. He sends the second letter to Nicola at <D8-0008775> And he says:

"Please also send this letter in the same way, dated 20th December 2016."

He's saying that on 16 January 2017. My Lord has seen the loan balance spreadsheet maintained by LCF. By 10 January 2017, Leisure & Tourism Developments was £2 million in excess of the facility limit. The date of 20 December 2016 appears to have been chosen as a date before that limit was first breached to make it look as though the extension was requested and agreed before the commitment was exceeded.

The attachment to this is <D8-0008776>. It is not exactly the same as the previous version because someone, presumably Mr Sedgwick, has added values. Waterside, which is the Lakeview resort, £17.15 million; El Cupey, which is The Hill, £30 million; and Magante, which is The Beach, of which Tenedora owns no parcels whatsoever, £14 million.

So that's what is sent. It's been redrafted as a letter from Simon Hume-Kendall. The previous draft envisaged it be signed by Mr Sedgwick but it's been redrafted to be signed by Mr Hume-Kendall. Nicola sends the letters in signed form back to Mr Thomson. The email is <MDR00071455>. On the same day, she copies in Mr Hume-Kendall and Mr Sedgwick in an email to Mr Thomson. The subject "Letters" and she says:

"Dear Andy.

"Herewith are 2 letters from Simon."

They are both in a single PDF attachment, <MDR00071456>. The first on the page is the default notification letter signed by Mr Hume-Kendall, bearing the printed -- the typescript date October 25th 2016. It's in the form that we have seen. And the second page is the second letter, bearing the date in typescript 20th December 2016, signed by Mr Hume-Kendall, containing the values that we have seen added in respect of the three items appearing in the middle of the page. So, those are provided to Mr Thomson, clearly, we say, for the purpose of creating a false impression to deceive LCF's accountants or auditors, who would thereby be led to believe that the default had been waived before it occurred and that the facility had always remained within the agreed limit. But this is put in place.

The temporary extension to the facility limit is, therefore, £30 million, and that creates a bit more headroom for further payments to be made. If we could go, please, to <A2/1/77>, in paragraph E11.1, we observe that, four days after the production of those letters, LCF paid £624,950 to Leisure & Tourism Developments, which paid £247,500 of that money to Mr Golding, £247,500 to Mrs Hume-Kendall, £27,500 to Mr Barker and the same amount, £27,500, to Mr Thomson, each with the reference "Share Payment", and that brought the running total of payments to them under the Lakeview SPA to a sum of almost £11 million. We note in paragraph E11.2 that, by this point, LCF had paid a total of £19.6 million-odd to Leisure & Tourism Developments, meaning that 56 per cent of the total paid by LCF to Leisure & Tourism Developments had been transferred by Leisure & Tourism

Developments to Mr Thomson, Mr Barker, Mr Golding and Mr Hume-Kendall -- Mrs Hume-Kendall. I'm sorry, I misspoke.

Then, over the page in E11.3, on 25 January --

MR JUSTICE MILES: Sorry, it was actually -- just on the transcript, can you just think about that? It's being paid to Mr Thomson, Mr Barker, Mr Golding and -- what did you say?

MR ROBINS: I don't know what I said, but I should have said "Mrs Hume-Kendall".

MR JUSTICE MILES: Right. Sorry, I just misheard, I think.

MR ROBINS: It either goes into her account or to a joint account. We can check the point. But it is recorded on the spreadsheet that my Lord saw as a payment to Mrs Hume-Kendall.

MR JUSTICE MILES: Right.

MR ROBINS: We have moved, by this point, to the new ratios of 45:45:5:5, which we know were agreed between Mr Golding and Mr Hume-Kendall, and which Mr Hume-Kendall was particularly agitated about because he wanted the uplift in the price to be distributed in those new ratios. But the spreadsheet, which we saw was being filled in as they went along, refers to "Mrs Hume-Kendall" in the column heading. On <A2/1/77>, in E11.3, on 25 January 2017 LCF paid £475,545 to Leisure & Tourism Developments, and that money was used to make payments to the defendants mentioned. We can see, towards the end of that paragraph, that Leisure & Tourism Developments has now borrowed in excess of the extended £30 million facility limit. That's, again, a figure that comes from an internal LCF spreadsheet mentioned in the footnote. There are then further payments that are set out in the remainder of that page, including E11.6, LCF pays a sum of almost £602,000 to Leisure & Tourism Developments, which pays £279,000 of that money to Mr Golding, £225,000 to Mr Hume-Kendall, £25,000 to Mr Barker and £25,000 to Mr Thomson.

Then in E11.7, on 17 February 2017, LCF pays almost £771,000 to Leisure & Tourism Developments, which pays £303,750 to Mr Golding, £303,750 to Mrs Hume-Kendall, £33,750 to Mr Barker and £45,000 to Mr Thomson. My Lord can see that the payments, by this point, are being made every week or two, roughly, and that that paragraph we just saw indicates, as I mentioned yesterday, that they are not always paid out with mathematical precision: sometimes one person might get slightly more than their entitlement as embedded into the spreadsheet; there may be additional ad hoc payments that we saw in the column "Extra payments". But the running total of such payments, as we pointed out at the end of E11.7, is now £10,849,500.

There are then further payments, in E11.8, so this is within a week of the last payment. LCF then, on the 24th, so the very next day, 24 February 2017, paid £453,125 to Leisure & Tourism Developments, which paid £180,000 to Mr Golding, £180,000 to Mrs Hume-Kendall, £20,000 to Mr Barker and £45,000 to Mr Thomson. Then, over on the next page, <A2/1/78>, we see it continues. At E11.9, on 28 February 2017, LCF paid £101,500 to Leisure & Tourism Developments. A few days later, it paid a further £450,225 to Leisure & Tourism Developments, which paid £180,000 to -- I think that is a typo, we will have to check that. It should be Mr Golding, I think. I will make a note to check that. £180,000 to Mrs Hume-Kendall, £20,000 to Mr Barker and £20,000 to Mr Thomson, each with the reference "Share Payment", and so on, until we get to the point in E11.11 where, by 3 March 2017, Leisure & Tourism Developments owed £34.7 million to LCF on a grossed-up, ie, fee-inclusive, basis, having received £25.2 million net, ie, in cash.

In E11.12, we mention the email that Mr Thomson sent to --

MR JUSTICE MILES: Just before you get there, can I just ask this question: what was the term of the loan under the facility?

MR ROBINS: Off the top of my head, I'm afraid I don't know. We will have to check that. It was <J1/1>, page 1. The contents page was page 2. Let's see if that gives us a clue. Let's have a look at the next page. The commitment period is defined to mean:

"The period of six months commencing on the date of this agreement."

That's the penultimate line. Let's see if that appears anywhere. Let's look at the next page, please. Next page [page 4].

MR JUSTICE MILES: Is there something called facility period?

MR ROBINS: Yes, my Lord is right:

"... the period from the date of this agreement until all the obligations of the borrower and each associated company under the finance documents have been unconditionally and irrevocably [discharged] to the reasonable satisfaction of the lender." That sounds as though it might be something else, but let's --

MR JUSTICE MILES: Then repayment date, three years. So, it looks as though it's --

MR ROBINS: Final repayment date.

MR JUSTICE MILES: -- three years or on demand. Is that right?

MR ROBINS: Yes. And Mr Shaw is suggesting we look at clause 6.1 at the foot of page 10 or perhaps the previous page, at the foot of page 9:

"Notwithstanding anything in this agreement, the borrower shall repay any sums ... demanded by the lender which demand may be made in the lender's absolute discretion at any time."

So it's repayable at any time:

"In the event the lender makes any such demand, the borrower shall repay such sum or sums demanded by the lender within 14 days of receipt by the borrower of such demand."

Then the next clause:

"In the absence of any such demand by the lender ... the loan (being the gross sum thereof) shall be repaid by the borrower in a single sum on the third anniversary of the date hereof."

Although it is backdated, "the date hereof" is clearly the date on its face, 27 August 2015. So the final repayment date would be 27 August 2018.

MR JUSTICE MILES: Right.

MR ROBINS: We were, I think -- if we could go back to <A2/1/77>, we saw that page, so then the following page [<A2/1/78>], we were looking at E11.12. On 6 March 2017, Mr Thomson emailed Mr Hume-Kendall and Mr Barker to say:

"LTD is way past its original limits and has exceeded its temporary increased limit so we will be asked some uncomfortable questions when we come to be audited which will only get more in depth the greater the overdrawn figure becomes."

I think it is an email we will look at at a later stage. Let me just check whether we need to -- yes, we will look at it in the context of stage 1 of the Elysian SPA. So, if your Lordship is content, I wouldn't propose to go to that email at this point. I think it is enough to see the extract in the written submissions.

Then, in E11.13, we see the payments continue notwithstanding what Mr Thomson said in that email. Three days after he sends it, LCF pays £500,250 to Leisure & Tourism Developments which uses the entirety of that money by making payments of £225,000 to Mr Golding, £225,000 to Mrs Hume-Kendall, £25,000 to Mr Barker and £50,000 to Mr Thomson each with the reference "Share Payment".

We explain, in E11.14 and E11.15, that the payments continue. In E11.15, for example, 27 March 2017, LCF pays a little under £920,000 to Leisure & Tourism Developments, which pays £360,000 to Mr Golding, £360,000 to Mrs Hume-Kendall, £40,000 to Mr Barker and £40,000 to Mr Thomson, each with the reference "Share Payment".

Then over the page, please [[A2/1/79](#)], we see at the top of the page that there were further such payments, again, every few days, at the most, there's a gap of five days in this section. In E11.17, we refer to a payment on 31 March 2017. At E11.18, on 5 April 2017, LCF paid a little over £400,000 to Leisure & Tourism Developments which by now owed £39 million gross to LCF, having received £28.3 million net. Let's just have a look at the footnote to see if it is what I think it is. It is [MDR00082830](#). Is that the right footnote? 734. Can we look back at the page? Yes. Let's look at [MDR00082830](#). It is another contemporaneous ledger. Then, on page 3, I'm guessing, we see it is -- the next page. Page 4. We have gone further. Yes, here we are. This is now up to 5 April 2017. The net sum that's been paid over, below the green column, is a little over £28.3 million, but the gross sum in the second column from the left is a little over £39 million, when it's been grossed up. So, as Mr Thomson has said, it's now significantly in excess of even the temporary limit of £30 million. Then if we go back, please, to [A2/1/79](#), which is I hope where we left off, we left off at the end of the first sentence of E11.18. It continues: "On the same day, Leisure & Tourism Developments paid £180,000 to [Mr Golding], £180,000 to [Mrs Hume-Kendall], £20,000 to [Mr Barker] and £20,000 to [Mr Thomson] ..."

Then, in E11.19, on 7 April 2017, LCF paid £420,500 to Leisure & Tourism Developments, it paid £126,000 to Mr Golding, £126,000 to Mrs Hume-Kendall, £14,000 to Mr Barker and £39,000 to Mr Thomson. Then, on 11 April 2017, LCF paid £355,075 to Leisure & Tourism Developments, followed by a smaller sum the next day, and a further sum of just over £50,000 the day after that. Leisure & Tourism Developments now owed £40.2 million gross to LCF, having received £29.2 million net. On the same day, Leisure & Tourism Developments paid £25,000 to Mr Thomson. So, we then get to a discussion of activating the mechanism in clause 3.4. If we could go, please, to [EB0043657](#), we see that, on 18 April 2017, Mr Sedgwick emailed Mr Hume-Kendall and Mr Barker, copying Spencer Golding and Christine Marais, who was Mr Sedgwick's assistant, with the subject "Sale of Lakeview". He says:

"Further to our conversation today, I confirm that I will draw up a memorandum between the parties to sale of [Lakeview Country Club Limited] that in accordance with the terms of the contract the sale price of the shares is being adjusted to increase it to £13.85 million ..."

Now, of course, the parties to the sale of Lakeview Country Club Limited are Mr Thomson and Mrs Hume-Kendall, who are not copied into this email. He says the memorandum will provide for the price to be adjusted to allow for the following factors. 1 is value of Magante, £4 million; 2 is Telos claim, £1 million; 3 is timeshare lodges, £2.85 million; and 4 is the original price of £6 million, which,

as we know, wasn't the original price, but it has been substituted for the original price in a backdated agreement. The total that's produced is, therefore, £13.85 million. He says: "I understand that this was agreed in March and the memorandum should be appropriately dated and submitted to HMRC. There will be additional stamp duty payable of £39,250."

Now, there's a subtle shift in the description of the items. As my Lord saw, clause 3.4 of the Lakeview SPA doesn't refer to the value of Magante or the timeshare lodges. It contains different terms with separate definitions. So, there is a subtle shift in what's being described. But it doesn't really make any difference because, as we know, nothing has happened to justify any increase in consideration, and we can come back to that in more detail in due course. The only point to note at the moment is that the basis on which the additional consideration is said to become payable seems to be in the process of reinvention or redescription in order to justify the payment of the additional sums that have already been repaid.

MR JUSTICE MILES: How much had been paid out by that stage under the heading of "Share Payment"?

MR ROBINS: As at 18 April 2017?

MR JUSTICE MILES: Yes.

MR ROBINS: Let's just go back to our opening written submissions and see if we can find the answer there. If not, I'm going to have to look it up in the spreadsheet, and I may need to come back to your Lordship on that, because it might take a moment to add up the various numbers. But if we go back to <A2/1/80>, we might at least get an indication if it is something that we included in the description. Otherwise, as I say, I will need to go back to the spreadsheet. If we can see the previous page, please, I'm not sure if there is any --

MR JUSTICE MILES: On page 77 of your document, by February, sorry, E11.7, you have got a running total there, a figure, to £10.8 million.

MR ROBINS: So, we could either do it manually with a calculator by looking at subsequent paragraphs, or we could go back to the spreadsheet.

MR JUSTICE MILES: Where is that number taken -- is that from the spreadsheet, 707?

MR ROBINS: The 707, let's look at the footnote -- the second document mentioned, <D2D10-00024828>. This is a version of the spreadsheet up to the 17th --

MR JUSTICE MILES: So that's up to that date?

MR ROBINS: Yes. We would need to open it in native format and expand the "Credit" column and some of the other columns in order to see the numbers. But I'm not sure if it is worth --

MR JUSTICE MILES: That's just up to that date.

MR ROBINS: Yes, that date.

MR JUSTICE MILES: Let's leave it. I have asked the question.

MR ROBINS: Yes.

MR JUSTICE MILES: We can come back to that.

MR ROBINS: The next document to go to is <D1-0003697>. We can see it is dated 18 April 2017. Mr Sedgwick emails Mr Hume-Kendall and Mr Barker and he copies Mr Thomson, Mr Golding and Mr Sedgwick's assistant with the subject "Revision of the price for sale of Lakeview". He says: "Further to recent discussions here is a variation agreement to establish the price being paid for the shares in Lakeview Country Club for your approval. I could add to it the division of the additional purchase price if that is helpful."

The attached draft agreement is <D1-0003699>. We can see that it's a draft variation agreement between Mr Thomson and Mrs Hume-Kendall, on the one hand, and London Trading on the other, bearing a date March 2017. On page 3, we see the recitals. In A, it says that the seller and buyer are party to an agreement for the sale and purchase of shares in Lakeview Country Club Limited, dated 27 July 2015. In B, it says:

"The agreement provided in clause 3.4 that purchase price be varied when the parties are able to assess the value of the Magante asset, the Telos claim and the timeshare claim."

Of course, we know the version of the agreement actually signed on 27 July 2015 didn't contain a clause 3.4 in those terms. That's something that's been added subsequently. But there we are. It continues:

"The parties have now agreed a valuation of the Magante asset, the Telos claim and the timeshare claim and have accordingly agreed to vary the agreement as set out below."

The operative clause is clause 2, headed "Variation". It says:

"The parties have agreed to value:

"(a) the Magante asset at £4 million;

"(b) the Telos claim at £1 million; and "(c) the timeshare claim at £2.850 million. "2.2. Accordingly, the parties have agreed that the purchase price shall be £13.85 million in substitution for the original purchase price of £6 million. "2.3. The definition of loan notes shall be varied to increase the aggregate value of the loan notes issued by the buyer to £13.85 million."

But this agreement wasn't executed and, instead -- sorry, is there anything I can assist with? I see your Lordship looking at notes.

MR JUSTICE MILES: No, it is all right. I was just looking back at what is meant by "the Magante asset".

MR ROBINS: We will look at the definition in due course when we see a signed final version of this agreement. This is just a draft that is in circulation as at 18 April 2017 and it is not executed in this form. Instead, the payments continue. If we can go back to our opening submissions, <A2/1/82>, we see at E13.2 at the top of the page that the payments continued. On 21 April 2017, so just three days after the preparation of the document we looked at a moment ago, LCF paid a little under £264,000 to Leisure & Tourism Developments, which paid £45,000 to Mr Golding, £45,000 to Mrs Hume-Kendall, £5,000 to Mr Barker and £30,000 to Mr Thomson. Then, on 28 April 2018, LCF paid £207,000 to Leisure & Tourism Developments, which paid £25,000 of that money to Mr Thomson.

