

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 21 - Wednesday, 27 March 2024

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

Michael Andrew Thompson (D1) is represented by Miss Anumrita Dwarka-Gungabissoon

Simon Hume-Kendall (D2) & Helen Hume-Kendall (D10) settled and are no longer appearing

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

Wednesday, 27 March 2024 (10.28 am)

MR JUSTICE MILES: Yes, Mr Robins.

Cross-examination by **MR ROBINS** (continued)

MR ROBINS: Mr Thomson, his Lordship explained to you yesterday that you weren't to discuss your evidence with anyone. Have you discussed your evidence with anyone?

A. I don't believe so. I have talked about what I am able to do in the witness stand. I have not "discussed", discussed. No, I don't believe I have done.

Q. Last night, did you discuss your evidence with anyone?

A. No.

Q. Did you discuss your supplemental disclosure with anyone?

A. No. I don't -- I talked about how I could conduct myself in the witness stand. I had that conversation.

Q. Did you discuss any documents in the trial bundle or any additions to the trial bundle with anyone?

A. I asked for assistance with trying to locate things, but that was a how to use the technology -- I forget what it is called. "Relativity", I think it is called. Something like that.

Q. So purely technical information?

A. Yes. I was trying to find documentation.

Q. Yesterday, towards the end of the day, you were explaining to the court that you handed control of One Monday and the banking over to Elten Barker and Michael Peacock in 2013 and you said:

"Answer: ... I didn't run it, Mr Barker and Mr Peacock did. I should have been removed from it, but I wasn't, and I didn't keep an eye on it." I took to you some documents which I suggested were inconsistent with what you had said, but you maintained your evidence consistently and gave explanations in the documents.

Let me show you one more document relating to the finances of One Monday. It is <D2D10-00007627>. Do you see, at the bottom part of the page, the bottom four-fifths, someone from Bank of Scotland has emailed Nicky Thompson and you, towards the end of July 2014, and number 1 in the list of items is One Monday Limited?

A. Mmm hmm.

Q. It says, in the second line:

"There is currently only a debit card set up for Nicky, so I will get a debit card application sent out to you to get a debit card for Andy."

Then, at the top of the page, we can see that Nicky Thompson has forwarded that to you with "Importance: High". Do you see that?

A. Yes.

Q. Now, she was sending that to you because you were still running One Monday?

A. I disagree. I don't know why she has asked for the debit card there. I don't remember the email.

Q. Well, that is why you needed a debit card for the One Monday account, isn't it? You were still running One Monday?

A. Again, I disagree.

Q. Let's move on to another document. Do you remember providing signed forms to the PRA and the FCA?

A. Which signed forms? Could you be more specific?

Q. Let's look at one as an example <D1-0003049>.

MR LEDGISTER: Sorry, my Lord, on that point, we are struggling somewhat on this side. I have not interrupted at all, but if the witness can just keep his voice up. It is a large room and your voice can sometimes be quite soft.

A. I will try my best.

MR ROBINS: Do you see this says "Individual Details Application", and "Candidate Details", it says "Mr Michael Andrew Thomson".

A. Yes.

Q. And then "Personal Identification Details", do you see it gives your date of birth and your national insurance number?

A. I will take your word for it. It is not a national insurance number, I don't remember it. I have not used it.

Q. Let's look at page 6 to give you some idea about the purpose of this form. Do you see that it says, "Select the controlled functions required by Michael Andrew Thomson", and various controlled functions, or CFs, have been ticked?

A. Yes. This would have been an application that I believe Kobus would have filled out. Which he did for everyone else here.

Q. Could we look at page 9. You see there is a declaration and then we will come back to that in a moment. Then, on page 10, that is your signature, isn't it?

A. That is my signature.

Q. And you were signing after the declaration. Let's look at what you declared on the previous page. Do you see, can we zoom in at the top of the declaration, it is very small. Do you see it says:

"It is a criminal offence, knowingly or recklessly, to give the appropriate regulator information that is materially false, misleading or deceptive ..."

A. Mmm hmm.

Q. Sorry, for the transcript --

A. Yes.

Q. And then, if we look below that, it says: "I/We confirm that the information provided in this application is accurate and complete to the best of my/our knowledge."

Do you see that?

A. I can, yes.

Q. And then, a few -- three paragraphs from the end of this extract, it says:

"I have attached the relevant documents where requested or where marked as 'send later' I have them fully ready and available on request and I have taken all reasonable steps to ensure they are correct." Do you see that?

A. I do, yes.

Q. You, presumably, read this before you signed it, didn't you?

A. This looks like a document that Kobus would have given me and just said, "Can you sign this, please". I can't remember whether I specifically went through all the details of it, no. I should have done, but ...

Q. You would have understood that it was important to ensure that it was true, wouldn't you?

A. I understood that it was a proper document, yes.

Q. You wouldn't have deliberately provided incorrect information to the FCA, I assume?

A. No. But I didn't, and I should have done, read through it all in detail. I was given a document to sign and I signed it.

Q. Can we look at page 3. Do you see, halfway down the page, it says "Directorships"?

A. Yes.

Q. And the third is One Monday?

A. Yes.

Q. And it says "Date the directorship ceased: 2 February 2016"?

A. Yes.

Q. You knew that you were still a director of One Monday until that date, didn't you?

A. As I said, I should have been taken off. I didn't. I wasn't taken off and I relied on others to take me off. It didn't happen, I was busy trying to do lots of other things.

Q. Well, it wasn't something that had been overlooked, you knew you were still a director because you were still running the company?

A. I go back to Mr Barker was running the company and Mr Peacock was running the accounts.

Q. Can we look at page 6, please. Page 6. I thought this was page 3? Can we look at the next page. No, next page, please. Next page, next page. Ah, there we are [<D1-0003049>, page 7]. Do you see it says at the top: "Additional documentation may be required ..."

A. Yes.

Q. It then says "Curriculum Vitae". The document that has been provided has a document title "Andy Thomson CV" and the file name "Andy Thomson CV.docx"?

A. Yes, I can see that.

Q. So you provided a CV to the FCA?

A. Well, a CV was attached to this application that I signed, but Kobus completed the application for us.

Q. Let's look at the CV. It's <MDR00002237>. You recognise this as your CV, don't you? That is your email address at the top, isn't it?

A. That does look like -- yes.

Q. We can see here -- can we get that extract back up? It has CEO International Resorts Group to June 2015, director Lakeview Country Club to June 2015?

A. Yes.

Q. Then you see it says:

"Managing Director, One Monday Limited, 2010 - Present.

"Non-executive services to the SME sector, specifically concentrating on strategic growth opportunities."

A. Yes, this would have been an old CV that Kobus attached that was on file.

Q. We can see it was prepared after June 2015, can't we?

A. Yes, but it was -- it didn't correctly reflect, that CV, the position when the application was signed. Because, looking at the application you took me to earlier, that was towards the end of 2016. Yes, this CV should have been updated. It wasn't updated.

Q. So when do you think it was last updated?

A. I don't remember.

Q. Where do you think Kobus got it from?

A. Would have got it from the file in LCF.

MR ROBINS: Can we look at <MDR00227556>. <MDR00227556>. Sorry, something has gone wrong. Let me just check.

(Pause).

There we are. That is the right document. Do you see an email from you to Mr Kobus Huisamen, dated 11 October 2016, with the subject "Andy Thomson CV.docx":

"Sorry this is late it took more rewriting than I expected, have a read and tell me what you think?"

A. Yes.

Q. You accept that you had rewritten your CV on or around this date and sent it to Kobus?

A. There was parts of it that I -- looking at that, that I would have amended, but it looks to me, from that document, that it is an old CV. I updated it and it was on the system and I forwarded it to him. But the CV didn't accurately -- as you have just pointed out, the application to the FCA was October 2016, I think. You have shown that I was resigned from One Monday I think February '16, so, yes, the CV didn't correctly contain the absolutely correct information. I didn't notice it at the time. And I don't know what I am referring to when I say "re writing".

Q. Well, let's look at the attachment to this, just so you can be clear. <MDR00227558>. That is what you provided to Kobus for him to give to the FCA. Do you see it has the words "Managing Director, One Monday Limited"?

A. Yes, but the point that I made to you, and you have shown me in other documents, is that "2010 - Present" doesn't correctly reflect the position, and I've missed that. The document you took me to previously said I was resigned from One Monday, I think February '16, and the application to the FCA was October '16, I believe.

Q. You told the court yesterday that you handed control of One Monday to Elten Barker and Michael Peacock in 2013 and didn't have anything to do with it after that. You told the FCA that you ran it until 2016. My question, Mr Thomson, is, were you giving inaccurate and misleading information to the FCA then or are you giving inaccurate and misleading information to this court now?

A. No, I am not. They ran the company. I should have been taken off, I wasn't. I didn't do anything about it. Mr Barker ran the banking, Mr Peacock ran the accounts.

Q. Mr Thomson, you are lying to the court now, aren't you?

A. No, I am not lying to the court now.

Q. <D1-0000842> please. Do you see an email from Oliver Clive & Company to you, dated 11 August 2015?

A. Yes.

Q. Do you see they say:

"The accounts for One Monday Limited made up to 30 November 2014 are due to be filed at Companies House ...

"Please advise if you still want to keep the company and have accounts prepared."

A. Yes, I can see that.

Q. You were still running the company in 2015, weren't you?

A. No. Again, Mr Barker was running the company, with Mr Peacock running the day-to-day accounts. Yes, I can see this, I did some administrative stuff. But I should have been taken off; I wasn't.

Q. You didn't reply to Oliver Clive & Company to say, "Sorry, I gave this company to Mr Barker and Mr Peacock two years ago. What are you talking about?", did you?

A. No. What I imagine I would have done at the time was I had the email, I dealt with it but that doesn't show that I dealt with the day-to-day running of the company, and the banking, which is what I think you are going to refer.

Q. Mr Thomson, you did deal with the day-to-day running of the company, that is why you put it on your CV?

A. No, I put it on the CV because it accurately -- it reflected that I was still a director. If I hadn't have put it on my CV, it would have been a lie.

Q. You put "managing director" on your CV. Do you want to look at it again? You were the managing director of One Monday, weren't you?

A. In 2010, yes. I should have updated the narrative on that CV. I didn't.

Q. You didn't because it was correct?

A. No, I didn't because it was an oversight.

Q. Can we look at <D1-0001334>. Please. Do you see there is another email from Oliver Clive & Company with the subject "One Monday Limited":

"Dear Andy, please find attached correspondence from Steven Davidson for your attention."

A. Yes.

Q. The attachment is <MDR00227554>. Do you see the letter from Oliver Clive & Company says:

"Please find attached the latest letter from Companies House in respect of the striking off of the company for your files".

You ran One Monday until it was struck off, didn't you?

A. No. I should have been taken off as a director. I wasn't. There were some administrative things I did towards the end. Mr Barker ran the day-to-day of the company and Mr Peacock ran the day-to-day accounts. I looked up One Monday yesterday on Relativity, I think it is, and, of the 1,300 plus documents that are on Relativity, only 60 of them are from my disclosure and none of them are accounting-based.

Q. Mr Thomson, your evidence about One Monday is untrue, isn't it?

A. Mr Robins, I believe I have already said I disagree with you.

Q. Well, you are lying about this because lying is something that comes easily to you, isn't it?

A. No, Mr Robins, and I would actually say the same to yourself.

Q. Mr Thomson, do you find that people often disbelieve what you are saying?

A. No.

Q. Do you find people say to you, "Andy, we don't believe you"?

A. No.

Q. Could we look at <MDR00050083>, please. On the bottom of page 3, do you see there is some correspondence between Mr Shah and Scott Allen of Surge? They are talking about LCF's account?

A. I can see that, yes.

Q. If we just scroll up the chain. Previous page. Do you see that Mr Russell-Murphy, in the middle of the page [page 2], was forwarding that to you, explaining Mr Shah is the finance director of Hertshen Group and was "chasing for our latest set of accounts"?

A. Yes, I can see that.

Q. Then, if we go to the previous page [page 1], do you see, at the bottom, you said to Mr Russell-Murphy: "The position with the accounts is that we are having to wait for guidance from HMRC re a technical point on how to represent the balance sheet. PWC and our accountants are chasing HMRC on a regular basis but I cannot give you a timescale. As soon as the accounts are finalised I will let you know."

A. I can see that. I don't remember the email, but ...

Q. That explanation was untrue, wasn't it?

A. I don't remember the email, as I have just said.

Q. Do you remember anyone telling you that that explanation was untrue?

A. Again, I don't remember the email.

Q. Well, let's look at <MDR00050122>. Do you see Mr Careless emailing you, forwarding an email from Mark Partridge, which he says is for your eyes only?

A. Yes.

Q. Do you see what Mark Partridge said about your explanation. He said:

"I know you won't want to hear this but this is almost certainly untrue. HMRC do not give opinion unless there is uncertainty with regard to the law ie tax law.

"This would appear to be accounting treatment and so not likely to get an opinion. And anyway HMRC are interested in the P&L, rarely are they interested in the balance sheet unless someone is hiding profits there -- that isn't something you would ask HMRC's opinion on. "PWC would know this -- I am not so sure what PWC have to do with this anyway.

"I am concerned. These accounts are long over due and the excuse holds no water ..."

