Neutral Citation Number: [2021] EWHC 398 (Ch)

Case No: BL-2018-001044

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

Royal Courts of Justice
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 24/02/2021

Before :

MR JUSTICE MORGAN

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Between:

BETWEEN:

(1) MR ALI H ABDULRIDA
(2) MR AHMAD AL-HABIB
(3) MR ABDULLAH KHURSHED
(4) AL-AREEN TOWERS REAL ESTATE COMPANY
(5) GULF RIGS FOR OIL SERVICES COMPANY
(6) PROJECT INTEGRATED TELECOMMUNICATIONS SERVICES

Claimants

and

(1) MR MAHMOOD SHAKIR AL-NAJAR
(2) MS JULIE AL-NAJAR
~~**(3) MR GULAMABBAS JAFFER**~~
(4) PRESTIGE HOMES BROUGHTON LIMITED
(5) FAPCC LIMITED
(6) PRESTIGE HOMES (DEVELOPMENTS) LIMITED
(7) PRESTIGE HOMES IMPROVEMENTS LIMITED
(8) PRESTIGE HOMES BROOKLANDS LIMITED
(9) VICEROY PROPERTY INVESTMENT LIMITED
(10) AHMAD AL-NAJAR BEING THE ALLEGED TRUSTEE OF THE HANNAH AL-NAJAR

TRUST
(11) AHMAD AL-NAJAR, BEING THE ALLEGED TRUSTEE OF THE SOFIE AL-NAJAR TRUST
(12) AHMAD AL-NAJAR, BEING THE ALLEGED TRUSTEE OF THE GABRIELLA AL-NAJAR TRUST
~~**(13) MR MAYTHAM LARRY**~~
~~**(14) WOBURN HOMES LIMITED**~~

Defendants

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Mr Tim Chelmick and **Ms Melody Ihuoma** (instructed by **Byrne and Partners LLP**) for the **Claimants**
The Second Defendant appeared in person
The other Defendants did not appear and were not represented

Hearing dates: 2-4, 10-11, 14-15 December 2020
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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE MORGAN

Covid-19 Protocol: This judgment is to be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be 24 February 2021.

MR JUSTICE MORGAN:

Introduction

1. The principal claimants are Mr Abdulrida, Mr Al-Habib and Mr Khurshed, who are three Kuwaiti businessmen and investors. The principal defendant, Mr Al-Najar, was involved in property development in and around Milton Keynes. Between 2012 and 2015, the three Kuwaiti investors invested some £14 million with Mr Al-Najar and with companies controlled by him. The investors have not seen any return on their investments and they have not been repaid the money they invested. Mr Al-Najar is now bankrupt, has left the United Kingdom and is currently living in Iraq. The Kuwaiti investors have brought these proceedings to establish their rights against Mr Al-Najar and his companies. Mrs Al-Najar is involved in these proceedings to the extent that Mr Al-Habib has brought a claim against her in relation to a building plot which is registered in her name. She also is bankrupt.

2. The Claimants allege that Mr Al-Najar was guilty of fraud in relation to a large number of projects which are now the subject to these proceedings. Mr Al-Najar has not participated in the trial although he has filed a Defence and has served a lengthy witness statement in which he has denied all of the allegations of wrongdoing which have been made against him. Mrs Al-Najar has appeared in person.

The parties

3. The First Claimant is a businessman and an investor, resident in Kuwait. He gave evidence at the trial by confirming the truth of the contents of two affidavits and one witness statement which he had served. He was briefly cross-examined by Mrs Al-Najar when he confirmed that he had granted a power of attorney to Mr Al-Najar.

4. The Second Claimant is a businessman and an investor, resident in Kuwait. He gave evidence at the trial by confirming the truth of the contents of two affidavits and two witness statements which he had served. He was cross-examined by Mrs Al-Najar principally in relation to 40 Monkston Park. I also asked him some questions in order to clarify certain matters in relation to that property.

5. The Third Claimant is a businessman and an investor, resident in Kuwait. He gave evidence at the trial by confirming the truth of the contents of one affidavit and one witness statement which he had served. He was briefly cross-examined by Mrs Al-Najar.