Then E13.3, by this point, Leisure & Tourism Developments owed £41.3 million gross to LCF, having received £29.95 million net.

The footnote -- I don't know if my Lord wants to go to it -- is another internal LCF spreadsheet of the type that we have seen previously, in footnote 750. Perhaps let's look at it, <MDR00085672>. If we

go to page 4, at a guess, see if I'm right -- yes, we can see that, as at 28 April 2017, the cash amount that's been paid over, at the bottom of the green column, is £29,947,835.49. The grossed-up amount, in the second column from the left, is £41,291,547.68.

If we go back, please, to <A2/1/82>, in E13.4, we mention that, on 3 May 2017, Mr Sedgwick emailed Mr Hume-Kendall and Mr Barker with the subject "Revision of the price for sale of Lakeview". He said: "Can I remind you that we need to deal with this?" I don't think we need to turn it up. It is adequately described there.

Then there is one final payment, on 4 May 2017, as mentioned in E13.5, Leisure & Tourism Developments paid £20,000 to Mr Golding, £20,000 to Mrs Hume-Kendall, £25,000 to Mr Thomson, with the reference "Share Payment".

Then we can go to the documents that we mention in E14.1. The first is <D2D10-00028391>, where, on 22 May 2017, Nicola sends Mr Barker an email with the subject "Share payments" and the attachment is called "Copy of share payments.xlsx", it is an Excel spreadsheet. The attachment is <D2D10-00028392>. Can we see it in native format? Thank you. This is a version of the spreadsheet we have seen before. It's got two tabs in this version. If we go to sheet 1 and look at the top, we can see it is headed "Share Payments £6m Sale Price". Column A has various dates, column B is entitled "Credit". Then column C is entitled "SG 67.5 per cent". It has "Amount paid", "Extra Payments", "HHK 22.5 per cent" appears in column F, among with "Amount Paid", "Extra Payments". "EB 5 per cent" appears in column I, with the same two columns, "Amount Paid", "Extra Payments", and then "AT 5 per cent" in column L, again with "Amount Paid" and "Extra Payments". We can see from the "Date" column that it covers a period up to and including 4 November 2016.

In Row 43, we see the totals, that's the total of the amount paid and the extra payment, if any. So, by that point, Mr Golding has received £4,050,000, Mrs Hume-Kendall has received £1.35 million, Mr Barker has received £300,000 and Mr Thomson has received £336,611.11.

If we scroll down to cell A46, we can see the grand total of the receipts up to and including 4 November 2016 in the sum of a little over £6 million. It is £6,036,611.10. Hence the title "Share Payments £6 million Sale Price".

If we look at sheet 2, it shows the additional payments since the end of tab 1. It is headed "Share Payments £6m +". Again, in the left-hand column, column A, there is a series of dates, column B, credits, and the other headings are as we have seen. If we scroll down to the bottom of the page, in row 47 is the amounts shown on this sheet in the two columns of payments and additional payments. In row 48 is the total amount per person on this sheet, so £4,050,000 for Mr Golding, £1.35 million for Mrs Hume-Kendall, £300,000 for Mr Barker -- sorry, that's the initial 3 million. Those are the figures from the page that we -- the tab we just left. So those have been brought forward from the previous tab. That's the amount received from the initial £6 million sale. So the total received in row 49 is the combination of the payments on the first tab and the second tab. It is both tabs combined. The cumulative totals for the period covered by both of these tabs.

So, Mr Golding's total up to and including -- we can see the date in row 32. It is up to and including 4 May 2017. Mr Golding has got a total of £7,759,000, Mrs Hume-Kendall has received £5,059,000, Mr Barker, £716,000 and Mr Thomson £726,361.11.

Is it possible to edit this? Let's put a new formula into box A55, cell A55. If we put in the formula bar for that "= D49", that's Mr Golding's money, "+ G49", that's Mrs Hume-Kendall "+ J49 + M49 [Mr Thomson]" and then press "return". We need to widen the column to see the result, please. Column

A. If we can stretch it out a little bit. We can see the grand total that's been paid out under the Lakeview SPA is £14,260,361.10. So, that's everything that's been paid out to the four individuals on both sheets of this spreadsheet. So, that's sent by Nicky to Mr Barker on 22 May 2017.

A little later, on the same day, we see an email from Mr Sedgwick <EB0048525>.

EPE OPERATOR: Would you like to save the spreadsheet?

MR ROBINS: I don't think --

MR JUSTICE MILES: I think you had better not. Since it is an original document, I think it is better not to save an edited version.

MR ROBINS: Yes. I was just using the formula --

MR JUSTICE MILES: Yes, I can understand that.

MR ROBINS: So, this is the same day as the date of the email from Nicky to Mr Barker.

Mr Sedgwick emails Mr Hume-Kendall and Mr Barker with the subject "Variation of the consideration for Lakeview Country Club Limited". He says: "Following my conversation with Elten this morning I have amended the total consideration for the sale of the shares to £14,260,361.10."

A curiously precise figure. I feel we may have seen that somewhere before:

"This is an increase of £8,260,361.10 from the original price and increases the stamp duty payable by £41,305 (stamp duty is calculated at 5 per cent of the consideration but rounded up to the nearest £5). "I attach a short agreement recording the variation in price for your approval and if approved it needs to be signed by Andy and Helen and a director on behalf of London Trading & Development Limited."

The attachment is <EB0048527>. It is a further version of this variation agreement bearing the date March 2017. On page 3, we have seen the recitals before, but the numbers in clause 2 are different. It says now that the parties have agreed to value the Magante asset at £4,328,288.88; the Telos claim at £1,082,072.22; and the timeshare claim at £2.85 million. Then in 2.2:

"Accordingly, the parties have agreed that the purchase price shall be £14,260,361.10 ..." Then in 2.3:

"The definition of loan notes shall be varied [to reflect the same figure]."

Then, later again, on the same day, at

<MDR00088015>, Mr Sedgwick emails Mrs Hume-Kendall and Mr Thomson, copied to Mr Hume-Kendall and Mr Barker, with the subject "Variation of the price for the sale of shares in the Lakeview Country Club Limited", and he says:

"Dear Andy and Helen.

"As you know the agreement for the sale of Lakeview Country Club had a provision for variation of the price ..."

Not the original version, but a subsequent version: "... and I understand that agreement has been reached to increase the consideration to £14,260,361.10. I have drafted a short agreement to record the new numbers and I attach it herewith. Can you please sign this and return it to me as soon as possible so that I can then notify HMRC of the change and arrange to pay the additional stamp duty."

The attachment, we don't need to -- well, maybe we can, just to confirm that it's what we see. <MDR00088016>. At the bottom of page 3, we can see, in clause 2.1, the revised numbers, which we submit are oddly precise and are obviously reverse engineered to justify the total amount that has been paid. This is reverse engineering. That's why the Magante asset is recorded in the figure including 88p and the Telos claim the figure including 22p. It is all reverse engineering, to account for the sum that has been received.

Mr Hume-Kendall seems to have had some concerns that the reverse engineering would perhaps be a little too obvious. At <D2D10-00028398>, we see that Mr Sedgwick emails Mr Hume-Kendall on the same day to say: "The main clause in the agreement is ..." And he sets out the clauses that we were just looking at, with the oddly precise figures. Then at <EB0048652>, Mr Sedgwick emails Mrs Hume-Kendall and Mr Thomson, copied to Mr Hume-Kendall and Mr Barker, to say:

"Following discussions with Simon, the breakdown of the increased price has been slightly varied and if you are able to agree it please sign and return the attached variation agreement."

The attachment is <EB0048653>. If we look at the bottom of page 3, we can see that the figures have been changed slightly. It is now £4,444,444.44 for the Magante asset; £965,916.66 for the Telos claim; and still £2.85 million for the timeshare claim. They still add up, of course, to the figure in clause 2.2, £14,260,361.10, in total. So that's a second draft. But that wasn't signed. And we know it wasn't signed because Mr Sedgwick explained that point in an email at <D2D10-00029050>, where he sends it to Mr Thomson on 13 June 2017 and says:

"Here is the share purchase agreement for the sale of your shares in Lakeview Country Club. I am also attaching a copy of the proposed variation agreement. This has not yet been completed."

A little later, on the same day, Mr Sedgwick explains the position, <MDR00090480>. He says in the middle of the page to Mr Thomson, on the same day: "Further to my email sending you a copy of the original agreement for the sale of the shares in Lakeview Country Club Limited to London Trading Development Group ..."

Of course it is not the original agreement, we know it is a third iteration, second to be backdated: "... I confirm that Simon asked me not to complete the variation agreement as the increase in value of the assets of the company conflicted with certain other things that he is seeking to achieve and I have been asked to look for other methods of achieving the same objective. However, as any such change will only relate to the current tax year and not any previous tax year, it should not concern you too much for now." So, it seems that Mr Thomson has asked for these documents, because his accountant is helping him to prepare a tax return, and Mr Sedgwick is explaining that the variation hasn't been completed because the valuations conflicted with certain other things that Simon was seeking to achieve, and Mr Hume-Kendall had asked Mr Sedgwick to look for other methods of achieving the same objective.

Then, two months later, <D1-0004424>, this is 14 August 2017, Mr Sedgwick is emailing Mrs Hume-Kendall and Mr Thomson, it's copied to Mr Hume-Kendall and Mr Barker. The subject is "Sale of Lakeview -- adjust me to price", presumably "adjustment" to the price. It says:

"Following some discussions with Simon I understand that there have been some adjustments to the agreed values for the extra sums paid for your shares. "Accordingly, I understand the valuations are:

"1. Magante £4.25 million.

"2. Telos £1 million.

"3. Timeshare £3.01 million.

"Total £8.26 million.

"This means that there is additional stamp duty to be paid ..."

And he explains:

"Andy's shares £31,495.

"Helen shares, £9,810.

"...

"This payable by London Trading & Development Group Limited.

"I attach the variation agreement which needs to be signed by Andy, Helen and LTDG."

It seems that Mr Hume-Kendall has decided that it would be preferable to have rounder numbers, rounder numbers would be more credible, the reverse engineering would be less obvious.

The further draft of the agreement is at <D1-0004423>. On the bottom half of page 3, we can see the new numbers as set out in the covering email. Clause 2.2:

"Accordingly, the parties have agreed the purchase price shall be £14,260,000 in substitution for the original purchase price of £6 million ..." It goes on to say, and this is new:

"... which shall be divided between the sellers as to £10,873,250 for Michael Andrew Thomson and £3,386,750 for Helen Charlotte Hume-Kendall."

So, the division between them is a new provision. We will come back to that. At <D1-0004430>, we can see that Mr Thomson says at the bottom of the page: "Hi Robert.

"I'm in France at the moment but can sign the doc on Wednesday."

Towards the top, Mr Sedgwick says, "That will be fine". Then the signed version, signed two days later, we think, <MDR00005904> is dated 16 August 2016. I don't know where the signatures are. Let's see if we can find them. Can we scroll through, please. Page 4, the signatures, Mr Thomson, Mrs Hume-Kendall and Mr Hume-Kendall.

At the bottom of page 3, we see the apportionment in 2.2, the division between Mr Thomson and Mrs Hume-Kendall. That apportionment assumes that the revised purchase price of £14.26 million has been paid in the ratio of 76.25 per cent for Mr Thomson, which includes the 71.25 per cent held on trust for Mr Golding, and 23.75 per cent for Mrs Hume-Kendall. In other words, it assumes that the total purchase price has been divided on the basis of the old ratios. Of course, if it had genuinely been a share sale, then the money would have been paid out in those ratios because those were the ratios in which the shares in Lakeview Country Club Limited were owned as at the moment before the signature of the share sale on 27 July 2015.

But, as my Lord has seen, the monies were not paid out in ratios that reflected the ratios of beneficial ownership of the shares. Those old ratios were applied only for the payment up to and including the first £6 million -- tab 1 of the spreadsheet. That's where we see the old ratios.

For tab 2, the payments in excess of £6 million, they moved across to the new ratios that had been agreed in the Golding-SHK agreement -- 45:45:5:5. So, although those payments were still ostensibly

being made under the Lakeview SPA, they were not being paid in ratios that reflected the beneficial ownership of shares in Lakeview Country Club Limited.

MR JUSTICE MILES: I thought those new ratios only, in fact, as a matter of fact, kicked in when about £10 million had been paid, not after £6 million, notwithstanding what the agreement said?

MR ROBINS: It is after £6 million.

MR JUSTICE MILES: Is it?

MR ROBINS: Yes, it is after £6 million. It is in the spreadsheets. If we go back to --

MR JUSTICE MILES: Sorry, let me just see why I said that and then you can address it.

When were the new ratios --

MR ROBINS: When were they -- what? So, they were agreed in the Golding-SHK agreement, which is -- but when are they implemented?

MR JUSTICE MILES: Yes. Sorry, if we look at where it passes £6 million, the running total.

MR ROBINS: Look at it --

MR JUSTICE MILES: In your --

MR ROBINS: In our opening written submissions --

MR JUSTICE MILES: So, at 9.17.

MR ROBINS: -- at 9.17 --

MR JUSTICE MILES: So, you've got to £6 million by there. Then the next lot of payments seem to be in the old ratios.

MR ROBINS: They do. If we go on to the next page, the first time they're paid in the new ratios is E9.23, which, if we can see it on screen, it's <A2/1/75>, which is when -- it is after the payments have hit £7.6 million.

MR JUSTICE MILES: Right, so I was wrong to say 10, but there seems to have been a bit of a lag.

MR ROBINS: Yes. Now, what we are doing is taking the figures from the contemporaneous spreadsheets. The first payments were made to Mr Golding alone. No-one else was getting anything at the start. The payments paid to him alone seem to have been cut and pasted, removed from tab 1, which was, in the contemporaneous spreadsheets, payments under the Lakeview SPA, and they have been put in -- by the version we started with yesterday, they have been put into tab 3, which treats the first £1 million to him as being repayment of his loan.

So, that seems to be why, when the payments exceed £6 million, you don't immediately revert to the new ratios, because it's decided, well, the first £1 million paid to Mr Golding is actually repayment of his loan. We move that to tab 3 of the spreadsheet, and so the figure at which we move to new ratios is correspondingly higher.

We can see that possibly in the spreadsheet itself, if we go back to the version that has the £14 million-odd in it.

MR JUSTICE MILES: Would this be a good moment for the break and then you can have a look at it?

MR ROBINS: Absolutely.

MR JUSTICE MILES: We will come back in five minutes. I think my recollection was a bit awry on the numbers, but I did notice there had been what appeared to be a timing lag between hitting £6 million and the new ratios coming into place. But it may be there's an explanation.

MR ROBINS: We can compare the spreadsheets and look at the embedded formulas and we will let your Lordship know what we find.

MR JUSTICE MILES: Five minutes.

(11.48 am)

(A short break)

(11.58 am)

MR ROBINS: My Lord, two points from our discussion before the shorthand writer's break. First, the running totals in our written opening submissions come from a spreadsheet, another Mr Barker document, at <MDR00072440>. If we can see it in native form, please, we can see it is headed at the top "LTD Plc Share Payments 24 January 2017". This is a document that reflects payments shown in bank statements which we used as a source for the running total figures. But what your Lordship has identified, and we don't really understand the reason for it, is that some of the payments that were made and recorded in this spreadsheet and which, as I say, are reflected in bank statements, were left out of account in subsequent versions of the spreadsheets. Although the payments were made and had been classified as being share payments, they were excluded from the equation in the subsequent version of the spreadsheet.

So, if we go to <D2D10-00028392>, we can see the spreadsheet that we saw earlier this morning. On tab 1 -- sheet 1, please, we have the share payments up to the £6 million sale price, and sheet 2 is payments over £6 million. If we go back to sheet 1 and look at the final row, row 30, we see the date is 4 November 2016, and there are payments in the "Extra Payments" column. If we look at tab 2, the next one starts on 4 November 2016, but there's only one payment on that date. So, the value was taken as breaking on 4 November 2016. That's where the flip from £6 million to £6 million-plus happens. There are extra payments on this. If we look at row 5, for example, click on D5. We should see in the formula bar the new ratio. So, the switch was taken as happening on 4 November 2016. That's why, when we go back to what we were looking at before in our opening written submissions, at <A2/1/75>, in E9.22, on 4 November 2016, LCF paid a little over £750,000 to LTD, which made payments to Mr Golding, Mrs Hume-Kendall and Mr Barker. The payments to Mr Golding and Mrs Hume-Kendall are neither old ratios nor new ratios; they're a bit of one and a bit of the other. There's a bit of that taken to get you to the £6 million mark which exhausts the old ratios on tab 1, and the rest of that is where you switch into the new ratios on tab 2, which is why, by E9.23, we're exclusively in the new ratios, but the running total figure that we have given at the end of E9.23 comes from the earlier version, the January version, of the spreadsheet, which includes some extra payments made, as we know, from the bank statements with the reference "Share Payment" but which, by the time of the later spreadsheet, have, for some reason, been left out of account.