Mark had said that to Paul, Paul was forwarding that to you. You understood that you had been caught out in telling lies, didn't you?

A. I don't remember the email and I don't believe so. There would have been some substance to why I wrote that. I don't remember what it is.

MR ROBINS: My Lord, I am moving on to a new topic?

MR JUSTICE MILES: Can I just -- if you are moving on to something else, Mr Robins, could you just go back to the -- because I just wanted to have a quick look at it -- the document of 21 August 2014, which was the RBS, the note after the RBS -- I think it was RBS -- meeting.

MR ROBINS: <D2D10-00007627>.

MR JUSTICE MILES: Do you remember meeting with Ms de-Zille?

A. No.

MR JUSTICE MILES: Do you think you did go to that meeting?

A. I don't remember it, my Lord.

MR JUSTICE MILES: Do you think you did, or do you think it is likely?

A. I don't remember the meeting. I don't remember the name and I don't remember the meeting, my Lord.

MR JUSTICE MILES: Do you remember meeting with someone from Bank of Scotland?

A. Not particularly, my Lord.

MR JUSTICE MILES: If you look at that document, if you read through the document and the things that were discussed at the meeting, do you think it is likely that you were at the meeting?

(Pause).

A. It looks like a meeting to open various different accounts.

MR JUSTICE MILES: So, do you think you were at the meeting?

A. Not -- I wouldn't have had to have been at the meeting, no. This could have been conducted without me. And I don't remember the name or the meeting.

MR JUSTICE MILES: Do you think it is likely that you were at the meeting or not?

A. I don't remember, it my Lord.

MR JUSTICE MILES: All right.

A. As we have stopped, could I ask a question, my Lord? Would it be possible -- and I don't know and apologies if it isn't or is, I have had the benefit of overnight and having reflection and looking at a couple of documents -- to amend something, a couple of points of yesterday or is that not possible?

MR JUSTICE MILES: No, if you have something that you wish to explain or clarify, then you can do that.

A. Can I do it now?

MR JUSTICE MILES: Yes, by all means.

A. Just give me a moment. I just need to -- I have made some notes.

(Pause).

Mr Robins, it was concerning our conversation yesterday about the LCF -- sorry, the LTD default letter. Do you remember that? I am just trying to, for context -- yesterday, we discussed that, and you took me to my witness statement and you read through part of my witness statement where I talked about the default letter and it is an example of a proper lender going through its proper duties. And you asked me three times that's what my statement is and I said, "Yes, it's true". You asked me, "Is it true?", I said "Yes". "Do you say that you are telling me the truth?", I say "Yes". "Are you sure?", "I have just told you so". And then you have said, "It's not true, is it, Mr Thomson?", and I have just told you twice that is. Then you continue and, at the end of that passage of conversation, you tell me that you cannot find the default letter and you are inferring from that that I have made it up so I could say

in my witness statement that I acted responsibly as a lender. Do you remember that conversation, Mr Robins?

MR ROBINS: Mr Thomson, I am not here to answer your questions.

A. I'm just trying to --

Q. If you want to clarify your evidence, you can say it for the transcript.

A. Yes, I just want to get context.

Could I take us to a document in the bundle? Thank you. It is <D1-0003152>.

EPE OPERATOR: It's not coming up.

A. Okay. Can I give you another one, <EB-0034267>.

MR ROBINS: I suspect that Mr Thomson's solicitors have not requested for these to be added to the trial bundle. If they can let us know, obviously without discussing Mr Thomson's evidence with him, we can add these and perhaps Ms Dwarka can re-examine on them.

A. I have numerous of them, and I looked up the trial bundle last night. I can take you to a different one.

MR JUSTICE MILES: So, do you say they were in the trial bundle when you looked at it?

A. They are not only in the trial bundle, my Lord. I did a simple search, "LTD default notice".

MR ROBINS: Were you looking on the trial bundle or Relativity?

A. Yes, I was.

Q. Sorry, that is an either/or question?

MR JUSTICE MILES: They are two different things.

A. Sorry, I was taken to Relativity, that is why I had to talk to someone about it, how I used it and I used the search terms.

MR ROBINS: Could you read out the list of documents, then your solicitors can tell us if they want us to add them to the trial bundle and Ms Dwarka can re-examine you on them?

A. I can but can I just -- I have them all here.

MR ROBINS: Then, if they are --

MR JUSTICE MILES: I think the point is, Mr Thomson, that they are not in the trial bundle, because the trial bundle consists of a smaller set of documents than those which are on Relativity.

A. Okay. I can read them all out and then explain why I have done this --

MR JUSTICE MILES: Well, I am --

A. -- or I can just give a --

MR JUSTICE MILES: I don't want to take too much time over this because the cross-examination is for Mr Robins to conduct. I would be very happy for you just to provide simply provide a list of these. Are you happy with that, Mr Robins?

MR ROBINS: If it is simply a written list.

MR JUSTICE MILES: A written list of these to your solicitors.

A. Sure. Would I just be able to say why I have done that?

MR JUSTICE MILES: Yes.

A. Okay. Thank you, my Lord.

The reason I have done this is because it took me all of about five minutes to find the default notice that LCF did indeed send to LTD that Mr Robins has said that they couldn't find. The metadata on that default notice is correct in the timescale. There is email traffic between Katie Maddock and Mr Hume-Kendall acknowledging that they received the default notice, I find it odd that the claimants couldn't find it. So Mr Robins' characterisation of me, that I made that default notice up just so I could say that in my witness statement, is entirely incorrect. And I am surprised, seeing as they had this document for the past five years, that a simple search under "LTD default notice", as it is such a point that Mr Robins made and asked me three times whether I was telling the truth or not, should have been easy to find. So I wonder why they couldn't find it and I want to amend saying, absolutely, this default notice was sent on the day I sent it -- LCF sent it to LTD and there is emails at the time between the two companies acknowledging receipt of the same.

MR JUSTICE MILES: Right.

MR ROBINS: My Lord, there is only one question arising out of that.

Mr Thomson, your evidence yesterday was that you had orally agreed a waiver in October 2016. Is it still your evidence that, having orally agreed a waiver of that default in October 2016, you sent a default notification in respect of the same default in December 2016?

A. The rest of what I said still stands. The point I was making was you told me that you couldn't find the default notice. I found it very easily and your characterisation of me was that I had dishonestly made it up, which isn't actually correct.

MR JUSTICE MILES: Do you want to just ask that question again, Mr Robins? If you just listen carefully to the question, Mr Thomson.

MR ROBINS: Mr Thomson, your evidence yesterday was that you had orally agreed a waiver of the default in October 2016. Is it still your evidence that, having orally agreed a waiver of the default in October 2016, you sent a default notification in respect of the same default in December 2016?

A. Yes, as I believe I said yesterday, that we had orally agreed it and then we sent a default notice later on and that was the default notice that you said wasn't in existence.

Q. Mr Thomson, Paradise Beach was a partially-built development for a holiday resort in the Cape Verde Islands, wasn't it?

A. Yes, it was.

Q. You arranged for Savills to undertake a valuation?

A. Yes, I did.

Q. You met the seller to obtain information?

A. I met the Cotters twice, I think.

Q. You made a working financial model of the properties at the resort?

A. No. I think that was someone else in the group that made that. I remember it, but ...

Q. You made a working financial model of the estimated values of the properties?

A. Erm, there was various different models there but the majority of them were created by other people. I reviewed and had a hand in. There was a very large financial model listing all of the units in Paradise Beach.

Q. But you made a working financial model of the properties at the resort?

A. I don't remember making a working financial model. I remember there was various different financial models.

Q. Do you remember making your witness statement in these proceedings?

A. Yes.

Q. Did you read it before you signed it?

A. I would have done.

Q. <C2/1>, page 6, please. It says, in paragraph 19: "... Simon made a deal in relation to Paradise Beach ..."

Then you say:

"I arranged for Savills to undertake the valuation and I met the seller to obtain information to provide to Savills. That involved making a working financial model of the properties at the resort and their estimated values."

Is that true or not true?

A. Yes, the working financial model had to be made to give to Savills.

Q. And you made it?

A. Again, I don't remember making it. I remember seeing them. That doesn't say that I made it, but there was various different financial models one for P&L, one for sales, one for property values, if I remember.

Q. So, are you saying your witness statement should say that involved someone else making a working financial model?

A. Well, at the time, we were working as a group and -- yes. My recollection is Mark Ingham produced most of them.

Q. So why did you say in your witness statement, "That involved making a working financial model"?

A. Because that did involve making a working financial model.

Q. You say:

"... apart from that [referring to the financial model], I had no real involvement ..."

So the financial model was part of your real involvement in the project, wasn't it?

A. I would have passed the financial model and discussed it with Savills. I don't see that this says I made it. I don't think a lot --

Q. Just read the words carefully:

"That involved making a working financial model ... But, apart from that, I had no real involvement in this project."

Part of your involvement was making the working financial model, wasn't it?

A. I don't remember making it. I remember meeting Savills, I remember meeting the vendors, I remember gaining information and I remember working with the other people in the group on it. But the majority of things I did was with Savills on this.

Q. Mr Thomson, this is your witness statement. Are you saying you signed it without caring whether it was true or not?

A. No. I don't think what you are saying is what I am saying here. You know, I arranged for a Savills valuation, I met with the seller, I obtained information, provided to Savills and that involved making a working financial model. There was a group of us that worked on this and we each had various different things to do.

Q. You were involved in making the working financial model, weren't you?

A. I would have had, you know, some hand in it. I would have reviewed it and I sent it on to Savills. The financial model that we may very well have been referring to there could have been provided by the people selling it. And it was updated. I don't remember at the time.

Q. You say, at the end:

"... apart from that, I had no real involvement in this project."

Is that true?

A. Yes I never went there. I dealt with Savills. Mr Barker and Mr Hume-Kendall went there. They and Mr Golding dealt with the -- Mr Sedgwick dealt with the sellers. I had some oversight on it.

Q. The reality is that you were closely involved, weren't you?

A. As I have just told you what my involvement was.

Q. You were closely involved with Mr Hume-Kendall in negotiating terms to acquire Paradise Beach, weren't you?

A. I had some oversight on it. As I said, the body of the work was with them. When this was -- I can't remember the date for the Savills' valuation, perhaps tell you what else I was doing at the time, but ...

Q. When Mr Hume-Kendall emailed John Cotter about the terms of the Paradise Beach sale, he would routinely copy the emails to you, wouldn't he?

A. Possibly, he would have done, yes.

Q. He was doing that because you were closely involved?

A. He was doing that because I would have had an oversight. I don't think just copying me in is infers close involvement.

Q. You were one of the members of the team who had real day-to-day involvement in the project?

A. Again, that is not what I said.

Q. Can we look at <D2D10-00008050>, and if we could read up from the bottom of the chain.

Do you see there is, at the bottom, an email from John Cotter to Simon and Spencer. Then, if we go to the previous page, we can see, at the bottom, Simon replies to John Cotter, copied to Ned Cotter and you. It was you and Mr Hume-Kendall who were negotiating the terms; yes?

A. As the previous email said, that was addressed to Simon and Spencer, I was copied into this. As I say, oversight. You are inferring that I was closely involved because I am being copied in.

Again, you see Mr Golding's email at the top of there and the email was addressed, the one that we saw just before this, to Simon and Spencer. I was closely involved, it would be Simon, Spencer and Andy.

Q. You were copied in because this is what you were working on with Simon and Spencer?

A. If I was -- if I was heavily involved, the email from the seller would have been to the three of us. I am copied in because I had some oversight on it.

Q. When you say you had some --

A. Sorry, that is why it says, in the second line of this email [<D2D10-00008050>, page 1]:

"... I confirm that the points set out below are an accurate expression of the agreements made between Spencer/yourself & Ned/myself ..."

If I was closely involved, why am I not mentioned?

Q. Let's be more precise. By "closely involved", you had a full understanding of the terms that were being negotiated because you were copied into the emails?

A. I had oversight and I was copied in. It depends on -- I mean, looking at the date stamp, I was doing various other things down with Lakeview at the time.

Q. You were sufficiently closely involved to receive the addendum agreement in draft before it was signed, weren't you?

A. Again, it is oversight. I come back to just looking at this email. If I was closely involved in this and involved in negotiations, why is the seller not mentioning me? He is writing this email to Simon. I am just on copy, but it says "agreements made between Spencer/yourself & Ned/myself". It doesn't say "and Andy". So you are inferring that I was closely involved because I was simply copied in and that is not accurate, and the email doesn't bear that out.

Q. Let me ask the question again, removing the word "closely" which you seem to be having difficulty with. You were sufficiently involved to receive the addendum agreement in draft before it was signed, weren't you?

A. I was involved to have oversight. That is not day-to-day involvement.

Q. Do you see, in the penultimate paragraph, it says: "On a separate matter I have garnered a schedule of balcony/terrace areas applicable to all units as requested by Andy ..."

A. Mmm hmm.

Q. You were sufficiently closely involved to be requesting a schedule of balcony/terrace areas applicable to all units, weren't you?