6. The Fourth Claimant is a company incorporated in Kuwait. It is majority owned and controlled by the First Claimant.

7. The Fifth Claimant is a company incorporated in Kuwait. It is controlled by the Third Claimant and beneficially owned by his family.

8. The Sixth Claimant is a company incorporated in Kuwait. It is controlled by the Third Claimant and beneficially owned by his family.

9. The First Defendant is Mr Al-Najar. He was born in Iraq in 1970. Mr Al-Najar came to the United Kingdom from Iraq in 1991. He trained as a commercial pilot and

worked as a pilot until 2001. In 1996, he started a business developing and renovating houses in the Milton Keynes area. He traded as Al-Najar Trading. Over the years he has incorporated a number of companies all using the word "Prestige" as part of their names. The first of these companies was Prestige Homes Ltd, incorporated in August 1999. I will refer below to other Prestige companies which are now Defendants to this claim. He married the Second Defendant in August 2001 and they have three daughters.

10. In these proceedings, a freezing order was made against Mr Al-Najar, initially on 9 May 2018, and continued thereafter. The freezing order required Mr Al-Najar to provide certain information to the Claimants and in compliance, or purported compliance, with that order, Mr Al-Najar has provided a witness statement and affidavits. On 5 June 2018, Mr Al-Najar was made bankrupt on his own application. On 11 June 2018, Mr Al-Najar served a Defence to the claim. Mr Al-Najar is currently in Baghdad, Iraq and appears to have been there in the period since these proceedings began, although it also seems he has been in the United Kingdom on an occasion or occasions during that period. His trustee in bankruptcy is Mr Nicholas Barnett. He is aware of these proceedings but has not been made a party to them and has taken no part in them. On 22 October 2020, Mr Al-Najar served a lengthy witness statement (102 pages). The trial of this claim was conducted at a remote hearing. Mr Al-Najar did not participate in the trial. In particular, he did not give oral evidence and he did not cross-examine the Claimants' witnesses. I will discuss, later in this judgment, what course I will take in relation to the lengthy witness statement which he has provided.

11. The Second Defendant is the wife of the First Defendant. Mrs Al-Najar was made bankrupt in October 2018. Her trustee in bankruptcy is Mr Lloyd Hinton. He is aware of these proceedings but has not been made a party to them and has taken no part in them. Mrs Al-Najar has participated in this litigation at various stages. She served a Defence. She has served affidavits and witness statements. She participated throughout the hearing which was conducted remotely. She gave evidence and made submissions.

12. The claim against the Third Defendant has been compromised.

13. The Fourth Defendant is Prestige Homes Broughton Ltd ("Broughton") which was incorporated on 13 January 2012.

14. The Fifth Defendant is now known as FAPCC Ltd but was formerly known as Prestige Homes Civil Constructions Ltd ("Civil Constructions"). It was incorporated in March 2010.

15. The Sixth Defendant is Prestige Homes (Developments) Ltd ("Developments"). It was incorporated on 13 March 2009.

16. The Seventh Defendant is Prestige Homes Improvements Ltd ("Improvements") which was incorporated in September 2010.

17. The Eighth Defendant is Prestige Homes Brooklands Ltd ("Brooklands") which was incorporated on 5 February 2013.

18. The Ninth Defendant is now known as Viceroy Property Investment Ltd but was formerly known as Prestige Rental Properties Ltd ("Rental Properties"). It was incorporated in April 2009. On 1 May 2019, Rental Properties was ordered to be compulsorily wound up. The joint liquidators are Nicholas Barnett and Kevin Kallis.

19. Mr Al-Najar's brother, Mr Ahmad Al-Najar, is named as the Tenth, Eleventh and Twelfth Defendant sued as the trustee of three trusts, the names of which include the names of Mr Al-Najar's three daughters.