MR JUSTICE MILES: Just looking at your document, the running total on your document seems to have been hit -- \$6 million seems to have been hit between E9 -- no, sorry, at around E9.15.

MR ROBINS: Yes.

MR JUSTICE MILES: So, that seems to be in September.

MR ROBINS: And that takes the figures from the January 2017 spreadsheet.

MR JUSTICE MILES: Then there is -- this is when what I have called the lag occurs. So that's between September 2016, and then the first one where they actually seem to be paying in the new ratios seems to be, on your document, November 2016, in E9.23.

MR ROBINS: Yes.

MR JUSTICE MILES: Albeit there's that one in, as you have pointed out, E9.22, where it's not in either the old or new ratios.

MR ROBINS: Yes.

MR JUSTICE MILES: So, that seems to be the period one is talking about.

MR ROBINS: It does. We will give my Lord chapter and verse on this tomorrow morning.

MR JUSTICE MILES: Shall we leave it there on that point?

MR ROBINS: Yes. The understanding we have at the moment, subject to checking again, is that they did, in fact, hit the total of £6 million at the earlier date, as shown in the January 2017 spreadsheet, but, for some reason, decided that certain payments which had been made would not be accounted towards the payments under the Lakeview SPA, it would be left out of account, and that means, on your revised figures, you hit the £6 million at a later date. Now, we don't know why the payments which had been made with the reference "Share Payment" were subsequently recharacterised as payments that had not been made under the Lakeview SPA, but we can investigate that further. Certainly the ratio switch, if I can put it that way, happens partway between the payments on 4 November 2016, some of which is treated as being made on the old ratio, some of which is being treated as made on the new ratios, and by 11 November 2016, they are fully into the new ratios. What that means is that Mr Sedgwick's --

MR JUSTICE MILES: Your case, as I understand it, is that there are actually payments with the reference "Share Payment" which tally with the totals in your document, so, based on that --

MR ROBINS: Yes.

MR JUSTICE MILES: -- what you have called Mr Barker's spreadsheet. Is that right?

MR ROBINS: Yes.

MR JUSTICE MILES: That's the first of the ones you just showed me.

MR ROBINS: Yes. For some reason, some payments are left out of account by the time we get to the revised spreadsheet. But all the payments were made, all the footnotes take you to the bank statements and give you the page reference in the bank statements and the narratives are taken from the bank statements. We have also, of course, agreed the figures for the payments in the neutral statement of uncontested facts. I don't think there is any controversy that the payments were made. The point that we are making is that the payments over and above what is, or what is deemed to be, the 6 million point are made in the new ratios set out in the Golding-SHK agreement, not in the ratios in which the Lakeview Country Club shares had been previously owned, which shows that this is, in fact, an agreement about divvying up monies from LCF and not payments for shares under a share sale agreement. But Mr Sedgwick seems to have forgotten about that and he drafts the

variation agreement assuming that the entirety of the £14.26 million has been paid in the ratios of 71.25:23.75:5.

As I say, if it had genuinely been a share sale, then the money would have been paid out in those old ratios. You would have had the ratios of beneficial ownership being reflected in the ratios of payment of purchase price for those shares because that was the ratio of ownership of the shares. But, as we have just been going over, the payment at some point, whether it is actually in excess of £6 million or what was subsequently deemed to be in excess of £6 million by leaving earlier payments out of account were paid out in the new ratios, and that's why there's subsequently a further variation agreement at <MDR00219483>. It is a further variation agreement and, at the bottom of page 3, there's a clause 2 headed "Further Variation". It says at 2.1:

"The parties have agreed that the purchase price as set out in the variation agreement be apportioned between the parties as to £8,911,500 for Michael Andrew Thomson and as to £5,348,500 for Helen Charlotte Hume-Kendall."

MR JUSTICE MILES: I'm so sorry, Mr Robins, I'm slightly behind you. Can you just -- I was just making a note of the last point.

So, this is a further --

MR ROBINS: A further variation agreement. We can see at the top it is dated February 2018. I think the signatures are on the next page. Let's have a look. Or is it the page after? There we are, signatures. Certainly Mr and Mrs Hume-Kendall. For some reason, this version isn't signed by Mr Thomson. That's page 4. But if we go back to page 3, clause 2.1 has further variation:

"The parties have agreed that the purchase price as set out in the variation agreement be apportioned [differently]."

A consideration of £14.26 million is split differently, to match the payments that were actually made, starting off on the old ratios, moving to the new ratios.

We say this shows that the payments that were made were not payment for the shares in Lakeview Country Club Limited because --

MR JUSTICE MILES: So this isn't either the old ratio or the new ratio?

MR ROBINS: This is a combination of both.

MR JUSTICE MILES: It is a combination.

MR ROBINS: Because you have had the old ratios up to a point and the new ratios thereafter. But it shows that the payments weren't payments for the shares because the ratio of the payments didn't reflect the ratio of ownership in the shares. It was switched to the new ratios. This agreement represents the after-the-event papering of the file to explain the payments that have already been made and it seems to us to be entirely inexplicable on any other basis. We now turn to look at the elements for which the additional consideration was supposedly payable. The biggest element in the variation agreement was described as the Magante asset. As to the facts, during the making of the payments in question, Tenedora still hadn't acquired The Beach. Nothing had happened. My Lord saw the definition of the term "Magante asset" in the backdated version of the Lakeview SPA. It was defined to mean the agreement with Sanctuary PCC whereby the company agreed to fund the development -- "the company" being Lakeview Country Club Limited -- of a site at Magante in the Dominican Republic in consideration of a share in the proceeds of sale of that site. That was the

contractual definition of the term in clause 3.4. As I said, Tenedora hasn't acquired The Beach. But, more than that, obviously Lakeview Country Club hasn't funded the development of that site. It hasn't been developed. It is still scrubland with cattle on it. And it hasn't been sold. So, there's nothing that's happened that could give rise to further consideration being paid in respect of the agreement with Sanctuary PCC whereby the company agreed to fund the development of a site at Magante in the Dominican Republic in consideration of a share of the proceeds of sale of that site.

The definition of the term "Telos claim" was, any claim made against the former directors of Telos (IOM) Limited as a result of the collapse of that company. As I submitted to your Lordship, Lakeview Country Club Limited didn't have a direct claim against the directors of Telos, it was the assignee of the Telos investors' claims against Telos itself. What seems to have been envisaged by Mr Sedgwick was, if Telos were to go into liquidation, if the liquidator of Telos were to pursue the former directors of Telos for misfeasance or similar causes of action, then there might be a dividend that would be payable to Lakeview Country Club on those assigned claims.

But, as at 16 August 2017, when the variation agreement was signed, there had been no realisation in respect of any claims by the liquidator of Telos against the former directors of that company. Telos did go into creditors' voluntary liquidation on 23 June 2016 and Mr Ned Ailyan was appointed as the liquidator. On 31 January 2017, Mr Ailyan commenced proceedings against Mr Hunt and Mr Banks, who were the former directors of Telos, for misfeasance, fraudulent trading and wrongful trading, and in May 2018, Mr Ailyan's claim against Mr Hunt and Mr Banks was settled. That's <EB0113651>. My Lord can see it is a Tomlin Order, sealed on 9 May 2018, in proceedings between Ned Ailyan, as liquidator of Telos (IOM) Limited, as the applicant, and Mr Hunt, Mr Banks and a company, Bridgewater, as the respondents. It refers in the usual way in paragraph 1 to a settlement set out in the schedule attached hereto. The settlement is at <EB0113684>. It is a deed of settlement and release between Ned Ailyan, as liquidator of Telos (IOM) Limited, Geoffrey Hunt, John Banks, Bridgewater (IOM) Limited, Telos (IOM) Limited, International Resorts Management Limited and Simon Hume-Kendall. If we look at the next page [page 2], we see that there are the same parties, including Mr Hume-Kendall. Then, on the next page [page 3], we begin to have some recitals that explain, in A, that the first and second respondents were directors of the company, the third respondent is the former resident agent. In B, there is a description of the position in respect of the Telos investors who entered into a deed of assignment with Lakeview and, in C, it says:

"On or around October 2012 the first respondent loaned the sum of £327,500 to Lakeview to provide finance with regard to the prospective purchase by Lakeview of the investments ..."

We saw part of that, £200,000, being used to pay the non-refundable deposit to the vendors ahead of exchange. Then, in D:

"On or around 19 December 2012 Mr Hume-Kendall agreed to personally guarantee Lakeview's obligation to repay £127,500 of the first respondent's loan ..." In E:

"On or around October 2012 the second respondent loaned the sum of £155,000 to Lakeview to provide finance ..."

And in F, another personal guarantee by Mr Hume-Kendall. Then, over the page [page 4], the recitals continue. I think the material recitals for the purpose of identifying the chronology are K and L. In K it records that on 31 January 2017, the claimant -- that's Mr Ailyan -- issued proceedings against the respondents -- that's Hunt, Banks and Bridgewater -- "for conduct relating to their roles and appointment to the company, including but not limited to alleged misfeasance, wrongful trading and fraudulent trading ..."

In L:

"On 7 April 2017, solicitors acting for Lakeview and Mr Hume-Kendall wrote to the respondents and threatened to issue a claim for misfeasance against the respondents in the Isle of Man in relation to the respondents' roles in the company ..."

And then M, the parties have settled their differences.

On the next page, page 5, we can see some definitions. On the page after that, there are some operative clauses.

Clause 3.1 provides for the respondents -- that's Hunt, Banks and Bridgewater -- to pay the claimant - that's Ned Ailyan -- the sum of £565,000. And in 3.2, that's to be paid within 28 days into the account, at 3.3, of Mr Ailyan's solicitors. Then 4: "The claimant [Mr Ailyan] shall deal with the settlement sum in accordance with the law governing his obligations as liquidator of the company, including the payment of legal fees and disbursements and his own fees and expenses."

Then 5.1:

"Lakeview [Lakeview Country Club Limited] shall pay to the investors [the Telos investors] the sum of £760,000 ... within 28 days of the effective date." So far from this settlement in 2018 resulting in any realisation for Lakeview Country Club Limited, it's actually going to have to pay out £760,000. 5.2:

"Lakeview shall pay to the investors any monies received from the claimant within three calendar months of receipt ..."

If Lakeview Country Club Limited receives any distribution on the assigned claims, it doesn't get to keep those monies, it has to pay them to the Telos investors.

Then 5.3:

"Lakeview shall pay the Lakeview monies and the distributed monies ..."

In other words, the amounts we have just seen: "... to the investors pro rata to the total sums due to each investor as set out in the investor's assignment ..."

Lakeview Country Club Limited has to pay £760,000 in clause 5.1 but there is also a turnover clause in 5.2. It's not to get, beneficially, any benefit of the sum in clause 3.1. If it does receive anything after payment of the liquidation expenses, it has to turn that over, any dividends over, to the investors.

So, as I say, this happens in May 2018. It costs Lakeview Country Club Limited £760,000. But, more importantly, for the purposes of clause 3.4, when we come to a settlement in May 2018, Lakeview Country Club Limited sees no return whatsoever from the claim made against the former directors of Telos (IOM) Limited as a result of the collapse of that company, to quote the definition of the term.

But in terms of the chronology, obviously, we have seen the dates when the various payments were made. The variation agreement attributing a value of £1 million to the Telos claim was signed on 16 August 2017. There had been no settlement yet. It was still ten or so months away. So it doesn't seem to us that anything had happened in respect of the Telos claim to justify an increase of the purchase price in the sum of £1 million. This was an artificial construct to attempt to justify the amount of monies that had been paid out. Mr and Mrs Hume-Kendall make a submission about this in their opening written submissions. If we can go to <A2/4/27>, they say in paragraph 89, at the bottom of the page:

"In September 2016, an agreement was reached with the Telos investors' trust which restructured debt and obligations historically burdening Lakeview Country Club Limited, and which effectively retroactively improved its position by transferring approximately £1 million of obligations towards the Telos investors to Waterside as the new owner of Lakeview."

The footnote, footnote 96, does refer to a document. It is <D2D10-00066393>. We can see it is headed "Consolidation Agreement":

"This agreement is made on 30 September 2016 ..." So that ties in, obviously, with what they say in paragraph 89. They say in September 2016 an agreement was reached. It is quite a difficult agreement to understand. The parties are Lakeview Country Club Limited, Waterside Villages Plc, LVI Recovery Limited and London Group Plc. There is a lengthy set of recitals in clause 1. It sets out some history. Whether or not it is factually correct is another matter, but there doesn't seem to be any reference to £1 million as mentioned in Mr and Mrs Hume-Kendall's opening written submissions. The closest I think we get is over the page, in recital 1.7, which says: "Lakeview Country Club Limited made a loan of £6.75 million to Waterside on 27 July 2015 ..." Well, we haven't seen any evidence of that. I'm not sure what that's a reference to:

"To satisfy the obligation to the investors it was agreed that Waterside would repay this loan by making sales and that the first £711,992 of sales would be paid to the Trust to repay the loans made by the investors to Lakeview Country Club Limited plus a further sum to cover the accrued interest."

Well, that does seem to contemplate that Waterside is going to make a payment of around £712,000 to the trust to repay the loans made by the investors. But obviously this is -- it is not £1 million, but it is also in the recitals purporting to describe things that have happened historically. This is something that is said to have been agreed on 27 July 2015, the date of the Lakeview SPA. It is not something that's said to have happened after that date so as to justify any increase in the price payable under the Lakeview SPA. So, it doesn't seem to be anything to do with clause 7.1 of the recitals.

There is another provision that might be what Mr and Mrs Hume-Kendall are seeking to refer to in clause 2.1. It says:

"The loan of £6.75 million from Lakeview Country Club Limited is to be repaid and reduced by the sale of the property transferred by Lakeview Country Club Limited to Waterside. These repayments total just over £5.9 million plus interest. The balance of £799,166 is to be repaid to Lakeview Country Club Limited out of sales of the property transferred after all interest payments due to the investors have been paid in full." Again, it is not the sum of £1 million to which Mr and Mrs Hume-Kendall refer in their opening written submissions, but I suppose a figure of just under £800,000 is getting close. They do say, in paragraph 89, as we saw, that what they are referring to is an agreement of September 2016 and one would therefore expect the subject matter of their reference to be something in the operative clause of that agreement, rather than something in the recitals that purport to describe matters of history. We think they are probably trying to refer to clause 2.1. We are not really sure how the explanation is meant to work as a matter of substance because the agreement doesn't say anything about transferring approximately £1 million of obligations towards the Telos investors to Waterside as the new owner of Lakeview. But if they are referring to clause 2.1 of this agreement, or to the agreement in some more general sense, as I say, they say in September 2016 "an agreement was reached ..." Well, it can't have justified a £1 million valuation of the Telos claim on 18 April 2017 because it didn't exist yet. It was created subsequent to that date.

MR JUSTICE MILES: What do you mean by that?

MR ROBINS: Well, it bears the date September 2016 on the front page.

MR JUSTICE MILES: Oh, right, you're about to tell me. All right.

MR ROBINS: It doesn't come into existence until much later.

MR JUSTICE MILES: Yes.

MR ROBINS: We have seen the chronology that the activation of clause 3.4 is something that is discussed towards the end of May 2017, the variation agreement is ultimately signed on or around 16 --

MR JUSTICE MILES: August.

MR ROBINS: -- August 2017. But it is towards the beginning of that period that we first see the figure of a little over £1 million being put on the Telos claim. It's 22 May 2017 that we saw Mr Sedgwick first emails and attaches a draft variation agreement with the oddly precise figure. Later on, in May, that's revised to a little under £1 million. Then in the final version, on 14 August 2017, it is given a value of £1 million. But as at the beginning of that period -- well, in fact, sorry, we can go back even earlier. Let's have a look at it. <EB0043657>. This is what I was thinking of. This is the date that I mentioned, 18 April 2017. An email from Mr Sedgwick bearing that date, saying: "... I confirm that I will draw up a memorandum between the parties to sale of Lakeview Country Club Limited ..."

And he attributes a value of £1 million to the Telos claim. The agreement that we were just looking at, dated 16 September 2016, didn't exist as at this date, 18 April 2017.

We see the preparation of the agreement --

MR JUSTICE MILES: Sorry, was it the 16th or the 30th of September?

MR ROBINS: The agreement?

MR JUSTICE MILES: Sorry, the one you showed me --

MR ROBINS: Sorry, my notes don't say. We need to go back to it. <D2D10-00066393>.

MR JUSTICE MILES: I think on its face it said it was --

MR ROBINS: I think my Lord is right, but I'm afraid my notes don't tell me the answer to that. 30 September 2016.

MR JUSTICE MILES: Yes.

MR ROBINS: We see it being prepared during the middle of June 2017, <D8-0016161>. We see Paul Sayers sends it to Mr Sedgwick in draft. There's an attachment "LVCCCL consolidation agreement", and the attachment is <D8-0016162>. We can see it is a version of that consolidation agreement. It contains lots of blanks. It is unfinished and unsigned.