A. That could have been to give -- to pass on to Savills.

Q. But is the answer to my question, "Yes"?

A. That I was closely involved to ask that question. They have asked the question because I needed some information from Savills, which is what I believe I said in my witness statement. That doesn't infer that I was closely involved in the negotiations to do this. I have admitted I have some involvement. I have admitted I have oversight. I have admitted that I dealt with Savills on this. I can see that that would be a reasonable thing to ask for a valuer.

Q. Could we look at <D2D10-00009437>. Do you see, in the middle of the page, there is an email from Robert Sedgwick to John Cotter, copied to Mr Hume-Kendall and you, saying:

"I now attach the addendum agreement which I have amended in line with your notes and comments." You were closely involved enough to be one of the two people copied into this email attaching the amended addendum agreement, weren't you?

A. As I have said, copied in and I had oversight on it. I wanted to know what was going on. That doesn't infer close involvement. That infers some involvement. And I have already told you I have oversight.

Q. As a result of your "oversight", as you call it, you knew that the price was 57 million euros in total, didn't you?

A. Yes.

Q. You knew that CV Resorts was going to be the purchasing company, didn't you?

A. I believe that was the purchasing company. I seem to remember.

Q. You knew that CV Resorts was going to have to pay 57 million euros to acquire the Paradise Beach resort?

A. That rings a bell as the purchase price.

Q. And 57 million euros, at the time, was about £41 million sterling, or there or thereabouts, wasn't it?

A. If you say so.

Q. As you have said, you were involved in getting the valuation of the site from Savills. Savills indicated to you that the site, in its present state, would be worth something in the early 40-million-euro range, didn't they?

A. Erm, I believe they gave two, if I remember correctly. I don't remember the exact valuation specifically.

Q. Well, in your discussions with them, they indicated to you that the site value, in its present state, would be in the early 40-million-euro range, didn't they?

A. I don't remember the value, the valuation specifically, the figures in it, but I believe that there was two numbers that were used.

Q. You don't remember them telling you that the site, in its present state, would be worth something in the early 40-million-euro range?

A. I would have had correspondence with them. I don't remember the specific figures. I remember that the valuation had, I think, two different figures they advised on, but I don't remember the specifics, sitting here right now.

Q. Do you not remember them saying that and you thinking, well, that means the price of 57 million euros involves overpaying by quite a margin?

A. I remember something like that, yes.

Q. Perhaps I can help <EB0004668>. We can see you are forwarding to Mr Barker an email from Savills and you say:

"We, need to talk the below through.

"Savills verbal opinion on P2 in its current state is that it will be a little more than the value of the land with planning as the only construction is the shell ..."

Then you mention P1. Then, in the final paragraph, you say:

"... taking all of the above into account the site value in its present state will be in the early 40 million euro range! Tag onto this the issues with the site and what we would have to pay SM [Stirling Mortimer] we are overpaying by quite a margin."

Do you remember expressing that view?

A. Clearly, I have. That is my email. I don't remember what P2 is or P1.

Q. Phase 1, phase 2, does that ring a bell?

A. Right, okay.

Q. Do you remember Savills sending the draft valuation report to you?

A. They would have done.

Q. Let me see if I can jog your memory. <MDR00017747>. At the bottom of the page, someone called Maddy Uren sends the email to you. Do you remember Maddy Uren?

A. The name rings a bell.

Q. At the top of the page, you forwarded it to Katie Maddock. She was your assistant, wasn't she?

A. Yes, she came with me into LCF.

Q. So she was your assistant both before LCF and after, or during LCF?

A. Not before. She worked with the group and she was one of the administrators, but there are a number of them. But, when I then left and took on LCF on my own, she came with me.

Q. Let's look at the draft report. It is <MDR00017752>. Do you recognise this?

A. Yes.

Q. If we look at page 3, it says, after the Wellington Gate address, "For the attention of Mr A Thomson". That is because you were the person responsible for dealing with Savills, isn't it?

A. Yes, as I have said, I dealt with Savills. It was one of the last things I did as I was leaving.

Q. Then, on page 3 -- page 9, please, do you see in the third row, it says:

"Resort development which has been partially constructed."

That was your understanding of the site at the time, wasn't it?

A. Sorry, which line?

Q. The third row, "Description and Accommodation"?

A. Yes. And there is the two different figures that I mentioned earlier.

Q. That is what you were referring to earlier?

A. Yes.

Q. You understand what market value means, don't you?

A. Yes.

Q. And the worth value is the value of the asset to the owner or prospective owner for individual investment or operational objectives, isn't it?

A. It is the value to the person buying it, yes.

Q. So if CV Resorts paid 57 million euros to get Paradise Beach, the market value being what they could effectively sell it for was a little over 40 million euros, the value to them would have been a little under what they paid for it; yes?

A. Erm, I believe that -- sorry, can you repeat that again?

Q. So if CV Resorts paid 57 million euros to get Paradise Beach, the market value, what they could effectively sell it for, was a little over 40 million euros. The value to them, the worth value --

A. Was a nudge under 57.

Q. -- was a nudge under what they would have actually had to pay for it?

A. A nudge under 57, yes. So that was the worth value, what they were prepared to pay for it, and that is -- yes.

Q. Let's look at the final version of the report, this was only the draft. <MDR00007482>. It says November at the top, I think it is 31st. Let's look at page 2 -- or 30th, I mean. Yes, 30 November 2015, still addressed to you. And then, page 8, it is the same figures, isn't it?

A. Yes. They don't look like they have changed.

Q. You understood that CV Resorts didn't pay the instalments due under the contract, did it?

A. That was after I had left.

Q. But that is something you understood?

A. No. I understood that they were paying as in line with the agreements that they had.

Q. You understood that they didn't pay the instalments due under this contract?

A. No, I just said the opposite.

Q. You knew there was a dispute which resulted in a variation agreement, didn't you?

A. I was aware that they were having difficulties. I was also under the impression that they were buying the resort in a staged process.

Q. You knew that those difficulties were disputes over non-payment?

A. I don't remember that, no.

Q. But you saw the variation agreement, didn't you?

A. I have seen it subsequently. I can't remember if I had seen it at the time. I may very well have done. I don't know.

Q. You understood that it pushed out the payment date?

A. I understood that they had issues and I understood that they were working through them. I don't remember the specifics of them.

Q. Let's look at <MDR00042487>. Do you see the email, at the top of the page, from Mr Sedgwick to you of 29 May 2016?

A. Yes.

Q. He is forwarding a chain and there are some documents attached.

A. Mmm hmm.

Q. If we look further down the chain, we can see the email from Mr Sedgwick identifying those documents. One of them is the variation agreement. Let's look at that. It is <MDR00042490>.

So this is the revised framework addendum. If we look at page 3, do you see clause 2 says that, for South Side - Phase 1, CV Resorts has to pay 20.6 million euros on or before 30 April 2018?

A. Yes, I can see that.

Q. Then, on page 4, at the top of the page, we can see the various instalments that were due to be paid?

A. That is what I said, it was a staged process.

Q. Then page 4, we are on page 4, clause 2.3 for North Side - Phase 1 it is 25.4 million euros on or before 31 March 2020. Do you see that?

A. Yes.

Q. Then, on page 5, clause 3.3 deals with phase 2 and then page 6, clause --

A. Could you just go back to that? I didn't have a chance to read it. It came up and then disappeared really quickly. Could you make that bigger again for me, the bit that you --

(Pause).

So that is them transferring phase 2, which I think was in the original agreement with them.

Q. Then page 6 --

A. That is my understanding of it.

Q. Page 6 --

A. Sorry, just to confirm, that is my -- that is your understanding as well, that the seller is, in this, agreeing to transfer straight away phase 2, including all buildings constructed on the plot of land, for the nominal payment referred to in clause 3.4.

Q. If that is your evidence, Mr Thomson, it is on the transcript.

A. I am just reading what this says here. That is my understanding, is they were supposed to send to transfer phase 2, including all buildings and constructed land, for the nominal payment referred to in clause 3.4. Could we have a quick look at clause 3.4, please? So they are to transfer all of phase 2, including all the buildings, for 184 grand -- 184,000 euros, sorry.

Q. Then, on page 6, clause 4.1, is a phase 4. Do you see that is the next paragraph, clause 4.2, 4 million?

A. Sorry, you are going through it too quickly. I just need to --

Q. Sorry, take your time. Let's take the whole -- do you see that is 4 million euros for phase 4?
(Pause).

A. So 4 million for phase 4. Yes.

Q. It says --

A. That is the question you asked?

Q. Yes, and then it says they have to deposit the sum of 3.8 million --

A. Hang on.

Q. -- because 200,000 euros of that have been paid already?

A. Okay.

Q. Then page 7, clause 5, there is an option to purchase phase 3 for 6 million euros. Do you see that?

A. Yes, hang on a second.

(Pause).

Mmm hmm, I can see that, yes.

Q. Then finally, page 8, clauses 6.3 and 6.4. There is an option or an obligation in respect of phase 5 for 1 million euros to be paid immediately upon completion of the construction of the hotel.

A. It references clause 3.6. Would you mind just having a look at that?

(Pause).

Okay, thank you.

Q. Have you seen what you need to look at, Mr Thomson?

A. Yes, it was just because the last clause you took me to referenced the previous one. I just wanted to have a read of that.

Q. So, as at the date of signature of the addendum agreement, it was still the case, wasn't it, that, to acquire the whole of the Paradise Beach resort, CV Resorts was going to have to pay a very substantial sum of money to the Cotters' company?

A. Over a period of time, yes.

Q. Yes. And the total payable for phases 1 to 5 was still 57 million euros?

A. For worth value. But then, by the time they had finished paying, you are going to have a hotel with 450 bedrooms on it. So the worth value would have increased. It wasn't valued at the time, it didn't have a hotel of 450 bedrooms when Savills valued it, but looking at this contract here, by the time they have finished purchasing, it will have, as 3.6 states, that the buyer undertakes to build the hotel at their own cost, so the 57 million euros, or a nudge under it, that they would have paid over a period of time, by the end of that, they would also have, on top of that, a 450-bedroom hotel which wasn't taken into account, I believe, in the Savills' valuation. So the worth value would have increased from there.

Q. But at the start of the period, on signature of the variation agreement, the purchase price of 57 million euros remained payable?

A. Yes. And, again, as the contract shows, over a period of time. It wasn't a one-off lump sum, as you have pointed out, payment.

Q. You knew that CV Resorts didn't actually pay the various instalments due under that contract, didn't you?

A. I understood that they were paying, I don't have knowledge of how much they were paying or how much they had paid.

Q. You knew that CV Resorts didn't acquire any property?

A. My understanding is that they were buying.

Q. You knew that it had simply the right under the contract to acquire the property but hadn't actually acquired anything?

A. Yes. I know they had the right to acquire and my understanding was that they were acquiring.

MR ROBINS: My Lord, shall we have one more email before a break?

A. Yes, please.

Q. Can we look at <MDR00084251>.

Do you see there is an email to Mr Sedgwick to Alex Lee, copied to you, dated 21 April 2017. In line 2, Mr Sedgwick explains:

"CV Resorts at the moment does not have any property in its name only the contracts to acquire the land in the Cape Verde."

That was your understanding in April 2017, wasn't it?

A. I was -- I see I was copied into this email, I don't remember it.

Q. It was your understanding CV Resorts, at that moment, didn't have any property in its name, only the contracts to acquire the land in Cape Verde?

A. CV Resorts should have had the phase 2 land transferred to it the previous year. My understanding was that they were buying it. I am sorry, I don't remember this email.

Q. There was no basis for thinking that they had acquired the entire Paradise Beach resort was there?

A. Again, I don't remember this email. I can see I was copied in.

MR JUSTICE MILES: Did you read your emails, Mr Thomson?

A. Yes, I did. I didn't pay particular attention -- there was lots going on at the time, my Lord. Yes, I did read emails. Things I was copied into, I didn't necessarily pay as much attention to as things that were directed at me. I don't remember this email. My recollection is that they were buying the resort.

MR JUSTICE MILES: But, as a matter of your practice as a director of LCF, did you read emails, business emails that came in for you? Just as a matter of practice.

A. Yes, just as a matter of practice. I paid more attention to the ones that were directly emailed to me. I was very busy at the time and I was copied into this one. I may or may not have even opened it.

MR ROBINS: Can we look at, perhaps, one more document, before we break, my Lord. It is <MDR00077856>. We need to open it in native form. We looked at it yesterday. It is the security valuation spreadsheet that you said yesterday was what lay behind the advert in The Times.

A. I said it could have laid behind the advert in The Times or it could have been Kobus's own valuation.

Q. You said yesterday it didn't look like Kobus's, didn't you?

A. I don't know who the author of this is. It looks like one of our spreadsheets that we had in LCF.

Q. We see, in row 20, Leisure & Tourism Developments; Paradise Beach resort; Sal, Cape Verde. Then it says 40.55 million euros. That is the Savills' valuation of market value, isn't it?

A. Then we have worth value, over the right-hand side, I believe.

Q. So what's actually included in row E is a sterling equivalent of £35 million, isn't it?

A. Yes.

Q. So that is part of what makes up the £221 million, isn't it?

A. Yes, as, I think, we went through yesterday.

Q. And we saw yesterday your email to Surge saying they should use a value of 215 million plus for security, didn't we?

A. Well, we went through that yesterday and, as you have brought up those points, I specifically told you that that was Kobus that authorised that specific -- well, the financial promotions and it was Kobus's say on what figures went out and what could be advertised.