20. The claims against the Thirteenth and Fourteenth Defendants have been compromised.

21. There are references in the documents to other companies incorporated by Mr Al-Najar, namely, Prestige Homes Ltd, Prestige Homes Estate Agents Ltd, Prestige Renovations and Constructions Ltd and Prestige World Travel Ltd. Prestige Homes Ltd went into administration on 24 April 2017, and has since been placed into liquidation.

22. I was also given information about the involvement of Mr Al-Najar with a Mr Al Nesnas. The relationship between these two led to Mr Al Nesnas bringing proceedings against Mr Al-Najar, Developments and Improvements. In those proceedings, Mr Al Nesnas alleged that he had invested money as a result of certain statements made to him by Mr Al-Najar. Mr Al Nesnas alleged that he had made an oral agreement with Mr Al-Najar and written agreements with Developments and Improvements. In the proceedings, Mr Al Nesnas alleged that Mr Al-Najar had made various fraudulent, alternatively, negligent representations to him which had induced him to invest. Mr Al Nesnas also claimed damages for breach of contract and other relief. He applied for and obtained summary judgment and, in February 2017, following judgment, the court granted a freezing order over the assets of Mr Al-Najar, Developments and Improvements. Mr Al-Najar appealed to the Court of Appeal against the summary judgment and the Court of Appeal gave its judgment in relation to that appeal on 10 July 2018. The neutral citation of that judgment is [2018] EWCA Civ 1619. The Court of Appeal allowed the appeal in relation to the summary judgment based on the alleged misrepresentations but substituted judgment for damages to be assessed for breach of contract by Mr Al-Najar, Developments and Improvements. That judgment was essentially based on the fact that Mr Al Nesnas had invested substantial sums in two projects in particular and that money had not been accounted for by Mr Al-Najar, Developments or Improvements.

The documents

23. I was provided with an electronic bundle comprising hundreds of documents. However, it seems that the documentary record is far from complete. In the course of their dealings with Mr Al-Najar, the Claimants relied on oral discussions with Mr Al-Najar and their arrangements were, to a significant extent, not recorded in writing. At the time of their involvement, the Claimants were not shown many documents which must have existed in relation to the projects in which they were investing.

24. The Claimants say that Mr Al-Najar has disclosed very few documents. He says that he no longer has access to many relevant documents which were brought into existence and, accordingly, he was unable to disclose them.

The witnesses

25. As already stated, I heard evidence from Mr Abdulrida, Mr Al-Habib and Mr Khurshed. The Claimants also called Mrs Jamal, Mr Mohammad Al-Habib and Mr Merali. Mrs Jamal is the wife of Mr Al-Habib. She gave evidence in relation to 40 Monkston Park but was not cross-examined by Mrs Al-Najar on that subject. Mr Mohammad Al-Habib is the son of Mr Al-Habib and gave evidence by confirming the truth of the contents of two affidavits and two witness statements which the Claimants had served. He was not cross-examined by Mrs Al-Najar. Mr Merali gave evidence by confirming the truth of the contents of one affidavit and one witness statement which the Claimants had served. He said that he had provided assistance to Mr and Mrs Al-Najar and certain of Mr Al-Najar's companies in relation to their financial affairs. He was cross-examined by Mrs Al-Najar.

26. Finally, Mrs Al-Najar gave evidence by confirming the truth of the contents of four affidavits and three witness statements which she had served and she was cross-examined. Neither she, nor any other Defendant, called any witnesses.

Hearsay evidence

27. The Claimants served a hearsay notice in relation to two statements. The first statement was in the form of a letter dated 18 October 2017 from solicitors for Holbud Ltd, relating to Seymour Place. The second statement was in the form of an email dated 29 March 2018 from Mr Hardeley, a property solicitor for Places for People Homes Ltd, relating to Broughton Manor. That evidence was admitted as evidence at the trial.

28. During the course of the trial, Mrs Al-Najar stated that she wished to rely on specific paragraphs in witness statements which had been served by Mrs Basma Larry and by her son, Mr Maytham Larry. Mrs Larry is the sister of Mr Al-Najar. Mrs Larry was not at any stage a party to these proceedings but she was a director of Woburn Homes Ltd, which was the Fourteenth Defendant. Mr Larry was the Thirteenth Defendant. The Thirteenth and Fourteenth Defendants had participated in these proceedings at earlier stages including by appearing through counsel at the Pre-Trial Review on 28 October 2020. Thereafter, the Claimants compromised their claims against the Thirteenth and Fourteenth Defendants on terms which were not disclosed to the court.