At <D8-0016603>, we can see that Mr Sedgwick says to Mr Sayers that he's tidied it up, and he attaches it for comments. The tidied-up version is <D8-0016604>. We can see that Mr Sedgwick has, as he says, tidied it up. Then, on 17 June 2017, at <D8-0016618>, Mr Sayers says towards the top:

"It's fine but I made a couple of ... changes." Then, at <D8-0016656>, Mr Sedgwick says: "I will get the details of the investors names, et cetera, and then get the agreement executed along with the novation agreement."

So, whatever part of that agreement is being relied on -- as I say, we really have no idea how the description in Mr and Mrs Hume-Kendall's opening written submissions is actually meant to tally with the contents of that agreement, but, whatever part of it is being relied on, it cannot have formed the basis of a £1 million valuation of the Telos claim on 18 April 2017, particularly when we recall the definition of that term. It is:

"Any claim made against the directors of Telos (IOM) Limited as a result of the collapse of that company." We don't see what this consolidation agreement could possibly have to do with that. It seems to us there is a certain amount of clutching at straws going on to try to justify a figure that was reverse engineered to reflect the payments that had been made. So we don't really understand how there could have been any basis for increasing the price by reference to the Telos claim as defined.

The next item is the timeshare claim. I told my Lord yesterday that, as far as we can see, the total quantum of the timeshare claim was £445,000. The facts relating to that claim predated the first version of the Lakeview SPA when the timeshare claim had existed as a receivable of Lakeview Country Club Limited and the parties at that time had seen no reason to include anything in the nature of clause 3.4 to cater for any uncertainty. Clause 3.4 emerged out of the subsequent discussion relating to the possibility of increasing the price.

I wasn't able, yesterday, to find the three CAPEX invoices so I will have another go just to make good the point about the total value of the timeshare claim being £445,000.

The first CAPEX invoice, I think we saw this yesterday, was <D2D10-00011413>. That is the £40,000 invoice with the date 18 August 2015, the same date that Mr Sedgwick first drafted clause 3.4 referring to the timeshare claim.

The second is <D2D10-00011415>, which is the £205,000 invoice, again dated 18 August 2015. The third, and I think this is possibly the one that wasn't in the trial bundle yesterday, let's see if it is there today, is <D2D10-00011411>. "2015 to date", again dated 18 August 2015, and this is £132,480. So, there are those. But then there are the additional items mentioned in the email <EB0005565>. At the top, that's the -- "the 43k from January", that's the outstanding balance of the £139,000 which we saw yesterday, I think. Strictly speaking, it is 42 rather than 43 in that figure plus 23,000 additional leisure bill. So it comes to something in the region of 444,000 or 445,000 in total.

Again, it is a dispute with the timeshare club that predated the signature of the original version of the Lakeview SPA on 27 July 2015, a receivable that existed on that date but the parties didn't see any need to cater for the uncertainty. Clause 3.4 emerged, as I said, from the desire to have some mechanism for increasing the purchase price in future. The timeshare claim we have seen is about £445,000. It was settled, on 6 December 2016, on terms which provided for the timeshare club to pay none of the outstanding monies to Lakeview Country Club Limited. The settlement agreement instead provided that Waterside Villages, which by then owned the freehold of the Lakeview site, would pay £762,000 to the timeshare club in return for a surrender of the leases of the timeshare club's 24 lodges. Essentially, Waterside Villages was buying back those leasehold interests for a proper price. If we look at <D2D10-00021399>, we get a bit of background to this. At the bottom of the page, Simon Winter of Charles Fussell is emailing someone called Declan Kenny. It is an email marked "Without prejudice" with the subject "Lakeview Country Club timeshare". He says: "Thank you both for your time at our offices today. My client and I found our meeting useful and productive and I trust you both share that view."

"As discussed, my client will now make an offer to buy the leasehold interests vested in Lakeview Title Limited and held on trust for the members of Lakeview Country Timeshare Club. I have been tasked with drawing up that offer.

"From my perspective, that offer will take the form of an estimate of the value of those leasehold interests less the value of the claims which my client maintains it has against the club ... I trust you understand that any offer will also be made on the basis that it is in full and final settlement ...", et cetera. At the top of the page, Mr Kenny replies to say: "As outlined in our meeting, as long as a fair offer is made to buy out the club with its leases, the matter will be seriously considered by the club. As explained at the meeting, the club has no figure in mind but once an offer has been made we will get our advisers to review same as we need to ensure our fiduciary responsibilities are dealt with. If we are not able to satisfy ourselves we will look to go to the courts for directions."

So, there's a snapshot of the background to that. The settlement agreement is at <EB0033879>. My Lord can see it is dated 6 December 2016. It is an agreement between Lakeview Country Club Limited,

Waterside Villages Plc, which, as I said, was the leasehold owner of the Lakeview site by that point in time, Lakeview Title Limited, which is the lessee for a company called Lakeview Country Timeshare Club. And the recitals set out the background. Clause 4.1, over the page, says:

"LCCL, WVP and LTL have agreed the following terms in full and final settlement ... of (1) the matters in dispute ..."

Clause 4.2 is:

"[Waterside Villages Plc] will accept a surrender of and [Lakeview Title Limited] will surrender (1) the leases [the 24 timeshare leases] ..."

In 4.1(1):

"As consideration for the surrender of the leases, WVP will, as a condition precedent to LTL's obligation to execute the said surrenders, deposit the sum of £762,500 ... into a bank account held by First National Trustee Company Limited which sum FNTC will hold as escrow agent and will only release such sum in accordance with the escrow agreement attached to this agreement as appendix D."

Waterside Villages paid the requisite sum to FNTC. That payment was funded by LCF, as we can see at <EB0033560>. It is an exchange of text messages or WhatsApp messages between Mr Thomson and Mr Barker. Mr Thomson says, on 1 December 2016:

"Hi Elten, funds available for today have increased to £562k, cheers A."

Mr Barker says:

"Good, I'm going to draw £400k towards the £750k ..."

That's the £750,000 for Lakeview Title. Mr Thomson says:

"Okay. I'll let Katie know."

Then he says:

"Hi, I'm in a meeting. Can I call later, I've already instructed Katie to send the £400." Which means £400,000. Then, four days later, at <EB0033672>, Mr Thomson messages Mr Barker to ask: "Do you

need more funds for the timeshare purchase, we will have £220k later today. Cheers Andy." Mr Barker says:

"Yes, please can you send when they arrive." Mr Thomson says, "Okay, will do" and Mr Barker says "Thank you".

So LCF paid those sums to Leisure & Tourism Development. They are drawdowns on Leisure & Tourism Developments' loan with LCF. We can see that at <MDR00071309>, which I think we are going to need to open in native format, if possible. It is going to be the front sheet, I imagine. If we look -- my notes say it is 120 and 121 and 122. Let's see if I'm right. At 120, the cash sum in green is just over £400,000. 121 is just over £221,000, and then there is another sum below that of just over £100,000. Leisure & Tourism Developments paid the money to London Group Plc, which then paid the money to FNTC, the escrow agent, as set out in the agreement. Let's have a look at <D8-0007337>. We can see, at the top, Nicola tells Mr Sedgwick:

"The transfer has been made from the London Group Plc account for £762,000 to FNTC Limited." So, the idea behind the increase in the price in respect of the claim against the timeshare club seems to have been that, although the settlement didn't result in any payment to Lakeview Country Club Limited in respect of the timeshare claim, Leisure & Tourism Developments had borrowed further monies from LCF which had been paid to London Group Plc to enable Waterside Villages to pay £762,000 in return for a surrender of the leases of the 24 timeshare lodges, and that that should somehow result in London Trading becoming liable to pay another £3 million to Mr Thomson and Mrs Hume-Kendall for the shares which they had previously sold to it outright for loan notes in the sum of a little over £2.1 million on 27 July 2015. We say it is plainly just more window dressing to justify the substantial payments that have already been made as set out in the spreadsheets that we have looked at.

The definition of the term "timeshare claims", as we have seen, referred to the claim against Lakeview Title Limited under the leases. There was no monetary realisation for Lakeview Country Club Limited under this settlement agreement. Waterside Villages, as I said, borrowed the money to enable it to acquire the freehold interests of the 24 timeshare lodges, all funded by LCF, which was loaning the money to Leisure & Tourism Developments without the benefit of adequate security. But, in any event, in the last reckoning, we have seen the total quantum of the timeshare claim as defined was £445,000. It is impossible to see anything that happened that could justify attributing a value of more than £3 million to timeshare claim as defined. So, my Lord, as I say, we have seen nothing in any of the documents to provide a reasonable, logical or commercial justification for the increase in the price that is ultimately agreed -- £4.25 million for the Magante asset, £1 million for the Telos claim and £3.01 million for the timeshare claim. It seems to us to have been an exercise in reverse engineering. They started with the spreadsheet provided by Nicky to Elten, identifying how much had been paid, and then sought to come up with some numbers to explain the receipt of those monies. The numbers began as the very oddly specific sums that we saw earlier. They were revised a number of times before settling on some more plausible round numbers, and the variation agreement, as we saw earlier, was signed in August 2017. So, that, my Lord, brings us to the end of the submissions in respect of the Lakeview SPA in opening. The next topic is the Elysian SPA. Before the short adjournment, I think it might be useful to start by looking at the corporate structure at the beginning of the --

MR JUSTICE MILES: Sorry, can you just explain to me what had happened with Waterside? I'm not sure I've picked that up fully. Why was it -- I think you told me that it had acquired --

MR ROBINS: The freehold interest in the Lakeview site.

MR JUSTICE MILES: When did that happen?

MR ROBINS: In the second half of 2015. It was something that was agreed as part of the restructuring, as it was described, that included the Lakeview SPA, which, as we know, was executed on 27 July 2015. But I'm hesitating because I recall seeing something to suggest that the transfer to Waterside Villages Plc wasn't implemented immediately and only took place later on during that year.

But it acquired the freehold interest in the Lakeview site which, as we know, was subject to various leases of lodges, but it acquired the freehold interest from Lakeview Country Club Limited and became the freehold owner, save in respect of a portion of land known as the development land, which was retained by Lakeview Country Club Limited and charged in favour of Lakeview UK Investments Limited as security for the loan that Lakeview Investments Limited had made to Lakeview Country Club Limited.

Lakeview UK Investments Limited, or LUKI, had, of course, raised that money by issuing bonds. The amount of the loan from LUKI to LCCL was in the region of £5.1 million, 5.3 maybe. We can check the number, it is set out in our opening written submissions. Mr Spacey valued the development land in the sum of £1 million. So, LUKI was undersecured. But that was the position. Ultimately -- we cover it in our opening written submissions -- Lakeview Country Club Limited, which ceased to be the freehold owner of the Lakeview site, save for the development land, was ultimately sold to a company associated with Prime for £1. Its name was changed to IRM, International Resorts Management. It owned the development land. It had the liability to LUKI. It was sold for £1. But, at the same time, the consideration payable under the Prime SPA was reduced to reflect the fact that LCCL, or IRM, as it had by then become, was effectively insolvent; it came with net liabilities.

But, yes, to answer your Lordship's initial question, Waterside Villages Plc became the owner of the freehold site. That's in very broad terms.

MR JUSTICE MILES: Did that mean that the timeshare lessees became the lessees of Waterside Villages?

MR ROBINS: Yes, and that's why Waterside Villages was the party that paid the money for the surrender of the leases and accepted the surrender. Lakeview Country Club Limited was not a party to that surrender because it had nothing to do with the leases anymore.

MR JUSTICE MILES: That's what I was wondering. But when one then looks at the various claims for service charges and things which gave rise to the various claims against the timeshare club, who were they vested in? Because you would think that those would be under the leases, and if the leases were effectively transferred --

MR ROBINS: Prospectively, from the moment of the transfer, the tenant's obligations going forward would be owed to the new landlord and any new obligations to contribute pro rata to CAPEX or whatever would be payable to the new landlord. But the historic receivable vested in the former landlord wouldn't move across.

MR JUSTICE MILES: So the amounts that you have talked about were all pre transfer of the land to Waterside?

MR ROBINS: Yes, that's when --

MR JUSTICE MILES: What you have called the 445, that's all pre-existing?

MR ROBINS: Give or take. That covers the period of 2013, 2014 and, I can't remember the exact date in August 2015, but it was an August 2015 cut-off date. It's around that time that Lakeview Country Club Limited ceases to be the freehold owner. It is not going to be entitled to any more than that from the timeshare club because it ceased to be the freehold owner. It is not entitled to any further sums under the leases. Those are moved across to Waterside Villages Plc, which is why I say we know it can't be more than the £445,000-odd because that's the cut-off date.

MR JUSTICE MILES: In the settlement agreement, there seemed to be talk about something called the disputed matters.

MR ROBINS: Matters in dispute, yes.

MR JUSTICE MILES: Were they between Waterside and the club or did that cover the historical --

MR ROBINS: It covered everything. Let's go back to it and check that.

MR JUSTICE MILES: That then seemed to be part of the consideration, effectively. Well, it was settled at least as part of the consideration.

MR ROBINS: It was settled. <EB0033879>. Let's look at the recitals on the second page to see if there is a notation of matters in dispute. 3.6 in the recitals: "LTL disputes that it has any liability whether to Lakeview Country Club Limited and/or Waterside Villages Plc for all or any part of the leases' service charges claims and the Vernon claims and, furthermore, in the event that it were held to be liable to either, also disputes the calculation and quantum thereof ..." So, it does include the sums payable, if any, to Lakeview Country Club Limited. 4.1 is:

"... the following terms are in full and final settlement ... of the matters in dispute ..." The terms are essentially that the new landlord pays £762,500 for a surrender of the leases. Lakeview Country Club Limited isn't party to that surrender because it is no longer party to the leases. But there is no consideration payable to Lakeview Country Club Limited under this agreement.

MR JUSTICE MILES: But it gets the benefit of the settlement of the claims, if I recollect, in clause 4.1.

MR ROBINS: In 4.1. Well, it's the claimant in respect of the matters in dispute. There's a mutual release in 4.1, but I have not seen any reference to any claims that Lakeview Title Limited might have been able to bring against Lakeview Country Club Limited. I'm assuming that's just boilerplate. He's put in a mutual release clause as part of the settlement agreement. There is no reference, so far as I can recall, in the recitals to Lakeview Title Limited having any claim against LCCL.

As we understand it, LCCL gets nothing from this deal. It gives up the claims it's got, and that's that.

MR JUSTICE MILES: You say there is no evidence of cross-claims, as it were?

MR ROBINS: We haven't seen any. The figure attributed to the timeshare claim, as we have seen, is a sum in excess of £3 million. There is nothing that we have seen in any of the disclosure to justify an increase of the price in that amount, or indeed in any amount, in respect of the timeshare claims.

MR JUSTICE MILES: We will come back, then, at 2.00 o'clock. (1.02 pm)

(The short adjournment)

(2.00 pm)

MR ROBINS: My Lord, the next topic is the Elysian SPA. Before getting stuck into that, we need to look briefly at what happened to the corporate structure by this point in time. We can pick that up first, I think, from schedule 1 to the neutral statement of uncontested facts at <A1/5/66>, which is the page relating to Leisure & Tourism Developments Limited, the company that borrowed from LCF.

My Lord can see, towards the bottom of the page, that the sole shareholder in Leisure & Tourism Developments Limited by 5 October 2015 was a company called London Group Plc. That's the company that we see at <A1/5/41>.

MR JUSTICE MILES: Sorry, let me look at this. You said that's --

MR ROBINS: 5 October --

MR JUSTICE MILES: Did it then stay --

MR ROBINS: Yes, can we look at the next page, please? It stays as that until some point in 2018, by the look of things. That company, London Group Plc, is the company we see at page 41, which ultimately became known as Global Resort Property application Plc. But my Lord can see from the description, change of names, this was the original London Oil & Gas, the Eric Bosshard consulting company owned by various members of his family, which changed its name to The London Group Limited, then London Group Limited, then, from 4 February 2016, London Group Plc. We can see also here that, on 8 February 2017, it changed its name to Global Resort Property Plc.

Its shareholders are set out over the next few pages of this document. There is a few page of references to Eric Bosshard and members of his family, but at <A1/5/44>, we can see that by 30 September 2015 the shareholder is International Resorts Partnership LLP. Then, as we saw previously, the shares were transferred into the names of the three individuals, with Mr Barker holding Mr Golding's share for him, and those shares were held in the new ratios of 45:45:5:5. So Mr Thomson, for example, had 5 per cent. By 7 March, towards the bottom of that page, the shareholder in this company, which, as I say, changed its name to Global Resorts Properties, is London Group LLP.

MR JUSTICE MILES: Sorry, I'm just trying to follow this. So from 1 October 2015 --

MR ROBINS: For just a day, it looks like, according to the annual returns.

MR JUSTICE MILES: Yes, but then the same people --

MR ROBINS: The same people, yes.

MR JUSTICE MILES: -- held it right the way down to March 2017; is that right?

MR ROBINS: That's right. So the shareholder of what becomes GRP is London Group LLP, which is owned by the same individuals, Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding, but they own it through an LLP. The registered members of the LLP are Mr Hume-Kendall and Mr Barker. We can see the --

MR JUSTICE MILES: Sorry, for what period is that?