Q. Perhaps we can come back to this after the break?

A. Yes. I would like to, because there is something else I would like to bring up on that as well.

MR JUSTICE MILES: Right. We will take a five-minute break now.

A. Thank you.

MR JUSTICE MILES: So we will come back at about 18 minutes to by that clock over there.

A. My Lord, is it okay if I speak to Ms Dwarka about those numbers?

MR JUSTICE MILES: I think if you just jot them down on a piece of paper and don't discuss them.

A. Yes, I'll just hand them to her. I just don't want anyone else to think I am giving her something else.

MR JUSTICE MILES: Thank you.

(11.33 am)

(A short break)

(11.41 am)

MR ROBINS: Mr Thomson, yesterday I asked you if you kept a close eye on the value of secured assets and you said that you and the other directors of LCF did keep a close eye on the value of the secured assets. Is that true?

A. Yes. The valuations that we received and we kept an eye on the value of the assets, yes.

Q. You said you got information from the borrowers, didn't you?

A. The parties that they had valuing the assets, they provided them, yes.

Q. And you said that you looked through it and got comfortable with it, didn't you?

A. As did all the directors.

Q. Including you?

A. Yes. I count myself as one of the directors.

Q. We looked yesterday at <C2/1>, page 39, where you said in paragraph 113, towards the bottom of the page: "The L&TD loan profile shows the last valuation update was on 13 December 2016 with total valued assets of £108 million ..."

Do you remember we looked at that yesterday?

A. Yes.

Q. Let's look at the document.

A. We got that figure from the valuations that we had.

Q. Let's look at the document. It is <MDR0011233>. We looked at this yesterday.

A. On the right-hand side.

Q. Yes, and you were familiar with these figures, weren't you?

A. They seem familiar, yes.

Q. Those are the same figures that we saw in the document we were just looking at, <MDR00077856>

So you are familiar with --

MR JUSTICE MILES: The same figures for LTD, because this also adds in London Oil & Gas.

MR ROBINS: LOG.

MR JUSTICE MILES: So when you say it is the same figures, do you mean it is for the lot?

MR ROBINS: For the same figures in rows 6 to 20.

MR JUSTICE MILES: Yes.

MR ROBINS: Mr Thomson. Do you agree?

A. It looks similar. It is not added up, but it looks similar to the spreadsheet that we saw before.

Q. You understood, at the time, that £35 million of the £221 million total was referable to Paradise Beach resort?

A. Yes. It says it there.

Q. You knew that CV Resorts hadn't acquired the Paradise Beach resort, didn't you?

A. Hadn't finished acquiring. There was agreement in place to purchase and it hadn't finished acquiring, was all of our understanding.

Q. Hadn't even started acquiring, had it?

A. Our understanding is that they had started acquiring --

Q. The Savills' valuation --

A. -- (overspeaking) in place to acquire over a period of time.

Q. The Savills' valuation was for the whole of the resort, wasn't it?

A. That -- if the company then utilised its loan facility to buy the whole of the resort, that would be the available security.

Q. But you understood that the company hadn't acquired the whole of the resort, didn't you?

A. I understood that it was acquiring. It hadn't finished acquiring. That was, at some point -- if I remember the document you took me to, some point in 2020 I think was the end date. I can't remember specifically.

Q. Yes, to acquire the whole of the resort, it was going to have to pay 57 million euros, wasn't it?

A. Worth value, yes.

Q. No, purchase price.

A. Yes. So the worth value, they were buying it for.

Q. If it paid 57 million euros, it would get something with the market value that you have put in here of 40.55 million euros, wouldn't it?

A. Well as I pointed out to you, the figure that they were buying didn't include a freshly-built, 450-bed hotel.

Q. Which hadn't been built, had it?

A. No, but by the time the contract would have been finished, exercised and bought, it would have been built. This is a staged process. Yes, that is the value at that period of time, but then you have to look at that in terms of where they are in the purchase, and we understood that they were purchasing over a period of time, as I believe the contract shows. And that is the value of the available security and that is what the directors took it at. After they -- if they did, indeed, and I know now that they didn't, finish the purchase, then that was the worth value they were going to spend, but then what isn't included in the Savills' valuation is everything else that was going to happen to the resort, including 450-bed hotel.

Q. If we look at A3, you accept the spreadsheet is as at 6 March 2017, don't you?

A. Yes, that is the date that is up there yes.

Q. On that date, if LCF had needed to enforce the security, it wouldn't have been able to get its hands on an asset with a market value of 40.55 million euros, would it?

A. That is the available security if the loan is drawn because then it would have bought it.

Q. It is not the available security as at 6 March 2017, is it?

A. But part of it would have been and, indeed, the purchase contract held that phase 2 was transferred over, which I think we went through and discussed.

Q. Let me rephrase my question: 40.55 million euros wouldn't have been the available security value as at 6 March 2017, would it?

A. Again, it is a staged purchase. So you would have had a portion of that and you would have to look at that in the context of what was the loan and it is Leisure & Tourism Developments, as the parent, had various different assets that it was secured against.

Q. So is your answer: no, LCF wouldn't have been able to enforce over a Paradise Beach asset worth 40.55 million euros as at 6 March 2017, but it might have been able to at some point in the future, if CV Resorts had paid the full sum of 57 million euros? Is that your answer?

A. Yes. And, on top of that, if it had finished and paid, the value would be above the worth value because there would be an additional hotel which hasn't been included in the Savills valuation. So if we had to enforce at a particular time, there would, is our understanding, be some value in there but it depends on where they were in the purchase schedule. But, at that time, we lent to Leisure & Tourism Developments not simply just that resort that you are inferring, there is other valuations that the directors got comfortable with.

Q. We will come to those in due course, Mr Thomson. But sticking with Paradise Beach, you agree that, as at 6 March 2017, LCF did not hold security over an asset with a market value of 40.55 million euros because CV Resorts had not acquired the whole of the Paradise Beach resorts yet?

A. It would have had access to what CV Resorts had purchased in the agreement. Part of which was phase 2. I don't know the value of phase 2.

Q. So only a very small fraction of the total 40.55 million euros amount?

A. Perhaps I can phrase it in a different way, if I may, and tell me if I am wrong. At 6 March 2017, if we had to enforce against Leisure & Tourism Developments, we would have had recourse to the assets of Leisure & Tourism Developments which included a phased purchase of Paradise Beach. So we would have had access to the part of the phased purchase that they had bought in terms of the contract. Is that perhaps a better way to (overspeaking)?

Q. As at 6 March 2017, CV Resorts had not yet acquired the asset with a market value of 40.55 million euros, had it?

A. It hadn't finished acquiring.

Q. It hadn't acquired it, had it?

A. It hadn't finished. It is a staged purchase. It is not a cut-off, on 5 March 2017, you have to pay all of this then. As the contract states, it is a staged purchase. So, if you had to enforce in the middle of that, it would be messy because you would have to figure out what is, but it is not a black-and-white answer because it is a staged purchase.

Q. You wouldn't have been able to recover, on enforcement, the market value of 40.55 million euros, would you?

A. Again, it is a staged purchase. So we would have gone after a portion of it. If we had to enforce against Leisure & Tourism, not simply CV Resorts, because the loan is to Leisure & Tourism, we would have looked at all of the available security and, when we looked to seek to recover, we would have sought to recover from the easiest one first and then gone down the list. The purchase wasn't complete. So we wouldn't have the whole of the value.

MR ROBINS: My Lord, I think I have taken that as far as I can. I am going to move on to another document. I think I have put my case sufficiently to the witness unless your Lordship has any questions?

MR JUSTICE MILES: Can I ask a question, if I may?

MR ROBINS: Sure.

MR JUSTICE MILES: As a director of LCF, what steps did you take when you were valuing the security over this asset to check with L&TD which parts of the Paradise Beach resort had, in fact, been acquired?

A. So we would have had conversations at the time, and by I say "we", it would have been myself and the other directors with them and we would have asked for updates and they would have told us that -- I believe they would have told us that they are purchasing in line with the agreement.

MR JUSTICE MILES: Did you require them to say any of that in writing?

A. I don't remember, my Lord. Sorry. I don't think -- from memory, I don't think there is. I can have a search.

MR JUSTICE MILES: I am not asking to you do a search, I am asking you for your answer. Did you require them to do it in writing?

A. No, we didn't require. It was meetings that we had with them.

MR ROBINS: Can we go back to <MDR00084251>, please. Here is something you were given in writing. It says, at the end of the first paragraph:

"CV Resorts at the moment does not have any property in its name only the contracts to acquire the land in the Cape Verde."

That is what you were told in writing?

A. That is the email that we went to before, I believe, that I was copied in on, that, as I say, I don't remember, and I believe my Lord asked me about reading my emails. I don't remember it. I may very well have missed it. April 2017 was a very busy time. I don't remember the email.

Q. What you were told in writing was that it hadn't acquired any of the property and you knew there was no basis for pretending that it had, didn't you?

A. As I have just said, I don't remember the email. I don't remember acting on this email. Reading that now, you know, if I had gone through that, then I imagine I would have reacted on that. But I don't remember the email, I am sorry.

Q. Can we look at <MDR00224094> please. If we look at the bottom of that page, we can see that Mr Partridge has sent you a letter. Do you remember getting letters from Mr Partridge?

A. I remember Mr Partridge is Surge's accountant.

Q. That's right. Do you remember getting letters from him?

A. I remember speaking to him. I don't particularly remember specifics.

Q. At the top of the page -- this is 9 February 2017 -- you have replied:

"Hi Mark.

"Thanks for your email, we are always happy to provide security values and the directors don't need to ask formally via yourself we are happy to let them have the detail at any time. As it happens we have just gone through the security values in preparation for our year end and the figures are as follows."

Then do you see the heading, "Verified security value" where it says £215 million?

A. Mmm hmm.

Q. That figure would have included something in the region of £35 million for Paradise Beach, wouldn't it?

A. That figure is the figure that Kobus has approved in their financial promotions, yes. That is why I imagine I would have used it there.

Q. So you say you had nothing to do with going through the security values in preparation for the year end? You say that was Kobus, do you?

A. No. No. What I am saying is, replying to this email, that security value there and looking at the time of that email, February '17, that seems to me to be around the same time that Kobus approved for transmission the security value that LCF held.

Q. But you were familiar --

A. That's why I included that there. But, yes, as I said, all the directors were familiar with the security values.

Q. And you were familiar with the fact that £35 million was referable to Paradise Beach, weren't you?

A. Yes, we went through that before. And, again, it is a staged purchase.

Q. You hadn't done anything to verify that information as being true because you knew it was untrue?

A. No.

Q. Mr Thomson, you were happy to pretend that CV Resorts had a very valuable asset when you knew that it did not?

A. I don't believe that's the case and I actually believe that later down the line -- I don't remember the date of it -- we actually issued CV Resorts a default notice because it came to our attention later on that the purchase had fallen down. So, therefore, there was no security in it. So we issued a default notice and I think Alex Lee drafted it for us. I can't remember the time of it and the group provided us additional security and we restructured accordingly.

Q. Mr Thomson, you didn't subsequently find out that CV Resorts hadn't acquired any property yet, you knew that throughout the entire period, didn't you?

A. No, you are inferring that from an email that I was copied into by Mr Sedgwick that I don't necessarily remember.

Q. You knew that CV Resorts still had to pay the 57 million euros. If it had done that, it would have got something with a market value of 40 million euros and incurred an instant loss?

A. Well, again, I'll take you back to the contract and I will take you back to the Savills valuation and what I have said to you before. If, indeed, CV Resorts had finished its purchase, given, I think, 2020, I can't remember the exact date, at that point, yes, it would have paid 57 million but the property would have been significantly improved to include a 450-bed hotel.

Q. That is the worth value of 56.72 million, isn't it?

A. That is indeed what I have just said. And didn't include the additional work that was going on, including, as it says in the contract, the 450-bed hotel built at the seller's expense.

MR JUSTICE MILES: Could you check that, please, Mr Robins? Could we go back to the contract?

A. I think it was point 3.6, my Lord.

MR ROBINS: <MDR00042490>.

A. Could you go to 3.6 for me, please?

Yes. So the seller promises to --

Q. Does it say "seller" or "buyer", Mr Thomson?

A. "... expressly undertakes to build in this plot ..."

Q. What do you see on your screen? On mine it says "promissory buyer".

A. It does say "promissory buyer". I am completely incorrect. I do apologise.

But again -- I apologise, I misread that -- the valuation wouldn't have included a 450-bed hotel.

Q. My Lord, I am proposing to move on to a new topic. Now you say, don't you, that Mr Hume-Kendall and Mr Golding set up a company called Lakeview Country Club Limited?

A. Erm, 2012?

Q. Sorry, is the answer to my question "Yes" or "No" or "2012"?

A. Was that in 2012? I can't remember. There was a company called Lakeview Country Club set up, yes. I can't remember the date.