MR ROBINS: That's from 7 March 2017 onwards.

MR JUSTICE MILES: Sorry, I'm just looking at the earlier period. So from 1 October 2015.

MR ROBINS: To 7 March 2017.

MR JUSTICE MILES: What are those ratios?

MR ROBINS: 45:45:5:5.

MR JUSTICE MILES: Then, 7 March -- okay, you were going to tell me that's a partnership?

MR ROBINS: Yes, an LLP. The designated members are Mr Hume-Kendall and Mr Barker. We can see the corporate structure in a helpful pictorial form at <MDR00081717>. We need to open it in native format.

My Lord can see at the top of the page this is as at 28 March 2017. LG LLP, the limited liability partnership, is the Topco. That owns GRP Plc, the original Eric Bosshard London Oil & Gas company that changed its name to London Group Plc before becoming Global Resort Properties Plc. That's the direct subsidiary.

GRP itself has three subsidiaries. On the left, in cell A8, is London Trading Development Group, London Trading, which, as we can see, owns the shares in Lakeview Country Club Limited. By this point, it's got the development land and the liability to LUKI, but that's about it.

GRP also owns LTD, Leisure & Tourism Development Plc, in cell E8. That's the company that borrowed all that money from LCF.

MR JUSTICE MILES: That's the one that's been called L&TD.

MR ROBINS: L&TD or LTD, yes. It's got three subsidiaries. In C12, that's CV Resorts, which has the signed but uncompleted contract to acquire the Paradise Beach development in Cape Verde for 57 million euros. Savills said it's worth 40 million euros, in terms of market value. There is another company in the middle of E12, CV Hotels, that we don't need to worry about at this point.

Then, on the right-hand side, the third subsidiary of LTD Plc is Waterside Villages Plc. That's G12. That's the company which now owns the freehold to the Lakeview site, subject to various leases to third parties of various lodges.

The third subsidiary of GRP Plc in J12 is IRG Plc, International Resort Group Plc, which is the registered holder of the shares in Inversiones but, of course, as we have seen, it holds them on trust for El Cupey, and Inversiones owns the plot of land known as The Hill that it acquired for £708,000.

IRG Plc also owns the shares in Tenedora, which has the contractual right to acquire The Beach, as we call it, in the Dominican Republic for \$3.5 million, although that contract is by now getting rather stale. It is five years old and Tenedora hasn't actually acquired any of the parcels yet. But that's the group structure as at 28 March --

MR JUSTICE MILES: What's happened then --

MR ROBINS: -- 2015.

MR JUSTICE MILES: -- to Sanctuary?

MR ROBINS: We saw the agreement by which it sold the shares in Inversiones and Tenedora to IRG Plc.

MR JUSTICE MILES: When was that?

MR ROBINS: That was dated 31 August 2015. I will say the reference but I don't think we need to go to it now, I will say it for the transcript, <MDR00005334>. Your Lordship saw last week that IRG executed a declaration of trust in favour of El Cupey to replace the declaration of trust that had previously been executed on behalf of Sanctuary. Again for the transcript, rather than actually having

to go to it, that was <MDR00116028>. Sanctuary was out of the picture. IRG Plc is the new trustee for the beneficiaries who are ultimately the Sanctuary investors.

So, that's the position --

MR JUSTICE MILES: Whose document is this?

MR ROBINS: Mr Peacock. Michael Peacock, the accountant.

MR JUSTICE MILES: He is an accountant for London Group Plc, or whatever?

MR ROBINS: Yes, and associated companies. We saw at the very start he's sending invoices for 20 per cent deposit to Sanctuary, but he pops up as an accountant, helps people prepare their tax returns and company accounts and that sort of thing.

So, while we are looking at this overview, we can see that the intermediate holding company, if I can put it that way, is GRP Plc. As we will see in a moment, the various companies under that are reorganised in a way that I will describe to your Lordship in a moment, but it's GRP which is ultimately sold to Elysian in the transaction that we know as the Elysian SPA, and we will look at that in a moment. But, before we do so, we need to look at the position in respect of what we call the Elysian stage 1, which is the reallocation of L&TD Plc's liability to LCF.

My Lord saw it ends up owing a very substantial amount to LCF. More than 50 per cent of that money is used to make payments to Mr Thomson, Mr Barker, Mr Golding and Mrs Hume-Kendall.

Ultimately, it is significantly in excess of not only the facility limit but also the extended limit of £30 million. There is some discussion about what to do with that large liability in February 2017 at <MDR00074971>.

On 14 February 2017, Mr Lee of Buss Murton emails Mr Thomson with the subject "Facilities reissue" and he says:

"Hi Andy.

"I am just coming back to confirm the position on the various facilities and with a couple of questions. "So there will be new facility agreements and security issued as follows:

"Waterside Villages -- £15 million (including £5 million already drawn and credited against the LTD facility).

"Magante (is this a UK company?) -- £17 million including £5.5 million already drawn as above. "CV Resorts (Cap Verde) -- £21 million (£7 million already drawn).

"El Cupey -- £25 million with £6.5 million already drawn.

"A further £6 million (being the balance of the LTD facility already drawn) made to the London Group. "Can you confirm this?

"All facilities to be cross-guaranteed and have debentures and charges in place against the properties." Mr Thomson replies at <MDR00074988>, when he says: "Yes, that looks correct to me, Robert will be able to confirm exact figures."

And Mr Sedgwick replies at <MDR00075733>, where he says it looks about right but he's checking. Well, it doesn't look about right, there is an obvious problem. LCF tells investors that it maintains a 75 per cent loan-to-value ratio. A £15 million facility for Waterside Villages implies a value of £20

million for the Lakeview site; a £17 million facility for Magante, ie, Tenedora, implies that Tenedora has assets of £23 million, but it doesn't have any at all. £21 million as a facility limit for CV Resorts implies that that company has assets of £28 million, but it hasn't bought Paradise Beach yet -- it would cost it 57 million euros to do so -- but CV Resorts would thereby incur an instant loss because Savills have said that the market value is 40 million euros. And £25 million as a facility limit for El Cupey implies The Hill is worth £33 million: (a) it is not -- as we have seen, it was acquired for £708,000 just a few years earlier; and, in any event, secondly, it is held on trust for the Sanctuary investors.

But that's what's being proposed as at

20 February 2017. There is some further discussion about that at the beginning of the following month at <MDR00077690>. Mr Sedgwick says to Mr Lee, copying Mr Thomson and Mr Hume-Kendall and Mr Barker: "When I last spoke to Simon he was going to agree with Andy how the lows [I think it should be 'loans'] were to be apportioned between the various companies. Simon is out of the office today so I am not sure what has been agreed. As soon as I know that I will be able to let you have a schedule of the assets to be charged." Mr Sedgwick also emails Mr Hume-Kendall and Mr Barker at <D2D10-00025460> where he asks, "Have you ..."

The first paragraph, second sentence:

"Have you agreed with Andy how the facility will be divided?"

Then he makes a comment about the security position. On the same day, there is an email from Mr Thomson to Mr Hume-Kendall and Mr Barker. We saw mention of it earlier in our opening written submissions. It is <MDR00077754>.

Mr Thomson says to Mr Hume-Kendall and Mr Barker: "Hi guys.

"Alex have been chasing Robert for some detail re the LTD loan restructure but has not received anything (the below email I believe is a chaser) so is unable to progress, can either of you please give Robert a nudge. "Also as LTD has continued to borrow past the £30 million facility can you let Alex and I have a breakdown of the proposed splits so the documentation is correct. I would really like to get the restructuring completed this week (subject to lawyers getting thing done) as LTD is way past its original limits and has exceeded its temporary increased limit so we will be asked some uncomfortable questions when we come to be audited which will only get more in-depth the greater the overdrawn figure becomes."

So he's asking about the proposed splits and commenting that LTD is way past the original limit, which is going to be uncomfortable for audit purposes. There are then two relevant developments. First, it is decided that there will be a restructuring of the group to simplify it, so that GRP, the intermediate holding company, the original Eric Bosshard London Oil & Gas, will have four subsidiaries and they will be CV Resorts, which entered into the contract in respect of Paradise Beach; Waterside Villages, which owns most of the freehold of the Lakeview site; a company called Colina Property Holdings, which will own title to the shares in Inversiones but will itself execute a deed of trust in favour of El Cupey, and we saw that deed of trust last week; and, fourthly, Costa Property, which will own the shares in Tenedora, which entered into a now rather stale contract to acquire the various parcels of land known as The Beach. That's the first development, four subsidiaries of GRP.

Secondly, it is decided that GRP will be sold to a new company, so that intermediate holding company with those four subsidiaries will be sold. Initially, it is intended the purchaser will be a

company called Global Resort Developments but, as we will see, that is used for some other purpose, so Mark Ingham incorporates a company called Elysian Resorts Group Limited, which will serve as the purchaser. Those two developments have an effect on the idea about reallocating the Leisure & Tourism Developments facility to various other entities.

As we will see, the idea that develops is that the debt owed by Leisure & Tourism Developments to LCF will be reallocated as follows. First, £24 million of that debt will be imposed on four new subsidiaries of London Group LLP, London Group LLP of course being the Topco we saw in that structure chart. It will have four new subsidiaries, newly incorporated companies that won't have any assets, but they will assume £24 million of the liability of Leisure & Tourism Developments to LCF, and £16 million of the debt owed by Leisure & Tourism Developments to LCF will be imposed on a company called Atlantic Petroleum Support.

Those four new subsidiaries of London Group LLP, along with Atlantic Petroleum Support, come to be known as the "Support companies". They all have the word "Support" in their names. The reason for reallocating the liability of Leisure & Tourism Developments to LCF in that way is essentially so it can be left behind, so that GRP and its subsidiaries can be transferred to Elysian debt free. They will have no responsibility for those liabilities to LCF, and GRP's subsidiaries, which, as I said, will be CV Resorts, Waterside Villages, Colina Property and Costa Property, will then be in a position to borrow further monies from LCF with a clean slate. That's explained in fairly big-picture terms by Mark Ingham in a document at <MDR00090417>. He says in this email, on 13 June 2017, to recipients including Mr Hume-Kendall, Mr Sedgwick and Mr Thomson -- it is an email to Mr Reid of Lewis Silkin to whom Mr Ingham seems to be explaining this point: "Graham.

"FYI -- the deal has been structured on the basis that there is no legacy debt within the new group (Elysian Limited) -- this will be restructured away at the sellers discretion. New debt, ie borrowings from LCF, money raise from bond, will be securitised against existing assets."

So, the old debt gets reallocated to these various Support companies, which will stay on the vendor side. The purchaser side, Mark Ingham, Elysian, will get GRP and its subsidiaries with no liability to LCF. Mr Lee explains that in an email at <MDR00084180>, where, on 24 April 2017, he emails Mr Sedgwick to set out his understanding. He attaches a draft facility agreement and he says:

"Dear Robert.

"Further to our conversation today, please find attached the facility agreement as discussed ... "In relation to GRP (and the subsidiaries namely Colina, Costa, Waterside Villages and CV Resorts) I gather that there is an agreement whereby London Group LLP (and its yet-to-be-incorporated subsidiaries) will be taking over the debt by way of contract between GRP and LG LLP. With that being the case, £24 million (of the £40.4 million LTD indebtedness) will be spread among those new subsidiaries and LG LLP itself although at this point I am not certain to what amounts are attributable to each entity. The documentation will comprise the new facility agreements, debentures in first position and cross guarantees including parent company guarantee. LCAF will need to see the contract between GRP and LG LLP to verify that position ..."

I should mention Mr Lee is acting for LCF at this point:

"... so if you could let me have the draft form of this, I would be grateful.

"The remaining £16.4 million will be taken up by Atlantic Petroleum (I am certain I have not given you the correct name here so your assistance will be helpful!). I understand that this company is a subsidiary of London Power Corporation Plc. So a guarantee will be needed from that company as

well as the security over the principal borrower. Could you come back to me on this element to confirm the correct entity.

"Finally, in relation to GRP itself, I gather there will be new facilities to be granted (both to GRP but also to the GRP subsidiaries (Colina/Costa/WS/CV) in sums not yet nailed down precisely but otherwise it is anticipated that these will be on the basis of the attached facility in the general sense ... Cross guarantees would also be required. In looking at the Companies House position I note that there are a number of charges against either GRP or one or another of the facilities. Can you please confirm that with the issue of new facilities that the existing charges will be released or subordinated?"

In the final paragraph, he mentions various deadlines. As I say, the idea is that the liability of L&TD will be put onto these Support companies, GRP will be sold and the four subsidiaries of GRP will enter into new facilities with LCF to enable fresh borrowing to occur.

Mr Sedgwick forwards this email to Mr Hume-Kendall and Mr Barker at <EB0044316>. So they are in the loop. They know about, among other things, the new facilities to the GRP subsidiaries, including CV Resorts. Then at <MDR00084233>, the very next day, Mr Lee provides Mr Sedgwick, copied to Mr Thomson, with an attachment entitled "LCAF CV Resorts Resolution Approving Facility, et cetera" and a second attachment called "LCAF CV Resorts Debenture v1.doc". He says: "Further to my email yesterday, I am attaching a draft debenture for your perusal based on the LTD one supporting the facility. There is a question of the properties as well that we will need to consider in relation to the security requirements when the facility is agreed in principle, but this is the start of that process.

"I have also attached a draft resolution ..." The attachments are <MDR00084238>. This is a draft resolution by CV Resorts Limited, one of the subsidiaries of GRP, in respect of a new loan facility agreement that it will enter into with LCF after the sale of GRP to Elysian to enable further drawings.

<MDR00084234> is the second attachment, the draft debenture that will be granted by CV Resorts Limited in respect of that facility.

Mr Sedgwick replies at <MDR00084281>. At the bottom half of the page, he says:

"Dear Alex.

"Thank you for these drafts which in principle seem fine. I will check them in detail. I note that there are a number of square brackets ... CV Resorts at the moment does not have any property in its name only the contracts to acquire the land in the Cape Verde. "I am waiting for instructions from the directors with regard to the facility agreement and I do not expect to receive those instructions until Monday as Simon is abroad."

We can see at the top of the page that Mr Sedgwick has forwarded that email to Mr Thomson and Mr Hume-Kendall and Mr Thomson replies to Mr Hume-Kendall alone, not copying Mr Sedgwick at this point:

"Hi Simon.

"I hope enjoying Mallorca and apologies for disturbing.

"We've had Alex run aground to get the docs as ready as can be but we can't go any further without input from Robert. Are you able to chase him up/give him an instruction to proceed?"

"Many thanks.

Andy."

Then at <MDR00084318>, Alex Lee asks Mr Sedgwick for a copy of the contract for the purchase of the Cape Verde property so that he can incorporate it into the debenture.

Then just a few days later, at <EB0044835>, Mr Sedgwick emails Mr Hume-Kendall and Mr Barker with the subject "New subsidiaries of London Group LLP" and he says:

"I would suggest that I form the following subsidiaries of the LLP:

"Colina Support Limited.

"Costa Support Limited.

"Cape Verde Support Limited.

"Waterside Support Limited.

"And as a subsidiary of London Power Corporation "Atlantic Petroleum Support.

"I assume that it is in order to keep the registered office at Wellington Gate and for you two to be the sole directors."

So those are to be the subsidiaries that stay behind on the vendor side and assume all the liabilities of Leisure & Tourism Developments, so that GRP and its subsidiaries can be transferred, as Mr Ingham has put it, without any legacy debt.

The next day, at <MDR00084663>, Mr Lee is moving this forward, he emails Mr Sedgwick, copied to Mr Thomson and Mr Hume-Kendall and he says: "Dear Robert.

"Thank you for your email. A few things: "1. In relation to the London Group LLP facilities to subsidiaries can you please provide me with details of the subsidiaries once incorporated and also the amounts each subsidiary is borrowing. Each subsidiary will have a debenture and there will be cross guarantees ...

"2. LCAF requires to understand the contractual arrangements between the shareholders of GRP and Global Property in order to understand how the discharge of the LTD loan and security would work. I look forward to receiving the relevant documentation. Our instructions are that the GRP Plc 'group' is to then be debt free to allow for further facilities from LCAF to be advanced. Can you confirm that this is the case and the proposed status of the existing securities that I mentioned previously?

"3. In relation to the facility to the subsidiary of London Power Group, we will need to see the documentation relating to the advances made already (and there convertibility)."

We will see what he is talking about in due course. He says:

"These arrangements will be subject to the security as well (... LCAF is not intending to provide a limit on the security at all. The security is an all monies position and at this stage it is only the facility that is limited."

He is talking about Atlantic Petroleum Support. We will see some documents which shed a bit more light on that in due course.

But it is clear from this email, as I said, there are going to be the four subsidiaries of London Group LLP, which will be assuming part of the indebtedness of L&TD. That's paragraph 1. In paragraph 2, Mr Lee says:

"Our instructions are that the GRP group is to then be debt free to allow for further facilities from LCAF to be advanced."

We don't need to see it on screen, but Mr Sedgwick says he will revert in due course. I will say it for the transcript, it is <MDR00084668>, but we don't need to go to that.

The next document to look at is <MDR00084775>, where we can see, at the bottom of page 1, Mr Thomson emails Mr Lee on 26 April 2017 and his message is over on page 2. He says:

"I thought LG LLP was to have four subsidiaries to mirror the subsidiaries of GRP, can you please check with Robert."

On the left-hand side at the top, we can see Mr Lee's response. He says:

"Andy, that is what is happening as far as I can tell. I will be checking the incorporations online of course, but just that so far these are going to be empty of assets. I was just wondering what if anything is proposed to be going in there (if you knew) and therefore what due diligence we should be looking at. "I will check back with Robert regarding the Atlantic Petroleum position -- that is the LOG assets being transferred, et cetera."

So, as I have said, the new Support subsidiaries of London Group LLP are going to be empty of assets. At <MDR00084789>, this is one of the documents that begins to shed a bit of light on Mr Lee's previous comments about the advancing and convertibility, et cetera. He emails Mr Sedgwick on 26 April 2017, copied to Mr Thomson, with the subject

"Atlantic Petroleum Support Limited". He says: "Dear Robert.

"Can you confirm that this company will be taking over the contractual position currently occupied by LOG in relation to Atlantic Petroleum? Can you let me have that documentation as well as the documents for the relationship between LOG and AP? Do you have any Faroe Island equivalent company house searches in relation to this company at all?"

So, we can begin to discern from this that Mr Lee has been told that Atlantic Petroleum Support will be the assignee of LOG's rights in relation to Atlantic Petroleum. LOG had lent some money to Atlantic Petroleum, we will see how much in due course. The loan had been made on convertible terms. It could be converted into shares. It was being said that LOG's rights in relation to Atlantic Petroleum would be assigned to Atlantic Petroleum Support so that Atlantic Petroleum Support had an asset that it could charge in favour of LCF as security for the £16.4 million of existing borrowing that was going to be imposed on it in place of L&TD, the original debtor in respect of that sum.

There is a further email about this at

<MDR00084850>. Mr Lee emails Mr Sedgwick, copied to Mr Thomson and Mr Hume-Kendall, on 26 April 2017, and he gives the subject "Atlantic Petroleum Support" and he says:

"Dear Robert.

"I have just been doing a small amount (and I mean just what I can find at the Copenhagen Nasdaq) of due diligence. There is something that needs clarifying for the security position. As I understand it, there will be the allocation of a facility of £16.4 million to Atlantic Petroleum Support Limited in respect of which the security taken is going to comprise the contractual rights (hence the need to see those documents) currently held by LOG (so need to see the transfer documentation as well). However, if that is all the security on offer, it is going to be insufficient. Looking at the company

Atlantic P/F, it seems that as at yesterday that company has a market capitalisation of DKK38.83 million (£4.4 million) with a negative EBIT in 2016. Clearly the interest in this is going to be insufficient as security for a facility of £6.4 million [but we can see from line 3 he means £16.4 million]. Could you please set out what other security is being proposed in relation to this element of the facility allocation please?"

Mr Lee sends a further email on this topic. It is clearly something that is bothering him. That's at <MDR00084888>. He says in an email sent to Mr Sedgwick and Mr Thomson and Mr Hume-Kendall:

"Both.

"I have not yet read these in great detail as yet. That pleasure will be dealt with today and this evening no doubt. However, in the context of the security offered up in support of the facility of £16.4 million (along with the market cap of Atlantic Petroleum P/F) we are still some way off the security requirements of LCAF (75 per cent loan to value) which would require net assets of £21.9 million.

"The other thing that I have noticed in at least some of the documents -- not least the deed of priority -- seems to prohibit the assignment of pretty much everything including the debt itself without consent of the other parties (which will include Atlantic P/F and EIK Bank P/F who have already lent to the borrower)."

By "the borrower" he means Atlantic Petroleum P/F, the Danish company:

"In addition to this, it is the case that the main asset (namely the debt and supporting security in Atlantic Petroleum P/F) is subordinated to EIK Bank one way or another. Clearly this further subordinates any LCAF security that might be obtained.

"Could you have a look at this and get back to me. I will continue to review the documents in the meantime."

So he's spotted some flaws with the consent. There are some rather bigger flaws that we will see in due course. But, in the meantime, at <MDR00085038>, on the next day, 27 April 2017, Mr Sedgwick sets out the allocations. We can see, about a fifth of the way down the page, he says:

"I understand that the allocation of the £24 million between the subsidiaries is:

"Waterside Villages £5 million.

"CV Resorts Limited £7 million.

"Colina £5.5 million.

"Costa £6.5 million.

"Total £24 million."

As we have seen from the previous emails and as we see, in fact, from subsequent documents, he is not referring here to the subsidiaries of GRP, he is referring to the Support company subsidiaries of London Group LLP, which he has recently incorporated. Waterside Support, Cape Verde Support,

Colina Support and Costa Support, Mr Hume-Kendall says "Agreed", at the top of the page. As I say, we know that he's talking about the Support company subsidiaries of London Group LLP rather than the equivalently named subsidiaries of GRP because we see, two days later, the various facilities that the Support companies enter into in these amounts. The first is at <MDR00005203>. This is a facility

agreement between Cape Verde Support Limited, the newly incorporated subsidiary of London Group LLP, and LCF. On page 3, we can see the term "Commitment", with a capital C, is defined to mean the gross sum of £7 million.

On pages 20 to 21, I hope we will see that this is a signed version. It is signed there by Mr Hume-Kendall and Mr Sedgwick and Mr Thomson. As I say, that's Cape Verde Support Limited.

At <MDR00005226>, there is a facility agreement between Colina Support Limited and LCF. On page 3, we can see that the commitment is £5.5 million, and on pages 20 to 21, we see it is signed by the same parties. Then at <MDR00005226> -- that's going to be a wrong reference. There is another one. I will have to come back to my Lord with the correct reference. There is another one for Costa Support. But then <MDR00005265> is the Waterside Support facility agreement. On page 3, the commitment is £5 million, and we can see the signatures on pages 20 and 21, as before. Those are the four subsidiaries of London Group LLP.

Then there is Atlantic Petroleum Support Limited, the subsidiary of London Power Corporation. That's at <MDR00006056>. We can see that the commitment on page 3 is £25 million, and the signatures are on pages 20 to 21. I don't think we need to go back to it but I will say it for the transcript: the missing facility, where I couldn't find the reference, for Costa Support is <MDR00005244>. But it is in the same form. As I say, it had a commitment of £7 million.

But the one we are looking at, my Lord, is the Atlantic Petroleum Support Limited facility agreement with a commitment of £25 million and that's accompanied by a debenture at <MDR00006057>. I should say that there are debentures for the others as well, but this is the only one that I need to make submissions on. My Lord can see it is between Atlantic Petroleum Support and LCF. It bears the same date as the facility agreement, 29 April 2017.

On page 27, we can see a reference to various assets in schedule 3: a loan agreement in the sum of £8 million between LOG and various companies, including P/F Atlantic Petroleum (Faroe Islands). In paragraphs 2, 3 and 4, associated debentures.

As we saw from the email traffic, what Mr Lee had been told was that LOG's rights against P/F Atlantic Petroleum and associated companies in respect of this convertible loan and the associated security would be assigned to Atlantic Petroleum Support Limited so that they could then be charged in favour of LCF pursuant to this debenture as security for the liability of £16.4 million, which was being assigned to Atlantic Petroleum Support and, indeed, any other borrowing that Atlantic Petroleum Support might make from LCF up to the facility limit of £25 million.

The obvious problem with this suggestion was that LOG's rights against P/F Atlantic Petroleum and others had not been assigned to Atlantic Petroleum Support Limited. They continued to belong to LOG, to London Oil & Gas Limited.

We see at <MDR00096349> that Mr Sedgwick raised this point in August 2017, on 4 August 2017. He emailed Mr Hume-Kendall and Mr Barker on that date with the subject "Atlantic Petroleum", and he attached a document, "Assignment of loan IOG to APS.doc" and he said:

"Simon.

"You will recall that in April we agreed with LCF to assign the benefit of the loan by LOG to Atlantic Petroleum to a subsidiary of London Power Corporation Plc Atlantic Petroleum Support Limited and I prepared a form of assignment. Alex Lee has been chasing me to let him [have] a copy of the executed assignment. I attach the documentation and would be grateful if you and Elten could

execute this on behalf of LOG and Atlantic Petroleum Support respectively. I have left a copy on your desk for signature."

The attachment is <MDR00096350>. My Lord can see it is a draft assignment. It is dated 28 April 2017, which would be the day before the execution of the debenture that we looked at a moment ago. It has obviously been backdated.

MR JUSTICE MILES: Well, Mr Sedgwick seems to say in his email that he gave this to them at the time, as I read the email. Can we just go back to the email? He seems to be saying, "Here is another copy".

MR ROBINS: <MDR00096349>. He says:

"I prepared a form of assignment."

MR JUSTICE MILES: Yes. But that's the date also referred to in that schedule to the debenture. So it says in terms "in the schedule to the debenture". It refers, I think, to that date as being the date of the assignment. So, the schedule to the debenture assumes that it's been done, as I read it.

MR ROBINS: It assumes that it's been done. We can have another look to see if it had actually been prepared. I don't recall seeing an earlier draft. But, in any event, it's clear that it hasn't been executed at this point. A copy is left on Mr Hume-Kendall's desk for signature. The version attached to the email is unsigned.

It was signed subsequently at some point between the date of this email and 9 August 2017. We can see that from <MDR00096696>. This is the assignment. I don't know which page the signature is on. Let's have a look. There we are. Page 12. It has been signed by Mr Barker for London Oil & Gas and by Mr Hume-Kendall for Atlantic Petroleum Support, and Mr Sedgwick has witnessed their signatures. It is dated, as my Lord saw, 28 April 2017 in typescript on the front page.

The difficulty with this is that, notwithstanding this purported assignment of these rights to Atlantic Petroleum Support Limited, Mr Thomson, Mr Hume-Kendall and Mr Sedgwick, among others, continue to treat the loan to P/F Atlantic Petroleum as one of LOG's assets and proceeded as if this assignment didn't exist. For example, Mr Hume-Kendall continued to approve further loan advances by LOG to P/F Atlantic Petroleum under the loan facility between those two companies. For example, <MDR00098713>. That's not it. I got that wrong, <MDR00098713>. Is that correct?

EPE OPERATOR: That's it.

MR ROBINS: Let's try another one. My Lord, I'm afraid I have a bad reference. <MDR00126474>. At the top of the page, this is February 2018, Mr Fawcett of Atlantic Petroleum is emailing Mr Hume-Kendall to confirm that LOG "will today transfer £150,000 to enable priority settlement of bank interest and then to enable commencement of a settlement programme of other creditors against a priority list". So notwithstanding the assignment has been executed, the relationship between LOG, as lender, and Atlantic Petroleum, as borrower, continues unchanged.

Mr Thomson, Mr Hume-Kendall and Mr Sedgwick, among others, continue to proceed on the basis that the rights against P/F Atlantic Petroleum belong to LOG and form part of the security granted by LOG in support of LOG's own borrowings from LCF. There is a large number of documents which make the point. I will take my Lord to a handful of them. <MDR00097899>, for example. On 21 August 2017, so just -- what's that? -- two and a half weeks after the execution of the backdated

assignment agreement, Mr Sedgwick is emailing Mr Thomson, copied to Mr Hume-Kendall, with the subject "Atlantic Petroleum", and he says --

"Here is the copy of the sale agreement for the sale by Atlantic of its interest in the Orlando field together with a spreadsheet showing the prospective return from the sale. I also attach a copy of the statement issued by Atlantic when the deal was completed ...

"If LOG were to exercise its conversion rights I understand that it would own approximately 68 per cent of the equity of Atlantic P/F."

An odd thing to say, one might think, if LOG had genuinely assigned its rights against Atlantic P/F to Atlantic Petroleum Support Limited.

At <MDR00098405>, there is an email from Mr Peacock to Mr Hume-Kendall, copied to Mr Thomson, Mr Lee, Mr Sedgwick. This is dated 23 August 2017. Mr Peacock says:

"Hi Simon.

"You asked for a few notes on the detailed calculations regarding the values of the gross assets on which the securities are based as discussed." After mentioning Independent Oil & Gas Plc, there is another heading "Atlantic Petroleum P/F" and he refers to the gross assets amount, he refers to the future income stream at NPV10, and he says:

"The fair value of LOG's potential stake of approx 63 per cent has been valued at £5,540,552." So, again, the rights against Atlantic Petroleum P/F are being treated as an asset of LOG as if no assignment had taken place.

At <MDR00104499>, there is a London Oil & Gas Limited period trial balance dated 26 September 2017. The debit column, which seems to record sums it's disbursed in respect of assets on the balance sheet, includes investment in Atlantic Petroleum in the sum of £4,158,000. So, again, it is still being treated as an asset of London Oil & Gas Limited.

At <MDR00117216>, there is another example. Mr Thomson emails Mr Hume-Kendall on 8 December 2017 to say:

"I was good to catch up the other day and thank you for coming over. Would you be able to have a look at the attached group chart and make any amendments as necessary to [I think it should be 'so'] we have the right picture of the group."

The attachment is <MDR00117218>. My Lord can see that it shows London Power Corporation owning London Oil & Gas and, on the right-hand side, London Oil & Gas has an interest in Atlantic Petroleum, as if there has never been any assignment of that to Atlantic Petroleum Support Limited.

Similarly, at <MDR00117323>, Mr Hume-Kendall, at the top, is receiving a soft copy of the revised draft information memorandum from Nicola Thompson, and Mr Andrew Thomson is copied into that as well. The attachment is <MDR00117324>. It is a draft information memorandum in respect of an investment bond that's proposed to be issued by London Power Corporation Plc. On page 8, there's a structure chart which shows that an investment in Atlantic Petroleum belongs to London Oil & Gas.

MR JUSTICE MILES: It seems to say it's owned -- is that right? Oh, yes, because there is no line there.

MR ROBINS: Yes.

MR JUSTICE MILES: Sorry, it's quite --

MR ROBINS: It is not terribly clear. I think possibly the text below might mention it.

MR JUSTICE MILES: You can see it from the lines.

MR ROBINS: The final paragraph as well: "The current portfolio comprises investment in three natural resources companies ..."

And there is a mention of Atlantic Petroleum UK Limited. Then <MDR00118501>. Mr Sedgwick is emailing someone called Adam Humphreys of PKF Littlejohn on 18 December 2017. The email is copied to Mr Hume-Kendall, among others. He says: "At the moment LOG has lent money to Independent Oil & Gas Plc and to Atlantic Petroleum P/F both of which loans are convertible into shares. So at the moment LOG does not have any shares in these companies but it has the right to those share ['shares', I think it should say]."

In the next paragraph:

"BDO in carrying out their audit have fully satisfied themselves as to the value attributable to these loans ...", et cetera.

Again, he is proceeding as if there had been no assignment of those rights to Atlantic Petroleum Support Limited.

MR JUSTICE MILES: What were PKF doing?

MR ROBINS: I'm going to need to come back to my Lord on that. I can't remember. <MDR00153591>. There is a board minute of London Oil & Gas Limited, dated 7 August 2018. It is attended by Mr Hume-Kendall and Mr Barker, among others, and on page 3, in paragraph -- sorry, it must be the previous page, paragraph 6.7 is what I'm looking for -- how strange. It exists in my version of this document.

MR JUSTICE MILES: Can you just check? Is there another page?

MR ROBINS: Maybe I've got this wrong. Maybe it is 7.6. I think it is, because, look, at the top, 7 is "Loans to IOG and Atlantic", and at 7.6 [page 3], it says: "The attention of the meeting then turned to the company's loans to Atlantic."

"The company" is London Oil & Gas, as we saw: "The meeting was reminded that the company is currently in negotiations with Atlantic to amend its existing facility ..."

Again, it is being treated as though the assignment had never come into existence. That's, my Lord, just a handful of documents we have put. We have put a rather larger number of documents in the relevant footnote of our opening written submissions. We don't have time to go through them all. They paint a consistent picture. To all intents and purposes, it was that the Atlantic Petroleum PF loan was treated as continuing to be an asset of London Oil & Gas Limited. Mr Thomson, Mr Hume-Kendall and Mr Sedgwick proceeded as if the assignment had never been executed. We will see in due course that the other directors of London Oil & Gas Plc, formerly the 11th to 15th defendants, said, after the collapse of LCF, when they became aware of this deed of assignment, that they had never seen it before, they never had any knowledge of it. As far as they were aware, the loan to Atlantic Petroleum PF continued to be an asset of London Oil & Gas -- an asset which, in fact, had been charged to LCF in support of LOG's borrowing from LCF -- and they were very surprised to discover that there was an executed version of this assignment agreement. But we will see that part of the story in due course.