Q. And you held shares in that company on trust for Mr Golding?

A. Mr Golding's family, yes.

Q. Mr Golding and his family?

A. Yes. Mr Golding and his family.

Q. As a director of LCCL, as I am going to call it, you signed the SPA for the acquisition of the Lakeview site?

A. Yes. I believe I did. I have not seen the contract for a little while.

Q. Let's have a look at it. We have <MDR00010600>. I think that is going to be an email, actually, from Mr Sedgwick, saying:

"Please find attached the agreement as amended and duly signed by Michael Andrew Thomson a director of the company ..."

The agreement itself is <MDR00010616>, and on page 4, I think it is, do you remember there is a -- if we can zoom in, there is a completion payment of £950,000, and then deferred consideration of £1.6 million?

A. I can see that, but I remember signing this document and I actually signed it whilst in a bed in Tunbridge Wells hospital, waiting to go down to have my appendix removed that was just about to burst.

Q. Do you remember there was then a renegotiation of the terms of the contract over the subsequent few months?

A. I remember there was a renegotiation, yes.

Q. Do you remember an offer that was made on behalf of LCCL with a revised purchase price of a little over £1.5 million?

A. I remember there was a revised offer, yes.

Q. Let's look at <MDR00011223>. Something has gone wrong with the formatting. Maybe can we look on the next page, I think there might be something on that. There is an email from Mr --

A. Just a second. Sorry.

Q. Oh, sure.

(Pause).

A. Thank you.

Q. Mr Visintin was a solicitor or former solicitor, wasn't he?

A. He was a solicitor, yes. Still practising, I believe, at that time.

Q. Became a director of Lakeview Country Club Limited?

A. I believe he was, yes.

Q. We see, on the right-hand side, an email that he has copied to you and Mr Hume-Kendall, reiterating an offer with a purchase price of £1.525 million. Do you see that?

A. Mmm hmm. I see that.

Q. And he is referring also to a further non-refundable deposit of £150,000 on signing the revised terms. Do you remember that?

A. I remember there were revised terms. Without seeing this email, I wouldn't remember the specifics.

Q. Do you remember, as he says in 4, the offer involved a daily charge or penalty of £3,333.33 per day from the signing date to the completion date?

A. I seem to remember there was something like that, yes.

Q. Do you remember KPMG made a counteroffer?

A. Say again?

Q. Do you remember KPMG were acting for the vendors?

A. I remember KPMG were included in the negotiations, yes.

Q. They were acting, weren't they, because the vendors, the Vernons, had some issues with their bank, Barclays, didn't they?

A. They had some financial difficulties and they were having to sell three resorts, as I understand it.

Q. KPMG had been instructed, I think by Barclays, to assist with the sale. Is that your understanding?

A. That sounds about right.

Q. If we look on the left-hand side, do you see there is a counteroffer from KPMG, copied to you. Do you see that? 11 March 2013?

A. Is that one with all the --

Q. Where something has gone wrong.

A. Yes, something has gone wrong there.

Q. It is a slight variation on the previous offer, it is still a purchase price of 1.525 million?

A. 4 grand a day, as opposed to lots of 3s.

Q. That's right. Do you remember receiving that?

A. I was on copy, so, yes, I would have done.

Q. Do you remember being involved in discussions with Mr Hume-Kendall and Mr Visintin about whether this offer should be accepted?

A. We would have been discussing that at the time, yes.

Q. Do you remember it resulted in a supplemental agreement with the Vernons?

A. I remember something like that. I can't remember the specifics, but I remember, yes, there was supplemental --

Q. Let me assist. <MDR00011370>.

There is an email from Mr Sedgwick saying: "Please find attached a supplemental agreement signed by Andy Thomson as a director of Lakeview Country Club."

You are copied in. Do you remember being copied in to emails like this?

A. Yes, I would have been. It is clear that I am.

Q. Let's look at the agreement, <MDR00011371>. Do you recognise that?

A. I acknowledge it. It is a supplemental agreement. It looks like it was done at the time.

Q. Page 7, please. That is your signature, is it?

A. That is my signature, yes.

Q. On page 4, in clause 4.1, we can see that the final completion date has been deferred to 10 April 2013 --

A. Yes.

Q. -- or some other date connected with the Vernons and their financial difficulties. Do you remember that?

A. I remember that -- that sounds about right. I don't remember the specifics of it.

Q. So the original completion date I think had been 8 March or something like that, it was being deferred by about a month, wasn't it?

A. I remember that it was deferred, yes.

Q. There is a reference there to a second initial payment, the £150,000. Do you remember that?

A. Not particularly, but it is there, so ...

Q. Then, if we look at clause 4.2, it says the various definitions have been deleted, including the deferred consideration. Do you remember that, as part of this variation, the idea of having to pay any deferred consideration was removed from the deal?

A. I don't remember the specifics of that, but that is what it says, so it must have been what was agreed.

Q. So then, in 4.3, the completion payment is amended to the sum of 1.175 million. Do you remember that?

A. I don't remember the specific figure, but that is what it clearly says in the agreement.

Q. Okay. While we are here, I should show you 4.4, which I think confirms that the deferred consideration has gone; yes?

A. Yes.

Q. So then, 4.7, at the bottom of this extract, the consideration is now going to be 1.525 million, and that includes the initial payment and the second initial payment as well as a completion payment. Is that your understanding?

A. That's what it says, yes.

Q. Then, on page 5, we can see, in 4.15, the £4,000 a day penalty for delay. But rather than being paid on a daily basis, it looks as though it has been agreed that those daily sums will be added up and paid weekly. Was that your understanding?

A. I don't particularly remember, but it says it in here that they would be rolled up and paid weekly, so that would have been discussed at the time. So, yes.

Q. In 4.16, the vendor has a right to rescind in the event of delay beyond the final completion date. Do you remember discussing that at the time?

A. Not particularly, but it is there in the contract.

Q. You were involved in trying to raise the completion monies from the Telos investors, weren't you?

A. The Lakeview roadshow, I think we called it. Yes.

Q. So, yes, I think, is the answer to the question. Is that right?

A. Sorry, yes, I think we referred to it at the time as the Lakeview roadshow.

Q. There were various meetings around the country, were there?

A. Yes.

Q. You were involved in making the arrangements about which investors would be attending which meeting?

A. Erm, no. That was done by the admin people behind the scenes.

Q. You were kept informed about what was going on?

A. We had a list of who was coming, so, yes, I didn't particularly arrange it, I didn't arrange the hotels or the places that we met them. But, yes, I met with them, so ...

Q. You gave instructions to the admin people about what hotels to book and what room rates to agree and that sort of thing, I assume?

A. I can't remember, no, it probably would have been discussed at the time or just asked to do it. I don't particularly remember.

Q. Do you remember preparing a presentation of options or being involved in the preparation of such a presentation?

A. I remember being involved yes. It was a group thing.

Q. Let's have a look at it <MDR00011181>. Does this look familiar?

A. It is a front page. Can we go through it?

Q. Yes, sure. I am not sure if there is anything on page 2. My notes say -- oh, there is a picture. That is a picture of the hotel that was planned to be built on the Lakeview site, is it?

A. Due to be built, extension of the main facilities and, I believe, top right-hand corner --

Q. It was going to have something like 110 bedrooms, was it?

A. 105 springs to mind.

Q. Over 100 anyway?

A. Yes, over 100.

Q. This is a computer-generated image, is it?

A. No, actually, that was a model that was built. I think that is a picture of a model.

Q. A photograph of a physical model?

A. A physical model, yes. I remember seeing the model. I didn't have it done. It was already there. I think this relates to the previous planning permission.

Q. The Vernons?

A. No, I think the people -- Telos was the company, I was in the bank, I wasn't involved.

Q. Oh, Telos.

A. I think this model relates to what the planning permission was for the development of the site.

Q. I see.

A. So I think this is what that is.

Q. You think the model is something that had been prepared by or on behalf of Telos?

A. Possibly and/or the Vernons. I remember looking at this, I remember the planning permission that we had to get put back in place and, yes, this was a physical model. I saw it.

Q. It says under that:

"Proposal is to build the site as per existing planning."

A. Mmm hmm.

Q. That was the proposal that you were making to the Telos investors, you would essentially pick up the existing plans and run with them?

A. Yes, that is, I believe, what I said.

Q. Then, on page 4, it says "Option 2" I think there were a number of options for the Telos investors, weren't there?

A. That sounds about right. I can't remember the specifics but I believe there was.

Q. And I think option 1 was to sort of do nothing, wasn't it? Something like that. They don't take any action at all. Does that ring a bell?

A. Do we have the options? I can't --

Q. For some reason, I don't think there is anything on the previous page. This starts on option 2. Oh, no, there is an option 1. How did that happen? So, yes, here we are, option 1:

"Do not take up any options offered by Lakeview Country Club Limited and pursue the recovery of your investment from Telos."

That was essentially the option for Telos investors who didn't want to accept your proposals, wasn't it?

A. Yes, and they were quite happy to see if they could recover from the Isle of Man company, which I believe, a number of years down the line, Mr Hume-Kendall was successful in recovering money from the Isle of Man company. I had gone by then.

Q. It says at the bottom:

"We are not looking to influence or persuade any investor from taking their own course of action but believe that what we are offering in light of the recent announcement from Telos (IOM) ... (ie that they are going into administration) offers the best outcome for all investors."

A. Mmm hmm -- yes, sorry. I meant to say yes.

Q. You weren't giving investment advice, but you were telling them you didn't think option 1 was really a very good option for them?

A. It was going into administration, there really wasn't anything there. So, yes, this is an option.

Q. Let's look at the next page, option 2. So you were offering a possibility of a new contract with Lakeview Country Club Limited. The Telos investors wouldn't have had any contract with Lakeview Country Club Limited as matters stood, would they?

A. No. Because they were -- Lakeview Country Club was a new entity, so Telos was an historic one. The terms of all this were, I believe, drafted by Mr Visintin, as the lawyer.

Q. You understood that the proposal in option 2 was for: "A new contract with Lakeview Country Club Limited mirroring the Telos contract, ie for a 30 per cent deposit (which in essence means that Lakeview Country Club Ltd is gifting every investor a 30 per cent deposit) with the balance paid on handover/completion." Do you remember that being part of the proposal?

A. I can see that is what it says.

Q. Then it says:

"If an investor feels that they will be unable to complete the contract Lakeview Country Club Ltd will re purchase the gifted contract for 33 per cent of their original investment with Telos ... This payment will be paid out on completion of the build."

A. I can see it there. I don't -- if you hadn't put this in front of me, I wouldn't have remembered the specifics, no.

Q. Essentially, the investors who proceed with option 2 are gifted something of a windfall, aren't they?

A. Lakeview Country Club owed them nothing.

Q. Yes.

A. Yes.

Q. Then, on the next page, we have, I think, a third option, is there? No, trust payments. It says: "10 per cent of all property sale proceeds will be paid into an independently managed trust ... " ... set up and managed by Moore Stephens ..." Do you remember that being part of the proposal?

A. Again, if you hadn't put this in front of me, I wouldn't have remembered it, but that is what it says.

Q. Then what is on the next page?

A. There was a note down the bottom of that.

Q. Yes, I was just wondering, do you think this is a PowerPoint and these are notes for you and Mr Hume-Kendall when you were making this presentation to the investors on the roadshow?

A. Possibly. It looks like a PowerPoint, and then some flexibility here as to set up.

Q. It looks like a speaking note, doesn't it?

A. We had Moore Stephens with us. Moore Stephens presented with us. So this wasn't just Lakeview, it was Moore Stephens as well.

Q. Was that Paul Sayers from Moore Stephens?

A. Yes, it was. So this may very well have been him. If this is, indeed, a presentation, then, looking at this, it follows that he would be discussing that, seeing as it is saying it is set up and managed by Moore Stephens.

Q. On the next page, there is an option 3. I think option 3 is that the investors could make additional payments to get enhanced recoveries. Is that right?

A. It seems to say that.

(Pause).

That looks to be that, yes.

Q. So under option 2, if you sign the new agreement, you get 33 per cent, but under option 3 you could make additional advances and, if you advanced 10 per cent of your original investment, then you would be effectively upgraded to 67 per cent?

A. That is indeed -- looks like it's what it is saying, probably.

Q. If you advance 15 per cent of your original investment you will be upgraded to 83 per cent; yes?

A. That follows, yes.

Q. That would be by way of a creditor loan from the investor to LCCL. Was that the proposal?

A. That is what it says there, so I imagine yes.

Q. Interest would be payable on that loan at 8 per cent. Is that what you understood the proposal to involve?

A. Again, that is what it says.

Q. Could we then look at the next page. Maybe we need to zoom in on this. This is a worked example of the various permutations of options 2 and 3, isn't it?

A. That looks like it is taking the previous table and putting some figures to it.

Q. Yes. What page is this, please? I think there is one more page. Page 8. Going forward. So this is, I think, a summary of the options for the investors. This is essentially what you understood was part of the proposal that you were making to them on the roadshow?

A. Yes. That looks like that's what it is. Yes.

Q. Do you remember being involved in the preparation of a letter to be sent to Telos investors after the roadshow to summarise the options?

A. That would have been, you know, a collective putting that together, yes.

Q. Let's see if there is any clue as to who is in the collective. It is <MDR00011187>.

A. I think I can probably list them for you.

Q. That is sent to you. So are you the collective?

A. No.

MR JUSTICE MILES: It's sent from Mr Thomson.

MR ROBINS: Oh, from you to Mr Sedgwick?