It is our submission that the purported assignment between LOG and Atlantic Petroleum Support Limited was a sham put in place and falsely backdated to create the impression that there was at least some security for the debt allocated to Atlantic Petroleum Support Limited when, in reality, there was none.

It doesn't seem that this is particularly controversial. Mr Hume-Kendall, who, as my Lord saw, actually signed the assignment, has pleaded in these proceedings that the investment in Atlantic Petroleum remains an asset of London Oil & Gas and is of substantial value. For reference, that's page 120 of his amended defence in these proceedings. So, there doesn't seem to be any real debate that the assignment was never intended to have any legal effect. The investment in Atlantic Petroleum PF was to continue to be an asset of London Oil & Gas Limited and to stand as security for that company's separate borrowings from LCF.

We will see in due course, in the minutes of the London Oil & Gas Limited board meeting, after LCF's collapse, what Mr Hume-Kendall had to say to his fellow directors about it when they discovered that it existed, that it had been executed.

That, my Lord, is what we describe as Elysian step 1 or stage 1, the reallocation of the Leisure & Tourism Developments' liabilities to these various Support companies. The next step is --

MR JUSTICE MILES: What about the security given by the other four companies, or the security position, because they each entered into a debenture, you told me.

MR ROBINS: Yes.

MR JUSTICE MILES: There was an earlier email saying, at the moment, they don't have any assets.

MR ROBINS: Yes.

MR JUSTICE MILES: Is there any further evidence about that?

MR ROBINS: There is. I'm afraid I don't have the references to hand. We can look at it this evening or when we get an opportunity.

Mr Lee is told that the four subsidiaries of GRP -- Waterside Villages, CV Resorts, Colina Property and Costa Property -- will enter into new facility agreements with LCF for new borrowings, and give LCF security for those new facilities. He is told that those four subsidiaries of GRP will also give debentures to the four Support company subsidiaries of London Group LLP, and that those debentures will be charged in favour of LCF. It is an arrangement that doesn't make a great deal of sense. But what he seems to be told is that, because these so-called assets are being sold on a debt-free basis by reference to what is said to be the gross values, the vendors will be responsible for repaying the debts to LCF from the proceeds of sale. But, of course, that never happens. The vendors, by which I mean Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding, receive some of the proceeds of sale and apparently they don't use any of it to repay any of the former liabilities of L&TD to LCF. But that's what seems to be said. We can dig out those debentures. As I say, it doesn't make a great deal of sense, and it is difficult to reconcile it with Mr Ingham's description of the position about GRP and its subsidiaries being debt free so they can borrow afresh from LCF.

But the idea, perhaps, and we can dig into it a bit further, was that LCF's new facilities would be some sort of first-ranking security and there would be some sort of second-ranking security in favour of the Support companies.

But, as a commercial proposition, it is quite difficult to understand. As a matter of legal analysis, it becomes even more difficult to get your head around. As a practical matter, as I said, even if Mr Lee was told that the proceeds of sale payable under the Elysian SPA would be used to discharge what Mr Ingham referred to as "the legacy debt", well, that never happened. The liabilities of L&TD that had been parked in the various Support companies remained there. They continued to be liabilities of those Support companies up to the FCA raid and LCF's collapse. They were never repaid at all. They were just parked in various Newcos and left.

MR JUSTICE MILES: Was there any document that was put in place which required the proceeds of sale to be applied in that way?

MR ROBINS: I don't think so, off the top of my head. But, again, we can check. We will look at the Elysian SPA after the shorthand writer's break. I don't recall it being a term of that agreement. But it's the next document to look at when we have had the shorthand writer's break.

MR JUSTICE MILES: Perhaps we will come back to it when we look at the agreement, but when you say the vendor -- so that what they are selling is GRP?

MR ROBINS: Yes.

MR JUSTICE MILES: And they are --

MR ROBINS: The vendors are -- we will see -- Mr Hume-Kendall, Mr Barker and Mr Thomson, although I think I'm right in saying -- we can check after the shorthand writer's break -- Mr Hume-Kendall signed on behalf of Mr Thomson.

MR JUSTICE MILES: But weren't the shares held by --

MR ROBINS: They were held by London Group LLP.

MR JUSTICE MILES: -- London Group LLP.

MR ROBINS: Yes, and, again, we can dig into this, presumably they were put into the names of Mr Hume-Kendall, Mr Barker and Mr Thomson so that they could sell them to Elysian Resorts Group Limited.

MR JUSTICE MILES: We will come back to that.

MR ROBINS: As I recall -- we will see it after the shorthand writer's break -- London Group LLP is a party to the Elysian SPA. So, to the extent it is the legal holder of title to the shares, then it is a party anyway. But we can --

MR JUSTICE MILES: Perhaps you can explain that when we come back. Thank you. five minutes.

(3.16 pm)

(A short break)

(3.23 pm)

MR ROBINS: My Lord, Elysian stage 1 involves clearing away "the legacy debt", as Mark Ingham describes it, by putting it into the various Support companies. Step 2, or stage 2, involves the sale of GRP to Elysian Resorts Group Limited. Elysian Resorts Group Limited is a company that was incorporated by Mr Ingham on 28 April 2017. Mr Ingham was the sole shareholder and the directors were Mr Ingham and Tom McCarthy. The very next day, Elysian Resorts Group Limited entered into

the Elysian SPA, and that's at <MDR00005460>. My Lord can see it is dated 29 April 2017. It is a share purchase agreement between Mr Hume-Kendall, Mr Barker and Mr Thomson, as the sellers, and Elysian Resorts Group Limited -- as we will see, that's the purchaser. The parties include as well Global Resort Property Limited -- that's the company being sold -- and also London Group LLP. We see those parties again on page 4. My Lord will see that the third party, Global Resort Property Limited, is defined in this agreement as "the Company", with a capital C. On page 7, at clause 2.1, towards the bottom of the page, Mr Thomson, Mr Hume-Kendall and Mr Barker sell the Elysian Resorts Group the "Sale Shares" -- capital S, capital S. That's a term defined on page 6, and my Lord will see, about two-thirds of the way down the page, it is the 100 ordinary shares of £1 each in "the Company" -- capital C. So it is 100 shares in Global Resort Property Limited.

On page 5, we can see the price is the completion payment, four down, it is the sum of £100. So, GRP is sold for £100. But that's not the end of the matter, because, on page 22, my Lord will see that schedule 1 envisages that there are 82,125,000 redeemable preference shares of £1 each in the company. That's the fifth box down, "Issued share capital". It mentions the 100 ordinary shares in GRP but also 82,125,000 redeemable preference shares of £1 each. The box below that, identifying the registered shareholders and number of shares held, envisages that those redeemable preference shares are owned in the ratio of 45:45:5:5. This is one of those instances where Elten Barker is mentioned twice, the first mention of him being a codeword for Spencer Golding. That's common ground.

It is also common ground, I think, that these redeemable reference shares were never issued, although, as we will see, everybody proceeded as if they did exist. But the agreement is entered into certainly on the assumption that there are 82,125,000 redeemable preference shares of £1 each in GRP.

Back on page 9, in clause 5.3, my Lord will see under the heading "Post completion matters": "Each of the sellers ..."

So that's Mr Thomson, Mr Hume-Kendall and Mr Barker: "... undertakes, after completion, to use all reasonable endeavours to assist the company or a subsidiary of the company to raise funds for the purpose of enabling the company [to] fund its regular activities and to develop the properties acquire additional properties and to redeem the redeemable preference shares ..."

From Mr Thomson's perspective, for example, he's undertaking to use reasonable endeavours to help GRP and its subsidiaries raise monies to make payments to him in respect of his 5 per cent. Then 5.4:

"The corporate finance may be secured by such security as may be advised ..."

5.5:

"Until the seller's receiver has confirmed in writing to the company that the redeemable preference shares have been repaid in full, all monies raised by the issue of any Corporate Finance [capital C, capital F] or otherwise received or realised by the company or the subsidiaries shall be applied in the following order: (a) general and administrative expenses and working capital in a sum to be agreed between the parties from time to time between £1,200,000 per annum and £1,600,000 per annum incurred by the company in the ordinary course of business; (b) coupon and interest payments due and payable with respect to the corporate finance; and (c) equally (i) costs associated with the development of the properties and (ii) repayment of the redeemable preference shares ..."

So 50 per cent of any monies left after general and administrative expenses and the interest costs will be applied in repayment of the redeemable preference shares:

"... provided that this order of priorities may be waived or amended at any time ... The parties will co-operate to agree the distribution of the monies raised by the Corporate Finance subject always to the conditions imposed by those advancing the Corporate Finance. The company and the buyer shall give notice to the sellers' receiver of all proposed capital expenditure and shall listen to any comments or suggestion in respect of these made by the sellers' receiver."

The sellers' receiver is a company -- it is not named but it is defined to mean a company appointed by the sellers for the purpose of receiving payments in respect of the redeemable preference shares. So, as I said, 50 per cent of new borrowings after what you might call running costs and interest costs are to be paid to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding and the ratios for those are the ratios set out in the schedule: 45 per cent for Mr Golding, 45 per cent for Mr Hume-Kendall, 5 per cent for Mr Barker and 5 per cent for Mr Thomson. As to the calculation of the figure of £82,125,000, the document at <MDR00007516> explains how it was arrived at. This is headed "London Group LLP property assets as at 18 July 2017". The relevant column is the column in the middle of the page headed "Gross £GBP". Below that, it says "Assets £GBP". This is what is said to be the gross value of the assets; in other words, if they are being transferred on a debt-free basis. So you don't need to worry about the net value, you are looking at the gross value.

Under the heading "Dominican Republic El Cupey", in that column, it says £28.28 million. So it is being said that El Cupey or The Hill has a gross value of £28.28 million. Dominican Republic Magante, gross value is £32.1 million. Then, in the middle of the page horizontally, Lakeview Cornwall, Waterside Villages, is given a gross value of £18.74 million. In the first box below that, we see the running total is £79.125 million, but then there is an addition of £3 million under the heading "CV Resorts Limited, Paradise Beach, Sal, Cape Verde", so £3 million is added. That gets you to the grand total of £82,125,000. Helpfully, just below that, it says "Preference shares 82,125,000". So, just a few years after handing over Inversiones and Tenedora for nothing -- Mr Thomson confirms in his evidence that no money changed hands -- Mark Ingham is now apparently prepared to buy them back for £60.3 million. That's a combination of the 28.28 for El Cupey and the 32.1 for Magante.

As my Lord saw last week, Mark Ingham used to run Sanctuary. He was one of the shareholders of Sanctuary International Resorts. He knows that The Hill was acquired for £708,000 and he knows that the shares in Inversiones are held on trust for the Sanctuary investors and he knows the contract price for The Beach is \$3.5 million and he knows that Tenedora hasn't actually acquired any of the parcels of land yet. In our submission, this is entirely absurd. He's apparently going to borrow from LCF to pay a total of £60.3 million for those assets which he gave away for free just a few years earlier and further substantial sums for Lakeview and Paradise Beach. Why on earth would he do such a thing? Well, it's been agreed that he will get 5 per cent of the sums paid out under the Elysian SPA in redemption of the redeemable preference shares.

We can see that at <D8-0010480>, where Mr Sedgwick, on 27 February 2017, emails Mr Hume-Kendall and Mr Barker with the subject "Shares in GRP (formerly London Group Plc)". He says:

"You have asked that we transfer shares to MI to give him a 5 per cent non-voting shareholding in GRP. "We can either do this by transferring 2.5 per cent of the voting shares from each of you to him and then converting them to A shares or we could leave your shareholdings alone and increase issue shares to each of the current A shareholders and to MI so that they each have 5 per cent of the issued share capital. In this way, we do not have to go through the process of changing the class

rights of the shares issued to MI." He sets out the calculations below. At this point, it seems to be envisaged that there will be a transfer or an allotment of shares to Mr Ingham. Towards the end of the third paragraph, Mr Sedgwick says: "Have you considered what MI is paying for the shares or if [he is] not paying anything what the tax consequences may be."

Then he sets out various figures. This is in February 2017. The idea isn't implemented immediately. A month later, at <D8-0011801>, Mr Sedgwick sends a further email in respect of this topic. He says to Mr Hume-Kendall and Mr Barker on 21 March 2017:

"I understand that you wish to give shares in GRP to Mark Ingham so that he has 5 per cent of the equity in the form of A shares which are nonvoting shares. "At the moment there are 2 A shareholders, Elten and Andy. So to issue shares to Mark and to retain the 5 per cent holdings for Elten and Andy it would be necessary either to transfer 2.5 per cent of the total number of shares from each of Simon and Elten to Mark and convert them to A shares or to issue further A shares to Mark and the other A shareholders to create the correct percentages.

"You do need to consider the tax consequences of these transactions as does Mark. The issue to him of these shares is likely to trigger a tax charge unless he is to pay for them.

"If you wish to give Mark a 5 per cent share now you would need to issue 105,205 A shares to each of Elten and Andy and [just under 1.9 million] shares to Mark." He sets out what the calculations would be. Then he says:

"My concern is that to issue to Mark [just under 1.9 million] shares would be treated by HMRC as a payment to him for his work and he may be charged income tax on the value of issue of the shares. "An alternative could be a declaration of trust to the effect that you have held shares equivalent to 5 per cent of the equity in the company for Mark since its inception. At its inception, it had only a nominal value. Again some tax advice might be sensible." So, Mr Sedgwick seems to be envisaging a backdated declaration of trust in respect of the 5 per cent for Mr Ingham to get around the inconvenience of Mr Ingham having to pay tax.

MR JUSTICE MILES: This document is referring to this class of A shares, but is that the -- that's not the same as the redeemable preference shares?

MR ROBINS: No. The redeemable preference shares, as I say, were never actually issued.

MR JUSTICE MILES: Because the agreement refers to 100 ordinary shares.

MR ROBINS: Yes.

MR JUSTICE MILES: And 82 million-odd redeemable preference shares as being the share capital of the company.

MR ROBINS: Yes.

MR JUSTICE MILES: You say, well, your case is that the 82 million were never actually issued. But this seems to be saying that there's this -- what is it? -- 32 million -- no, rather more than that, 37 -- no, 32 million, or something, shares already issued.

MR ROBINS: Yes. It is an observation we have made previously that there were a rather large number of ordinary shares at 100. If all that was sold under the Elysian SPA was 100 ordinary shares, that would give Elysian a small minority stake in GRP. It wouldn't be 100 per cent of the share capital being transferred across. But the intention does appear to have been to transfer 100 per cent of the

ordinary shares to Elysian. I think what I have seen, we can check this, is that the intention became to increase the number of ordinary shares to 82.125 million, plus 100, and then to convert 82.125 million of them to preference shares. But that's something that ultimately never happened. But the reference to this email is made to demonstrate the intention for Mr Ingham to have 5 per cent of GRP, which is the company that was sold to Mr Ingham.

We see subsequently, and my Lord saw it in the Elysian and Prime spreadsheet, that Mr Ingham gets 5 per cent of the monies from LCF which are distributed under that transaction. The ratios change from being 45:45:5:5 to 42.5:42.5:5:5, the additional 5 being 5 per cent for Mr Ingham. He gets 5 per cent of the money that he borrows from LCF to pay out under the Elysian SPA.

This seems to be the origin of the idea that he should have 5 per cent. There's discussion of transferring 5 per cent to him or allotting a new 5 per cent to him. Mr Sedgwick is concerned that this might render Mr Ingham liable to a tax charge, and so he says the alternative could be a declaration of trust.

MR JUSTICE MILES: But do the filed returns for GRP show all of these shares having been issued? These A shares.

MR ROBINS: They show a lot of shares having been issued, but not all of them. The position is, from the annual returns, set out in <A1/5/44>. We were looking at it earlier today. It is where we started at about 2.00 o'clock.

My Lord can see what was recorded at Companies House. There is reference to ordinary shares and ordinary A shares, and the total never approaches £82.125 million, and there is never any mention of Mark Ingham.

MR JUSTICE MILES: At first glance, that looks closer to what we have been looking at in the email. It seems to stay consistent, fairly consistent.

MR ROBINS: That's right. The omission of Mark Ingham is, as we will see in due course, because his 5 per cent came to him by way of a deed of trust, but the position in respect of the shareholding, as my Lord observes, remains consistent. The intention may have been to alter the share capital so that there were 100 ordinary shares and 82.125 million preference shares, but, as far as we can see, that never happened, and that has the rather odd consequence that what was actually sold to Elysian under the Elysian SPA, although apparently intended to be 100 per cent of the ordinary shares of GRP in issue, was, in fact, only a very tiny fraction of the ordinary shares. It has the further anomalous consequence that very substantial sums came to be paid out purportedly in redemption of redeemable preference shares which didn't exist, which I believe is common ground didn't exist.

MR JUSTICE MILES: It may not be necessary to go into it, but there are quite different rules concerning the ability of a company to buy shares back using its own funds, depending on, for example, whether they're redeemable shares or ordinary shares. But maybe that is something we won't have to explore.