A. Yes.

Q. So is it --

A. So I sent it to him asking for advice or, maybe -- I don't know -- just, "Have a read of the attached and advise if you believe the content of the letter constitutes investment advice, which is not its purpose".

So that is just the company sending to its lawyer at the time because, looking at that date, Mr Sedgwick would have been in Buss Murton. So, if you want, the collective, I said I could probably list some names for you.

Q. Yes, please.

A. That would be myself, Mr Hume-Kendall, Mr Golding, Mr Barker, Mr Visintin, Mr Redman, and legal advice from Mr Sedgwick.

Q. Thank you. Let's look at the letter <MDR00011188>. So you would have been involved in the preparation of this. I am not suggesting you're solely responsible, but you were one of the group of people involved in preparing it?

A. This, I believe, would have been mainly drafted by Mr Visintin, who is the, let's say, in-house lawyer, for want of a better word. Again, there is mention of Mr Redman in there. Mr Visintin, as we mentioned earlier, was still a lawyer and, as director of Lakeview, I believe he would have had the main hand in drafting that.

Q. Can we look at the next page. It was going to be a letter from you as CEO of LCCL. It is something you had been closely involved in drafting or at least review?

A. Absolutely, I don't deny that. And I forwarded it on to Mr Sedgwick for his advice on this. Again, it was a collective, we were working on lots of different things. I believe the main drafting of that would have been Mr Visintin, but, yes, we would have all seen it and had input.

Q. Do you remember that some of the Telos investors agreed to lend monies in return for their enhanced returns?

A. Yes, they did.

Q. Do you remember they had to fill out forms and send them back to say what option they would prefer?

A. I remember something like that.

Q. Let's look at <MDR00011363>. Is this the sort of form that you recall?

A. It looks vaguely familiar.

Q. Do you remember most of the Telos investors responded to the proposal?

A. Yes.

Q. Do you remember being involved in the preparation of a letter to the Telos investors who had responded?

A. There would have been a letter in response. Again, it would have been a collective that put it together. If it is a legal-type letter, Mr Visintin would have probably led that.

Q. Let's look at it to see if it assists. <MDR00011281>. I think that is the email. This time, it is from Mr Sedgwick to Clint Redman and you --

A. Sorry, is someone's phone continually buzzing? I can hear it going off.

MR JUSTICE MILES: There seems to be a phone on silent.

MR ROBINS: There is a phone buzzing somewhere.

MR LEDGISTER: Not guilty, my Lord.

MR JUSTICE MILES: It seems to have stopped. Thank you.

MR ROBINS: Do you think it is possible Mr Sedgwick drafted this one?

A. I don't know. Possibly. Again, it was a group input.

MR ROBINS: If we can look at <MDR00011282>, that is the attachment. I think it is to be sent by Buss Murton. That is Mr Sedgwick's firm, isn't it, or was at the time?

A. So, yes, if it is sent by Buss Murton, then it would have been Buss Murton that was drafting it.

Q. I see. Yes, and he is attaching a draft agreement. Would you have been involved in reviewing the draft agreement that he was going to be sending out?

A. Again, the collective I refer to them as would have all had knowledge/a hand in it.

Q. Do you recall that the Telos investors started to pay monies to Buss Murton's client account?

A. I remember they did so, yes.

Q. Do you remember being informed about that by Mr Sedgwick?

A. He probably did.

Q. If I were to say that, in total, the Telos investors provided about £728,000 by way of these additional advances, does that sound about right to you?

A. I don't remember the figure, but it -- I am sure you have added it up and it is correct. I don't remember the specific figure, sorry.

Q. Let me show you a spreadsheet and ask if you saw it at the time. It is <D2D10-00007195>. We need to look at it in native form. Maybe if we scroll to the top. Is this something you were familiar with?

A. It looks like a Michael Peacock-type spreadsheet. He likes his colours.

Q. Do you think you would have seen this at the time?

A. I probably would, as did everyone, yes.

Q. If we look at cell 139.

A. I think you are in page setup.

Q. I wonder if it is a different tab. Is there a tab to the left?

A. You have your -- your view in Excel is on page setup. You need to come out of that and see the whole spreadsheet. Your view is in print page setup, so you need to come out of that. You have selected an area and that is why you are seeing it that way.

Q. So, do we need to go to "page layout" at the top, are you saying?

A. Yes, you should -- so you should just go back to --

Q. Under "view" maybe. There we are, on the right, "view".

A. You need to go "normal". There you go.

Q. It is still not what I was expecting to see, so that didn't help.

A. What were you expecting, Mr Robins?

Q. Where did the colours go?

MR JUSTICE MILES: It seems to be in the address tab.

MR ROBINS: Yes, where did the colours go?

MR JUSTICE MILES: It is a different tab, I think.

MR ROBINS: We were looking at Mr Peacock's pretty colours, weren't we?

MR JUSTICE MILES: This is a different tab.

A. If you scroll over to the right-hand side. There you go.

Q. Oh, there we are.

A. You were in 100 per cent view. If you take the percentage down, you will be able to see all of it.

Q. There we are, that is what I was looking at. So if we scroll to the bottom of the colours, do you see there is a figure, in what is it going to be something like Y139, of £728,572.88?

A. Click on the cell for me. Oh, it is just a sum. 728, yes.

Q. Does that look like the total additional amount provided by the Telos investors?

A. That looks like it is adding up that column, so yes.

Q. If they are going to get 8 per cent per year, then that is going to be something in the region of £58,000 per year payable to them, isn't it?

A. Yes, roughly. Yes.

Q. You were involved in obtaining bridging finance for the acquisition of the Lakeview site, weren't you?

A. Ortus or Ultimate, I think.

Q. Ortus first. Do you remember there being a facility from Ortus in the sum of £800,000?

A. I remember we got bridging finance from Ortus, yes.

Q. Do you remember you gave a guarantee to Ortus?

A. Not particularly, but I am sure you will show me that I did.

Q. <MDR00012403>. Do you remember giving the guarantee? Maybe it is -- I mean, it's ten years ago, maybe you don't.

A. I mean, it says that I did. I don't particularly remember it, and it is witnessed by a lawyer, so I will accept that.

Q. Do you remember the sale of Lakeview completed on 5 April 2013?

A. I don't remember the date, it completed around that time.

Q. Do you remember that LCCL paid a total of about £1.6 million to acquire the Lakeview site?

A. Was it 1.525, I think? Was that --

Q. Well, including the pre-completion payments and the --

A. 4,000 rolled up.

Q. -- delay penalties?

A. Yes.

Q. So does about 1.6 sound about right?

A. Let's go with about that, yes.

Q. Do you remember the bridging finance from Ortus was due to expire in July?

A. I remember it was short-dated. I can't remember the date.

Q. Do you remember that you were involved in trying to find new bridging lending for Lakeview Country Club Limited?

A. I remember that happening. I think that was Ultimate Capital.

Q. Do you remember liaising with Jo Baldock and John Russell-Murphy about getting the new financing?

A. Possibly. They may have introduced us to a company called Crystal.

Q. Let me see if I can jog your memory, <D7D9-0000311>. There is an email at the top from Mr Russell-Murphy to Jo Baldock. How long had you known Mr Russell-Murphy?

A. I would have only just met him and I don't particularly remember him then. He was someone that Spencer knew and was a broker.

Q. He is saying:

"Can you give Andy Thomson a call, he will be able to answer your questions."

Is that your phone number, or was it at the time?

A. That was my phone number at the time.

Q. Then it says:

"He is employed by Spencer and is running Lakeview."

A. That's wrong.

Q. What do you say is wrong?

A. The second part "running Lakeview" is correct; "employed by Spencer" is incorrect.

Q. Should it have said employed by LCCL?

A. Probably, yes.

Q. And Spencer owned, and his family owned, 71.25 per cent of LCCL?

A. Yes. They were the shareholders, yes. Majority shareholder.

Q. So it should have said he is employed by a company majority owned by Spencer and his family, if it was going to be entirely correct?

A. Yes, you wouldn't write that in this type of document. It is correct to say he is employed by LCCL or, probably better, he is a director of LCCL.

Q. Well, you represented Spencer in LCCL, didn't you?

A. I held his shares, yes. His shares for him and his family, yes.

Q. And you represented his interests and were a mouthpiece for his views?

A. No. Represented his interests in holding his shares, yes; mouthpiece for his views, no.

Q. Do you remember getting an offer from Ultimate Capital?

A. I think I mentioned Ultimate Capital before, yes.

Q. Do you remember that you weren't very keen on the Ultimate Capital offer?

A. I don't remember the specifics of it. I remember Ultimate Capital, I think I mentioned it to you about ten minutes ago, but I don't remember specifics no.

Q. The reason I said that, there is a suggestion you weren't very keen at <MDR00012906>, where Mr Sedgwick, at the top of the page, is talking about the Ultimate offer. He says:

"I believe whilst Simon Hume-Kendall wants to proceed, Andy Thomson, who represents a major shareholder, does not".

Do you remember a disagreement between you and Mr Hume-Kendall about this?

A. Quite possibly. I think there may have been something to do with his property in this as well. I can't remember what the issue was, and, yes, it is correct to say that I represent the major shareholder. I can't remember what -- what the issue is.

Q. Okay. Do you remember that there was a valuer you dealt with called Jonathan Marshall?

A. I remember that name.

Q. Do you remember he was part of GVA in -- at some point in 2013?

A. GVA Humberts?

Q. I believe that is the full name, yes.

A. Mmm hmm.

Q. Sorry, for the transcript --

A. Yes, sorry.

Q. Let's look at GVA's valuation at <MDR00011619>. Do you recognise this?

A. I recognise that, yes.

Q. If we look at page 2, there are some photos. Those are, on the left, the lodges at the Lakeview site?

A. That is some of the A-frames, I believe. There was also three-bed lodges as well. That is one of the lakes, to the right.

Q. I see. Can we look at the whole?

A. You can see the resort looks quite tired there.

Q. Yes, it does. Then, on page 3, at the bottom, do you see it says, "Market value £4.65 million"?

A. Yes. I can see that.

Q. And you remember GVA giving that valuation?

A. Yes, it is clear they did.

Q. And do you remember it?

A. Do I remember, what, sorry?

Q. I asked you if you remembered it and you said --

A. Yes, I said it's GVA's valuation.

Q. Can we look at the next page, please. There is the same valuation, 4.65?

A. That looks just like a cover letter.

Q. Yes, that's right. If we look at the bottom of page 31, it says, right at the bottom:

"Lodges 1, 3, 7, 15, 26 and 65-67 are held in hand." That was the position at the time of the acquisition of the Lakeview site, wasn't it?

A. Yes, I think it was the main facilities, the site, the golf course, seven lodges. I think there was another office that could be turned into a lodge, but that -- and then there is the various facilities and outbuildings that were with it.

Q. I see. That is why this refers to -- you said seven lodges and the office; this refers to eight. Was lodge 1 the office that could have been turned into a lodge?

A. Possibly, yes. Yes, it wasn't -- I remember there was one that wasn't -- it was built as a lodge, but it didn't have any accommodation in it. It was used as an office.

Q. That was one of the ones owned by LCCL on completion?

A. Yes.

Q. Then, if we look at page 33, we can see at the top that there were 24 lodges -- lodges 8, 10, 23, 24, 27-31, 37-40 and 50-60 -- which were let to Lakeview Title Limited. These were the timeshare lodges, weren't they?

A. I don't remember the specifics. There was mid 20s in timeshare, the remainder, I think there were 69 or 70 lodges in total. So in the mid 20s for timeshare, seven plus an office were, and then the rest were, I believe, held on long leases to others.

Q. Yes. It says the timeshare leases were a term of 76 years at a peppercorn rent. Is that what you remember?

A. I don't remember, but it sounds plausible. I don't particularly remember that.

Q. Let's look at page 31, which has the other lodges you mention. Oh, no something has gone wrong. We have gone backwards but maybe it is the next page. There we are. That is the page I was expecting to see. These are the other let lodges, aren't they? They say, 36 let lodges: 2, 4 to 6, 9, 11 to 14, 16-22, 25, 32-36, 41-49, 61-64, 68 and 69, let on 999-year leases?

A. That's what I believe. I spoke about earlier.

Q. These were let to various tenants, weren't they? It is not like the timeshare --

A. Private individuals, I think a couple were maybe held in companies. Sorry, can I ask how long until you break for this, I am just --

MR JUSTICE MILES: Are you in need of a break, Mr Thomson?

A. I am just looking at the time, it is coming up to 1 o'clock. I am just wondering if Mr Robins is coming up to a natural break now or not in what he is doing.

MR JUSTICE MILES: But do you need a break now or are you able to go on for a while? If you let me know.

A. Okay. I am in pain, but if it is only a short --

MR JUSTICE MILES: Is it intolerable pain or is it pain that you can manage?

A. I will manage for the moment, my Lord.

MR JUSTICE MILES: Mr Robins, we might break a little bit before 1 o'clock, so if there is a convenient moment, but if you want to go on for a little longer.

MR ROBINS: Yes. May I just explain, Mr Thomson, we normally break at 1 o'clock and reconvene at 2 o'clock, so it would be another 15 minutes. But, as my Lord has said, if you need to break earlier, we can rise a little earlier than normal.

MR JUSTICE MILES: If you feel that you are unable to carry on now, Mr Thomson, the alternative would be to break now and to come back at 1.45 pm. Would that be -- which would you prefer? It will make the afternoon a little longer, but we will take breaks.

A. I can continue for a bit. I am just getting some referred pain going into my leg, sorry.

MR JUSTICE MILES: As I say, I am very sympathetic, so if you do need a break then let me know. But if you feel able to go on properly --

A. If we continue for a little bit and I will let my Lord know.

MR JUSTICE MILES: Right, well let's carry on for a little longer but you let me know.

MR ROBINS: If we then look at page 55, we can see how they came to that value of £4.65 million. Do you remember that they didn't attribute any value to the timeshare lodges, the 24 timeshare lodges?

A. I can see they didn't. I don't remember at the time but that is --

Q. And for the 36 privately leased lodges, they have valued the ground rents. Did you understand that at the time? It is actually a net present value calculation?

A. Yes, I can see what they are doing there.

Q. Then, for the five owned A frames, they have said £135,000 each. But then they have taken 85 per cent of that. Do you remember seeing that at the time?

A. Not particularly. I can see it is there now but I would have seen it at the time.

Q. The A frames were the two bed lodges, weren't they?

A. The ones that look quite tired that we looked at earlier.

Q. Then there are three owned lodges at £180,000. Would those be the three bed bungalows?

A. Probably, yes.

Q. Do you remember there being discussion about the value of 36 plots on which new lodges could be built?

A. They have clearly put a value on it. They are the valuers and they had access to the site and they have valued it. That is what they have come up with.

Q. You understood at the time this was part of the 4.65 million valuation?

A. Yes, it says it clearly there.

Q. Trading EBITDA, is that to do with the central facility do you think?

A. Or it could be -- it could be the central facility, it could be the whole site, including rentals. I don't -
- it doesn't --

Q. They have included ground rent separately at the top, haven't they. What other --

A. I am not sure what he means by "lodge resale EBITDA". I think I probably asked at the time, but I don't remember now.

Q. The owner's house was also referred to as The Manor, wasn't it?

A. Yes.

Q. It was a house. Do you remember them valuing that at -- well, they have put 70 per cent of £750,000?

A. Mmm hmm. Yes. I don't know why those wrote those down, those percentages down.

Q. Okay. But you saw this report at the time?

A. Yes, I would have seen it at the time.

Q. You understood what GVA were valuing was LCCL's interests in the Lakeview site?

A. Future interest. This was done January 13, it hadn't actually purchased it yet.

Q. I see. The interest it would have on completion?

A. I believe this is what it was for, yes. I think I am correct, this was January 13.

MR ROBINS: My Lord, I am about to look at another valuation that might take more than five minutes --

A. Yes, it says it down the bottom: "January 2013".

MR ROBINS: Yes, you are quite right, Mr Thomson. My Lord, I don't know whether you want me to carry on for another five minutes. There is --

MR JUSTICE MILES: Let's break now and we will come back at 1.50 pm.

MR ROBINS: There is something I could usefully raise. We still haven't had a response from Kingsley Napley about our letter about privilege.

MR JUSTICE MILES: Do you want to stay there, Mr Thomson, or would you rather walk around a bit?

A. If you are going to talk about what Mr Robins asked about, I am happy to go.

MR JUSTICE MILES: I will release you from the witness box now and then you can have a bit of a walk, if that is helpful to you.

A. I am grateful.

MR JUSTICE MILES: We will come back for your evidence -- well, actually, we might come back at 2 o'clock in that case, if it is going to take a few minutes.

MR ROBINS: Yes.

MR JUSTICE MILES: We will come back at 2 o'clock, Mr Thomson.

(The witness withdrew)

Submissions re Kingsley Napley letter by **MR ROBINS**

MR ROBINS: My Lord will recall the letter that I passed up, it is at <Q6/2>, page 1.

We were told that we would get a response by letter. That didn't turn up when it was promised. We are not why it is a response by letter anyway, we had asked for a witness statement. If it is to be in the form of a letter, there can of course be a very short one or two paragraph witness statement verifying the truth of the contents of the letter, but it is a very serious matter. We want the comfort of knowing that someone is prepared to sign a statement of truth as to the contents of the letter.

Given that we haven't received any witness statement or any confirmation that the witness statement will be provided, or even any letter, we do ask your Lordship to make an order under the paragraph of the Practice Direction that we refer to on the final page of the letter. If you go to the final page of the letter, I think it must be page 3. Paragraph 3.2(5) of Practice Direction 57AD, requiring a witness statement to be provided within seven days. That is the paragraph that enables the court to require a party to provide a witness statement explaining any matter relating to disclosure.

Oh, sorry, I have read the wrong paragraph. It is 17.1(5). I looked at the wrong part of the letter.

(Pause)

MR JUSTICE MILES: Right. Okay, Mr Ledgister?

MR LEDGISTER: My Lord, might I give way to Mr Curry on this.

Submissions re Kingsley Napley letter by **MR CURRY**

MR CURRY: My Lord, it is regrettable that the letter hasn't been sent so far but my basic submission is that it is unnecessary for your Lordship to make an order that a witness statement should be filed at this stage. If I can summarise the problem that my learned friend and his solicitors are concerned with, as I understand it. It is that there was a tranche of disclosure in July 2023 and a further tranche very recently. Both of those tranches of disclosure involved the manual review of documents that have previously been considered to be -- well, it is wrong of me to say "they had previously been considered to be" -- they had previously been tagged in the course of the electronic disclosure process as privileged. On manual review in July 2023, it became apparent that a significant number of these documents had been wrongly tagged. They were recategorised and disclosed accordingly. In the course of Mr Robins' opening, he referred to a document, your Lordship may recall it, it was an email to Mr Russell-Murphy and he said that this document had not been disclosed by any party. It is not, of course, for me to give evidence, my Lord, but that motivated me to have a look on the online disclosure platform and I found the document. That caused my solicitors to make further enquiries and, in the course of that, they discovered that there was a further batch of documents that needed to be reviewed for the correctness of their privileged or otherwise tagging.

That review produced the recent tranche of disclosure.

My Lord, there is a draft letter explaining all of this. It has taken some time to finalise because those instructing me need to liaise with the online disclosure provider whose systems have lain behind the disclosure that the claimants have been providing, so that they can be certain that what they say in the letter is correct. As I say, the letter is in draft, I don't want to create any further hostages to fortune by saying that it is going to be sent today, although I would hope it would be. Given that this is the last day of term, in my submission, it would be premature to order a witness statement at this stage, given the explanation that is going to be forthcoming in this letter. The parties can correspond about that over the vacation and, if and to the extent that my learned friend Mr Robins and those instructing him are still dissatisfied with the state of the fifth and sixth defendants' disclosure, they can bring the matter back before your Lordship at the start of term.

MR JUSTICE MILES: I mean, what is not entirely satisfactory about that is that part of the purpose of this, of what the claimants are asking for, as I understand it, is to try to ensure that there are no further documents which might need to be disclosed. Of course they need that in good time before they start having to cross-examine your witnesses.

I mean, clearly in order to answer the questions which have been asked, or at least, if not the exact questions that they have asked, to explain what has happened, your solicitors are going to have to have carried out a careful review of what has happened to ensure that there is nothing more. What is the difficulty then, if they have carried out that process, with producing a witness statement which confirms it and which gives a higher degree of assurance than more correspondence, because it focuses the mind?

MR CURRY: Well, my Lord, it is very difficult for me to say that a witness statement -- we can't generally object to the provision of a witness statement. Your Lordship correctly identifies that the key question is both the claimants and the court having sufficient confidence in the integrity of the process in order to be able to understand that there aren't likely to be any further documents to disclose. That will require an explanation from those instructing me to the best of their ability. Now, obviously, with the best will in the world whatever they may say in that, they can't actually provide an absolutely cast iron guarantee, particularly in a case with as many documents as this one, that there won't be some further documents at some point. But it is still my submission that a witness statement is not required today, and is certainly not required on an overly tight timetable.

This has been a complicated disclosure exercise from the Surge defendants' perspective and if they are to be required to file a witness statement, to the extent that your Lordship considers that appropriate, they need to be given sufficient time to make sure that they have conducted the appropriate enquiries with the disclosure provider, and that they don't accidentally say something that is either not a complete explanation or is an explanation that subsequently proves to be wrong.

MR JUSTICE MILES: Is there a way of assessing how many documents that remain have been tagged as legally professionally privileged?

MR CURRY: My understanding, on the basis of the draft letter that I have seen, is that currently those instructing me do not think, and have no reason to think, that there is any further unknown folder of documents that has not been brought to their attention that needs to be the subject of further review for being incorrectly tagged as privileged documents. That is one point.

MR JUSTICE MILES: I suppose I am asking a slightly simpler question. Is there some -- I don't know how the system works obviously but is there something within the system that tags documents as legally professionally privileged?

MR CURRY: My Lord, with your Lordship's indulgence I am going to venture an answer to that, but if neither your Lordship nor my learned friend Mr Robins could necessarily hold it against me if --

MR JUSTICE MILES: Well, I want to hold it against you in the sense that this is a submission and so I need to know what the position is. If you are saying that you don't know what the position is --

MR CURRY: I have a fairly good idea but --

MR JUSTICE MILES: Why don't you take instructions on it and we will come back at 1.50 pm and see whether there is a way of dealing with this. But if you can take instructions which I will then, as it were, hold against you.

MR CURRY: My Lord, in those circumstances that would be entirely fair.

MR JUSTICE MILES: What I want to know, I suppose, is whether there is a way within the system on which your client is holding documents of identifying those which have been withheld on the basis of legal professional privilege. Secondly, whether that is all of the documents. In other words, have all documents been put on to the system? Third, how many remaining documents there are which have that designation and have not been disclosed. And fourth, what, if anything, is proposed in order to be absolutely certain that there are no more documents being withheld. In other words, what review process has been taken, if any, in relation to that remaining set of documents which have been designated in that way.

Now, you may tell me that that doesn't make sense as a way of looking at this, but I would like to have that information. Also, I do regard this as a matter of some urgency for the reasons that I mentioned. Sorry, Mr Robins, you wanted to say something?

MR ROBINS: My Lord, I was also just going to ask if my learned friend could take instructions on the possibility of simply providing the witness statement. What we have heard is obviously of concern. We are told they are prepared to say something in a letter today but they are not prepared to put it in a witness statement because they are not sure that it is correct. We are very happy for them to have an extra seven days to check that it is correct and to provide it in the form of a witness statement.

I was also concerned about my learned friend's suggestion that there is no reason for thinking that any further documents that ought to have been disclosed have been withheld on the grounds of privilege. We have identified some on page 3 of our letter. They include, for example, an attachment to an email. It is clear from the email that the attachment is a Westminster Corporate Finance Plc draft information memorandum, so it relates to LCF 2, but the attachment has been withheld on grounds of privilege. It seems to us to be entirely unsustainable and a perpetuation of the problem.

We were told, after the disclosure of the 29,204 documents in July that had been wrongly withheld on the grounds of privilege, that there were no further privileged documents. That is the same assurance as my learned friend gives now. It turned out to be wrong then and we are concerned it seems to be wrong now. The questions we have asked are very simple. We want to know, for example, who assessed privilege. It really ought to have been done by lawyers. We want to know if that was the case or not. We want to know what instructions were given to those people, what process was applied for checking the decisions of the reviewers. There is a list of questions in our letter. Why, for example, did somebody think in July that they ought to revisit the privilege designations and check? That was some considerable time after disclosure had been given, what was the occasion for thinking, hang on a minute, let's go back and check that? What review process was carried out at that time?

These are very straightforward questions and we would rather have them accurately in a witness statement in seven days, rather than potentially inaccurately in a letter now.

I haven't taken my Lord through the correspondence because I know it is not something that judges relish, but we are driven to do this after a long history of correspondence about the 11 tranches of disclosure that have trickled out from the fifth and sixth defendants. Often our letters go substantively unanswered; when they are responded to, it is after considerable delay. When we get a response, it doesn't answer the questions and contains a lot of tendentious language attacking us for having the temerity to ask in the first place. We don't want to get into any more of that. We think that a witness statement within seven days is a clear and simple way of knocking this on the head. It really shouldn't be allowed to drag on.

So, as I say, I would ask my learned friend specifically to take instructions on whether they can think again and provide the witness statement voluntarily.

MR JUSTICE MILES: Right. Well, you have heard that. What I am going to do is rise now until -- well, in fact I am going to rise now until 2 o'clock because it is 1.10 pm. How do we want to deal with this in terms of timing? I don't want this to eat too much into the cross-examination of Mr Thomson, and equally I don't want his cross-examination to be unduly prolonged. Is it best to deal with it at the end of the day?

MR ROBINS: Probably.

MR CURRY: My Lord, Mr Ledgister and I also suggest it be dealt with at the end of the day.

MR JUSTICE MILES: Right. But I would like a solution to this.

(1.06 pm)

(The short adjournment)

(2.00 pm)

Housekeeping

MS DWARKA: My Lord, before we resume, I would like to let you know Mr Thomson has not been feeling well since we broke off. Actually, he had been lying on the floor for half of the time. I have asked him what he would like to do, but he is torn between wanting to proceed, because he doesn't want this to drag, but also he is in a lot of pain. He has told me that he has taken more medication than he would usually take. So I don't know if you want to ask him how he is feeling, but he has told me he is not feeling very well at all.