MR ROBINS: I don't think so, because, as my Lord can see, the position in respect of the share capital doesn't really seem to change. So payment is made out purportedly in redemption of redeemable preference shares but those redeemable preference shares don't exist, nothing is redeemed, there are no alterations to the share capital. That's obviously something we rely on to show that this is just another facade for divvying up money that's been taken out of LCF.

MR JUSTICE MILES: Did Elysian have solicitors acting for it?

MR ROBINS: No. Elysian was incorporated the day before the signature of the agreement.

What we do know from the bank statements and the spreadsheets is that, after the signature of the Elysian SPA, Mr Ingham gets 5 per cent. The ratios for Mr Golding and Mr Hume-Kendall go down to 42.5 per cent. The document that we were looking at seems to be the genesis of that arrangement. My Lord saw Mr Sedgwick says, "An alternative could be a declaration of trust in the shares to the effect you held shares equivalent to 5 per cent of the equity in the company for Mark since its inception, an inception that had only a nominal value". And it seems that he's envisaging a backdated declaration of trust because he says that, "You could have held 5 per cent for Mark since inception". <EB0040733>, towards the bottom of the page, we see Mr Hume-Kendall says:

"I really don't want to commit tax hari kari while I am away without understanding why the trust route doesn't suit Mark."

But Mr Sedgwick, at the top of the page, has spoken with Mark and he is happy, he says, "that we proceed down the trust route". He says:

"... I will produce a declaration of trust to be made by Simon and Elten to the effect that you each hold 2.5 per cent of the shares in London Group (now GRP) on trust for him and that you undertake to transfer them to him on demand subject first to their conversion to non-voting shares. He would like the same principle to apply to the LOG shares."

So he is also going to get, it seems, 5 per cent of the shares in LOG too. Subsequently on the same day, at <MDR00081545> Mr Sedgwick emails Mr Ingham on his platingham@hotmail.co.uk email address copied to Mr Hume-Kendall and Mr Barker with the subject "Shareholdings" and he says:

"I attach four trust deeds to cover your interest in Global Resort Properties Plc and London Oil & Gas Limited.

"The trust deed for the GRP shares is dated 30 September when the shares were transferred to Simon and Elten from International Resorts Partnership LLP. The trust deed in the LOG shares is dated on the date that London Group Plc transferred its shareholding in LOG to Simon and Elten.

"AS and when we complete the sale of the shares in Global Resort Property Plc, we can then issue you the appropriate number of preference and B shares in line with your entitlement."

Then he says:

"With regard to the LOG shares these are also in the process of being sold to London Power Corporation Plc so on the completion of that transaction you can receive the consideration shares."

And he mentions his concern about the tax liability. The first attachment to look at is <MDR00081548>. This is a draft declaration of trust to Mark Ingham. It says:

"This deed is made on 30 September 2015 ..." That's the 30 September date that Mr Sedgwick mentioned in the covering email when the shares were transferred to Simon and Elten from International Resorts Partnership LLP. So it's been backdated. As Mr Sedgwick said, it could have happened at inception. It records that the nominee is the registered owner of the stated number of ordinary shares in London Group Limited. Now, what's rather interesting about that, of course, is that the company known as London Group Limited, on 30 September 2015, became London Group Plc on 4 February 2016, and then, on 8 February 2017, it changed its name to Global Resort Property Plc. Mr Sedgwick's covering email says:

"The trust deed for the GRP shares is dated 30 September."

So he knows what he's talking about. In the first paragraph of that email, he said:

"I attach the four trust deeds to cover your interest in Global Resort Properties Plc in London Oil & Gas Limited."

He knows that the company in question is called Global Resort Property Plc. But in order to make the backdating convincing, he's got to refer to that company by reference to the name that it had on the purported date of the declaration of trust.

So, it is not just backdated because it's being sent on 27 March 2017 whilst being dated 30 September 2015; it has been done rather artfully. Mr Sedgwick has ensured that the backdating is convincing by referring to the company by reference to its old name, and, as we will see, my Lord, it is what we might call a Sedgwick special: you don't just backdate it, you use the old name and, if necessary, the old registered office address, to make it as convincing as possible. So, that's the first one. As we can see, it's to be given by Simon Patrick Hume-Kendall of Hook House. This is in respect of the 2.5 per cent that Mr Ingham is going to get from Mr Hume-Kendall.

Then at <MDR00081549> is the corresponding deed of trust to be given by Mr Barker. This is the 2.5 per cent coming out of Mr Golding's entitlement. That's why we goes from 45 to 42.5. Again, it's dated 30 September 2015 and it refers to GRP by its historic name of London Group Limited.

These were executed -- we know, as I said, Mark Ingham subsequently gets 5 per cent, but we have also got Mr Barker's executed declaration of trust. It is attached to an email. The email is <EB0041687>. Mr Sedgwick is sending it to Mr Barker on 3 April 2017, saying:

"Here are the copies of the deeds of trust which you executed."

The attachment is <EB0041688>. The first is the LOG declaration that I don't need to worry about. But at page 3 is the GRP shares, declaration of trust, still dated 30 September 2015, still referring to GRP by its old name, London Group Limited. At page 4, we can see Mr Barker's signature which has been witnessed by Mr Sedgwick.

MR JUSTICE MILES: Can we go back to the schedule which shows who the shareholders in GRP were?

MR ROBINS: Yes. That is schedule 1 to the neutral statement of uncontested facts, <A1/5/44>. As I said, there have been previous pages referring to various iterations of the Bosshards, but this is the relevant page for our purposes.

MR JUSTICE MILES: Sorry, the question that arises out of that is that -- which was, I suppose, something I asked earlier on -- the SPA is dated, I think, 29 April 2017.

MR ROBINS: Yes.

MR JUSTICE MILES: So, by then, the shares are actually in the name of London Group LLP. But, for some reason, under that agreement, they seem to be being treated as in the names of the sellers, who are the individuals.

MR ROBINS: Yes.

MR JUSTICE MILES: Is there any documentation that casts light on that?

MR ROBINS: Not that I can recall. One area around which some caution may be required is that the dates on the left-hand side are the dates given in the annual return, the confirmation statement.

When you lodge an annual return, you might lodge it on a particular date, but you describe the position as at a different date. It may be the date on which you lodge it, but it may be the date in the past. We saw that previously with regard to the Lakeview Country Club Limited annual return. It was lodged in February 2015, but purported to describe the position as at December 2014. In fact, I took your Lordship through the documents to show that the purported historic position had been misdescribed. The share transfers that were being set out were being backdated in the annual return. So, we can have a look at it. It may be that the annual return date of 7 March 2017 is the date given on an annual return that was lodged much later.

MR JUSTICE MILES: It may not matter. I'm just trying to get it clear in my mind.

MR ROBINS: It may not matter. We have looked at the emails relating to the 5 per cent for Mr Ingham in the trust deeds. Whether or not, mathematically, it is 5 per cent, the intention certainly seems to have been that Mark Ingham should have 5 per cent. The emails refer to him having 5 per cent. It is 2.5 per cent from Mr Golding's shares held by Elten Barker and 2.5 per cent from Mr Hume-Kendall's shares. We saw in the spreadsheet yesterday morning that, in the payments under the Prime SPA -- this is one of the spreadsheets sent by Mr Barker to Mr Sedgwick -- Mr Ingham gets 5 per cent -- he is added, there is a column for him -- he gets the same as Mr Thomson and Mr Barker, and the 45 per cent figures go down to 42.5 per cent.

So, the oddity about this is that Mr Ingham is the beneficial owner of Elysian Resorts Group, which is buying GRP on the basis that it will borrow from LCF to pay £82.125 million to the sellers' receiver and it seems to be intended, and ultimately does occur, that that money is then distributed in the ratios of 42.5 for Mr Golding, 42.5 per cent for Mr Hume-Kendall, 5 per cent for Mr Barker, 5 per cent for Mr Thomson and 5 per cent for Mr Ingham. So, he's getting 5 per cent of whatever he borrows from LCF for that purpose. The other person involved with Elysian Resorts Group, as I mentioned, is Tom McCarthy. He is not a shareholder, but he's a director of it. We can see a little bit about him at <EB0025614>. This is on Tuesday, 19 July 2016, so the previous year. Mr McCarthy is emailing Mr Hume-Kendall, Mr Barker, Mr Golding and someone called James Cannon with a proposal which he says is strictly private and confidential. He says:

"Dear Simon, please see my attached proposal." The attachment is <EB0025615>. It is a letter to Mr Hume-Kendall, London Group Plc, where Mr McCarthy says:

"It has been a pleasure to meet Spencer, Elten, Mark and yourself with James to discuss our business proposals. James [and] myself are both of the opinion we wish to proceed with the London Group Plc as soon as possible. We both believe we can add value both to existing and potential new divisions within the group of companies."

Under "Outline role/roles", it says:

"At our meeting on Friday, we came to the conclusion my role would be to assist James with his 'back office' internal needs ..."

In the next paragraph he says:

"I am under the impression Mark is particularly busy and will only get busier, so I will happily work alongside him or under his command. I believe we can run multiple SPVs in parallel ..."

He says he has access to trusted advisors and sets out his experience. So he is someone who, the previous year, is applying for a group with London Group saying he will work with Mark Ingham or

under his command. Then, at <MDR00090175>, at page 4, we can see -- we are now at June 2017, Mr McCarthy sends an email to "Chris":

"My name is Tom McCarthy and I work for London Group Plc."

This is after the signature of the Elysian SPA, he describes himself as someone who works for London Group Plc. Then, at <D8-0016320>, we can see that someone called Ben Bullen of Re-Space is emailing Nikki and Mark at Fluent Group, copied to Clint Redman, Elten Barker, Robert Sedgwick and Mr Hume-Kendall, about a property at 80 Calverley Road in Tunbridge Wells. It says:

"Global Resort Property (London Group)." This is 13 June 2017. He says:

"Hi Nikki.

"After speaking with Mark yesterday I understand that you ran the 80 Calverley Road project for Elten recently!? Due to their proposed furniture layout they will need some of the floor boxes moved as indicated on the attached drawing."

The attached drawing shows the layout of the 80 Calverley Road, Tunbridge Wells, office. It is <D8-0016323>. So we can see, consistent with Mr McCarthy's description of himself as someone who works for London Group, he is sitting next to Mark in the bottom right-hand corner. Mark and Tom are there in the bottom right-hand corner.

Just above them on this plan is Rocky O'Leary. He has still got a desk. At the top of the page, we can see in the corner Michael Peacock, he's got a desk; Nicky has got a desk next to the kitchen. On the other side at the top, Clint and Simon have offices. We can see, just below that, there's an office for Robert and an office for Elten towards the bottom left. I think question marks are next to that. Presumably that's a desk for Mr Golding, but his name can never be mentioned in connection with the management of a company.

So, although Mr McCarthy is a director of the purchaser, he is actually an employee of London Group and he's got a desk in the office next to Mark Ingham.

Then at <EB0098556>, we are now in September 2018, so some time later. Mr Sedgwick is emailing Mr Hume-Kendall and Mr Barker with a draft settlement agreement with Tom, so he's ceasing to be an employee and his employment is coming to an end, there's a settlement agreement. That's at <EB0098558>. It is a draft settlement agreement between London Group LLP and Thomas Terence McCarthy. I think page 3 is going to be the page that we want. It says in (A) in the "Background" section:

"The consultant was engaged by the company and some of the associated companies, as a consultant. "(B) The consultant's engagement as a consultant by the company and other associated companies terminated on [blank] August 2018."

So, for the entirety of the period in question, Mr McCarthy is not some third party purchaser, he's an employee of London Group who works with or under the command of Mark Ingham and sits next to Mark in the office.

Perhaps for understandable reasons, in light of all of that, Mr Ingham seems to have a particular concern about appearances. At <D8-0014230>, we see that shortly after the signature of the Elysian SPA, at the bottom of the page, Mr Sedgwick emails Mr Hume-Kendall, Mr Barker, Mark Ingham and Mr McCarthy with a subject "Directorships" and he says:

"I will this afternoon attend to the resignation of Simon and Elten from all the companies that are remaining in the group and the appointment in their place of Mark and Tom.

"I shall leave myself in as company secretary but if you want to replace me let me know.

"I shall appoint Paul Sayers as the preference shareholders' director. Please instruct in due course if any of the non-executive directors are to be removed and/or replaced."

Mr McCarthy replies at the top of the page: "Dear Robert.

"Nothing personal towards Paul, but his links to Lakeview/Telos/LC+F both previously and present as a director and possible shareholder would make me uncomfortable and I would prefer Mr Marshall or even Jeremy Friedlander to be considered.

"Cross-contamination is key in my eyes in this transaction and all the above are public knowledge and easily found on the net."

So, he seems very concerned not to do anything to undermine the impression that Elysian Resorts Group is a third party purchaser. He's concerned that the appointment of Paul Sayers as a director would result in cross-contamination and destroy that illusion. So that, my Lord, is what we call stage 2 of the Elysian transaction, the transfer of GRP to Elysian. Step 3, or stage 3, relates to the new facilities granted by LCF to GRP's four subsidiaries. We saw previously it was always part of the intention that, following the sale of GRP to Elysian, the subsidiaries of GRP would enter into new facility agreements with LCF to enable them to make fresh drawdowns. That's how GRP is going to raise monies to make the payments in the new ratios of 42.5:42.5:5:5:5.

We saw some documents about that. Perhaps let's go back to one of them. <MDR00084180>. This is the email we saw earlier where Alex Lee says, in the penultimate paragraph, just over halfway down the page: "Finally, in relation to GRP itself, I gather that there will be new facilities to be granted (both to GRP but also to the GRP subsidiaries (Colina/Costa/WS/CV) in sums not yet nailed down precisely but otherwise it is anticipated that these will be on the basis of the attached facility in the general sense (... cross guarantees would also be required", et cetera. Then, in fact, we also saw <MDR00084663>, five days later, where Mr Lee makes the point halfway through paragraph 2:

"Our instructions are that the GRP Plc 'group' is then to be debt free to allow for further facilities from LCAF to be advanced."

So, it has always been part of the plan in the emails that have been circulated to Mr Sedgwick, Mr Thomson, Mr Hume-Kendall and others. So, after the signature of the Elysian SPA, this element of the plan failed to be implemented.

At <MDR00086312>, if we read up from the second page, we can see that Mr McCarthy says to Mr Lee and Mr Thomson, on 5 May 2017:

"How are we progressing with the facility docs? "We hoped to get them signed this week." On the page to the left of that, Mr Lee replies: "I don't think we will get these done today. I spoke to Andy yesterday and I am working on the facilities on the basis that there will be £20 million per subsidiary.

"You asked about the parent company being able to administer the position directly. For various reasons this is not going to be able to work from a contractual perspective. You may want to discuss with Andy as to how there might be any informal administrative efficiencies might be achieved."

He has mistyped. I think he is saying "as to how any informal administrative efficiencies might be achieved". So it is envisaged that there will be £20 million per subsidiary, four of them, so £80 million in total. They are duly executed on 12 May 2017. We can look at the one for CV Resorts. That's at <MDR00005204>. If we look at page 1, we can see the parties are CV Resorts Limited and London Capital & Finance Plc. It is dated 12 May 2017. On page 3, there's a commitment defined to mean £20 million. On pages 20 to 21, we can see that it is signed by Mark Ingham and Tom McCarthy and, on the following page [page 4] by Mr Thomson.

There is a debenture at <MDR00005207>, which goes with that facility. But that's obviously pretty meaningless because CV Resorts doesn't own any property. There are others for the other subsidiaries. At <MDR00005247>, we have got Costa Property Holdings Limited. Again, page 3 is a commitment of £20 million. Pages 20 to 21 have the signatures. There is a debenture that goes with that, <MDR00005248>. Costa Property hasn't bought The Beach yet. There is a facility for Colina at <MDR00005229>. Again, that's got a facility commitment on page 3 of £20 million. The signatures are the same on pages 20 to 21, Mr Ingham, Mr McCarthy and Mr Thomson. There is a debenture goes with that, <MDR00005230>. My Lord will have seen Colina holds the shares in Inversiones on trust for El Cupey, so there is nothing that it owns beneficially that it could charge under this. Then <MDR00005264> is Waterside Villages facility agreement. On page 3, the commitment is £20 million, the signatures on pages 20 and 21 are the same. Then at <MDR00005415> is the debenture that goes with that. Of course, Waterside Villages Plc does have a freehold interest in the Lakeview site. It is the only company of the four that is actually the beneficial owner of some property that could be charged in favour of LCF, but it is not worth anywhere near £20 million, as we know, let alone the grossed-up figure that you'd need to have an LTV ratio of 75 per cent.

The payments under the Elysian SPA funded by drawings on these facilities can be taken fairly quickly by reference to our opening written submissions. If we can go, please, to --

MR JUSTICE MILES: I think what we might do, Mr Robins, is stop there for today.

MR ROBINS: I'm very happy to do that.

MR JUSTICE MILES: Then we can resume with those payments in the morning.

So, we will resume then at 10.30 am tomorrow. Thank you all.

(4.19 pm)

(The hearing was adjourned to Wednesday, 28 February 2024 at 10.30 am)

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