MR JUSTICE MILES: Mr Thomson, are you able to come in or do you want to address me from there?

A. Sorry, my Lord, at the moment, it hurts to stand, it hurts to sit and it hurts to perch. I am currently holding myself up at the moment to keep the weight off my back. I am torn between wanting to not drag this on, but I am in pain.

MR JUSTICE MILES: Well, are you -- it doesn't seem to me that you are really in much of a position to give evidence if you are unable either to stand or -- can you give evidence standing? No, because --

A. It hurts to stand.

MR JUSTICE MILES: Sorry. You just said that.

A. (Overspeaking) outside, my Lord, because lying flat on my back, but that was -- yes, that is about -- I have overmedicated myself to try and deal with it to continue to be here. I am slightly swimming at the moment.

MR JUSTICE MILES: Does the medication that you have taken affect your cognitive ability?

A. I believe that, yes, my Lord. My head is a touch on the swimming side and I think the report that was done went into that.

MR JUSTICE MILES: Well, I have looked at that. Right. Mr Robins, do you have any submission to make?

MR ROBINS: Well, I think I would need to take instructions. Obviously, losing half a day would be unfortunate but, equally, I am conscious that we wouldn't want there to be any suggestion after the event that a witness had been unable to answer questions sufficiently clearly for your Lordship's benefit.

Could I take a moment to take instructions? (Pause).

We are in your Lordship's hands.

MR JUSTICE MILES: Right. Well, I think, reluctantly, I am going to adjourn now. It seems to me important that Mr Thomson continues to be in a proper state to provide his evidence. I am fully satisfied that, so far, Mr Thomson has been able to understand the questions and provide his evidence, and it is important that that should continue to be the case. He has informed me that he is in severe pain and, indeed, has been lying flat on the floor, and that he has also had to take extra painkillers, and there is evidence that that has some effect on his cognitive abilities.

I weigh against that the fact that time will be lost from the trial and that, obviously, the time will have to be added to the end of the cross-examination to make up for that. But I think, on balance, the better course is to adjourn now, so that is what we will do. The other thing I ought to tell you all is that it turns out that -- let me just check the date. Well, it is the first day of next term, which is 9 April. I am sorry to say there are now judicial commitments which mean I won't be able to sit on that day at all, which is the first day of term. So we will, I am afraid to say, have to return on the 10th. I apologise for that. It is something that should have been notified to the parties earlier, but I am afraid that is unavoidable.

MR ROBINS: That is understood.

MS DWARKA: Noted, my Lord.

MR ROBINS: We will rewrite the timetable accordingly.

MR JUSTICE MILES: Yes.

Right now, there is the other matter to deal with.

MR ROBINS: Yes.

MR CURRY: My Lord, I have spoken to my solicitors over the short adjournment. Of course, at the time I was speaking to them, and indeed as I spoke to my learned friend Mr Robins just before the end of the adjournment, I had anticipated they would have until 4 o'clock to set out their instructions. I can therefore answer some of your Lordship's points but I can't answer all of them. Going through them in turn, your Lordship asked, is there a way within the system of identifying

those documents which have been withheld on the basis of legal professional privilege? The answer to that is, yes, there is.

Secondly, whether that is all the documents, in other words, have all the documents been put on the system, as far as those instructing me were aware when I spoke to them over the short adjournment, yes. All the documents have been put on to the system, so this is not a disclosure problem that is being created by new documents being found and added to the -- new hard copy documents, or indeed electronic documents, being added to the system.

Third, how many remaining documents there are which have that designation and have not been disclosed, that is a number that could be found out by sort of clicking on the right buttons within the system, but I am not in a position to give it to your Lordship now. Fourth, what, if anything, is proposed in order to be absolutely certain that there are no more documents being withheld? In other words what review process has been taken, if any, in relation to that remaining set of documents. It is on that question, my Lord, in particular, what the details of the review process were -- and I fully accept, in many ways, that is the most important question -- that I can't assist your Lordship properly at this stage.

MR JUSTICE MILES: Right. Going back to the application which is made by the claimants, they say that they are not asking for an immediate answer, in the sense of being told today in a witness statement, they are asking for an order that the court requires a witness statement within seven days. What is the objection to that, if any?

MR CURRY: My Lord, I am not in a position to consent to that order because I don't have positive instructions to do so, but, equally, I don't have any positive objection to it, save that I would say, could those instructing me have until -- it would have been the first day back but, as we just heard, your Lordship will not be sitting on the 9th. Could they have until the 9th? My rough calculation is that is actually seven working days on the -- that is seven clear days from today.

MR JUSTICE MILES: Well, I think it is --

MR CURRY: I may have miscounted a bank holiday.

MR JUSTICE MILES: I think it is important that this be resolved a little sooner than that, in order that the claimants can review whatever is said. On the other hand, I take account that there is a bank holiday in all of that.

I mean, at the moment, Mr Curry, I am inclined, because there isn't, as it were, sufficiently clear information that you are able to give me, notwithstanding that this letter was sent on 22 March, so some days ago, I am inclined to order the provision of this witness statement, because I think it is a way of concentrating minds, and I see no reason why it shouldn't be possible to provide answers. But my -- I will hear Mr Robins, but my instinct, at the moment, is to say that you should have until 4.00 pm next Thursday, which would then give an extra -- no, I am going to say Friday next week.

MR CURRY: My Lord, given that there are two bank holidays, Friday and Monday --

MR JUSTICE MILES: Yes, I am going to say Friday next week.

MR CURRY: Next Friday, my Lord. My Lord, as I have said I can't positively consent to that and I don't have any instructions regarding --

MR JUSTICE MILES: No, I understand that and I said that I am inclined to order it. Sorry, I spoke over you. I said I am inclined to order it.

MR CURRY: My Lord, I understand that. Simply on the time available, given that we are dealing with this now rather than at 4.00 pm, I don't have any instructions on whether there may be grounds for that not to be long enough or not, but, obviously, I am in your Lordship's hands as to what you wish to order.

MR JUSTICE MILES: Right. I am giving you rather longer than the seven days suggested by the claimants and I do take into account the fact that it is an important matter and that Mishcon de Reya wrote a letter on 22 March. I also take into account the fact that tranche 11 was given on 15 March 2024 and it seems to me, that, as part of your client's continuing disclosure obligations, they must then, and your solicitors must then, have satisfied themselves that they have now given complete disclosure.

So, subject to anything Mr Robins may say, I am going to make that order with the date of Friday next week at 4.00 pm.

MR ROBINS: My Lord, we would be content with your Lordship's suggested deadline.

The only clarification I would seek for the purposes of drawing up the order is whether the witness statement should cover your Lordship's additional questions as well as the questions in Mishcon de Reya's letter.

MR JUSTICE MILES: Well, I think, if -- my questions were a slightly alternative formulation, as far as I took it, and it seems to me that, in practice, they will have to be answered, really, something along the same lines will have to be answered in providing the witness statements. I am not going to suggest yet further questions being added.

MR ROBINS: That's helpful. Thank you, my Lord.

MR JUSTICE MILES: Nor am I saying that those questions necessarily have to be answered in exactly the way I formulated them.

MR ROBINS: Yes.

MR JUSTICE MILES: All I say is that there is a clear overlap. But I would expect those points to be considered in answering the questions which are set out in the letter.

MR ROBINS: Yes. That will be on the transcript. We won't put anything in the order specifically mentioning it.

MR JUSTICE MILES: Right. Is there anything else to deal with at the moment? There was a question about the amended pleadings, if you are applying for permission.

MR ROBINS: We obviously need to know first whether and to what extent they are consented to.

MR JUSTICE MILES: Were they indeed provided?

MR ROBINS: They were sent yesterday, a little after we had anticipated. Unfortunately, obviously the sooner --

MR JUSTICE MILES: What time were they sent?

MR ROBINS: It was around lunchtime. We say a little after we had hoped. But we do need to know, if and to the extent they are not consented to, we will need to make an application and that is something that will have to come forward at the beginning of term.

Obviously, to the extent that it is said that there is any prejudice, we reserve the right to rely on the fact that they haven't taken steps that were available to them over the Easter vacation to secure it. But I say that for the record and don't propose to add any more at this point.

MR LEDGISTER: My Lord, we are seeking instructions on this. I think, as matters currently stand, it is the Isle of Wight amended pleadings which present some -- not difficulty, I think that is probably putting it a bit too high, but we require specific instructions on that. If we can have some time on it, I don't anticipate it being a major issue but I must take instructions.

MR JUSTICE MILES: That's helpful, Mr Ledgister. I think, given that the amendments were provided to you only yesterday, and I don't think Mr Robins is saying anything different, it is not appropriate for me to rule on this at the moment. But it would be helpful to have a sort of end date by which you are able to set out your position in relation to whether you consent or not. What do you suggest in relation to that?

MR LEDGISTER: Sorry, my Lord. Forgive me.

MR JUSTICE MILES: Yes, of course.

(Pause).

MR LEDGISTER: My Lord, we expect to have some form of instruction on this over the next 24 hours for sure. So, in those circumstances, could we be given perhaps until close of business next week Tuesday to respond?

MR JUSTICE MILES: Yes. That seems sensible.

MR LEDGISTER: I am grateful.

MR JUSTICE MILES: Equally, I am not going to make any direction in relation to it, because it would be inappropriate to do so, but you heard what Mr Robins has said about any argument concerning prejudice if it is necessary for your clients to serve further supplemental witness statements. I think Mr Robins has already indicated previously that the claimants would not object, and it is difficult to see how they could, to the provision of further witness statements. But obviously there is a period now between today and the resumption of the trial in which work could be done in preparing those.

MR LEDGISTER: My Lord, yes.

MR JUSTICE MILES: That is not an indication that such prejudice will be irrelevant, it is simply a statement of the obvious.

MR LEDGISTER: I am grateful, my Lord.

MR JUSTICE MILES: Right. Is there anything else at this stage?

MR ROBINS: Nothing further from us, my Lord.

MS DWARKA: My Lord, a quick query. Would we be dealing with the case management point that Mr Robins is going to raise when we resume after the break?

MR JUSTICE MILES: The one about the pleadings?

MS DWARKA: The one about the strike out.

MR JUSTICE MILES: Sorry, you are quite right.

MS DWARKA: Because you had said, and I just want to know when I should expect to receive his skeleton.

MR JUSTICE MILES: Yes.

MR ROBINS: Friday was being whispered to me but I am going to suggest next Tuesday so that I have a chance to review it.

MR JUSTICE MILES: I think Tuesday seems a sensible date because there are two bank holidays.

MS DWARKA: Yes, thank you.

MR JUSTICE MILES: We will say the same time, which is 4.00 pm, on Tuesday next week.

MS DWARKA: Thank you.

MR JUSTICE MILES: Thank you for reminding me of that. So it sounds as though there will be a little bit of business to be dealt with on any view at the beginning of term, but it may be that, if the pleading point is dealt with, there won't be much on that. There may or may not be. And there may be relatively short argument on the case management point about your strike-out application.

I am just wondering whether it would be sensible to say now that Mr Thomson needn't attend until perhaps 11.30 am/12.00 pm on that day?

MR ROBINS: Sounds sensible.

MR JUSTICE MILES: Do you think 12 o'clock?

MS DWARKA: 12 o'clock, my Lord.

MR ROBINS: Yes.

MR JUSTICE MILES: Mr Thomson, we are going to resume then on 10 April, and you needn't attend court -- unless you wish to, to hear the argument on the strike-out point and that is clearly a matter for you -- until 12 o'clock. But that is when I will anticipate that your evidence will resume.

MR ROBINS: My Lord, I had one further point actually. It crossed my mind at lunchtime. It would obviously be rather unusual and an apparent contravention of the ordinarily applicable rules for a witness to effectively dictate his own re-examination by continuously feeding lists of documents to his advocate on the basis that he should be taken to those. I just wanted to establish that, beyond the documents we have discussed this morning, Mr Thomson is not to be providing further lists of documents to his representatives.

MR JUSTICE MILES: Ms Dwarka?

MS DWARKA: I intend to re-examine based on what I think would be the position anyway, my Lord.

MR JUSTICE MILES: I think that must be right. The way the point arose this morning was somewhat unusual and so I think that the general prohibition on discussions with lawyers means that, save for that one case where it was allowed, it is not open to Mr Thomson to direct, as it were, his own lawyers to documents that might be helpful for the purposes of re-examination.

Have you understood that, Mr Thomson?

A. Yes, my Lord. I didn't know that they weren't in the trial bundle. I didn't mean to cause --

MR JUSTICE MILES: No, I understand. But I think from now on, no further lists of documents of that kind. We made an exception for that particular group of documents. Right. We will resume on the 10th.

(2.22 pm)

(The hearing adjourned until 10.30 am on Wednesday, 10 April 2024)

Transcript originally produced by:

Epiq Europe Ltd www.epiqglobal.com Lower Ground Floor, 46 Chancery Lane London, WC2A 1JE

And converted to a more readable format using an automated process by:

Daniel Cloake www.mouseinthecourt.co.uk

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