29. Mr Chelmick, for the Claimants, submitted that I should rule that Mrs Al-Najar should not be entitled to rely upon the paragraphs which she had identified in the witness statements of Mrs Larry and Mr Larry. He said that she had not taken the procedural steps which she ought to have taken to enable her to rely on that evidence. He further submitted that the evidence was essentially irrelevant to anything the court had to decide and, in any case, I could tell at the time, when Mrs Al-Najar made her application, that I ought to give no weight to the evidence because Mrs Larry and Mr Larry had not attended for cross-examination, when they could have been made available for cross-examination. As to the latter point, Mrs Al-Najar accepted that there was no barrier to prevent those persons giving evidence and being cross-examined but she said that they had found these proceedings to be very stressful and she did not feel able to insist on them giving evidence and being cross-examined.

30. CPR rule 32.5 deals with the use at trial of witness statements which have been served. Rule 32.5(1) deals with the case of a party serving a witness statement and wishing to rely on that witness statement at a trial. Rule 32.5(1) provides for the witness to be called to give oral evidence, or the party putting the statement in as hearsay evidence, and the rule cross-refers to CPR Part 33 as containing provisions about hearsay evidence.

31. Rule 32.5(5) deals with a case where the party who has served a witness statement does not call the witness to give evidence at the trial. That sub-rule applies in this case where the Thirteenth Defendant served the witness statement of himself, Mr Maytham Larry, and the Fourteenth Defendant served the witness statement of Mrs Larry and where those Defendants did not call those witnesses at the trial. In such a case, rule 32.5(5) provides that any other party may put the witness statement in as hearsay evidence. Mr Chelmick submitted that rule 32.5(5) was a free-standing rule and it was not appropriate to consider CPR Part 33, dealing with hearsay evidence, when applying rule 32.5(5). I do not think that that is right, although it may not matter very much in the end. I consider that rule 32.5(5) is not an entirely freestanding rule but is to be operated in accordance with CPR Part 33 which specifically deals with hearsay evidence.

32. The evidence in question in the witness statements of Mrs Larry and Mr Larry is hearsay evidence within section 1 of the Civil Evidence Act 1995. Mrs Al-Najar did not, prior to the hearing, give notice under section 2(1) of the 1995 Act that she proposed to rely on this evidence as hearsay evidence. Indeed, she did not raise the possibility of the court receiving this evidence as hearsay evidence until part way through the trial. She explained that, as a litigant in person without any legal training, she did not understand what was possible in this respect. Section 2(4) of the 1995 Act provides that a failure to comply with section 2(1) of the 1995 Act, or with rules made under section 2(2)(b) does not affect the admissibility of the evidence but might be taken into account by the court when considering the exercise of its powers with respect to the course of the proceedings and costs and also as a matter adversely affecting the weight to be given to the evidence.

33. The evidence in question is hearsay evidence within CPR rule 33.1. Rule 33.2 deals with the giving of notice of an intention to rely on hearsay evidence. Mrs Al-Najar did not comply with this rule, in particular with rule 33.2(2). However, section 2(4) of the 1995 Act has the effect that such a failure does not affect the admissibility of the evidence. The note in paragraph 33.2.3 of Civil Procedure deals with a failure by a party to give notice under rule 33.2. The note states that the court has a discretion to refuse to admit hearsay evidence where there is a failure to comply with rule 33.2. The note refers to rule 32.1 and rule 32.1(2) provides that the court may exclude evidence that may otherwise be admissible.

34. If I felt that the evidence in question was significant and adverse to the Claimants' case (in particular, the case of Mr Al-Habib in relation to Monkston Park), then there would be a strong case for excluding it. Mrs Larry and Mr Larry are available to give evidence. On the assumption that the evidence was significant, I would not be inclined to excuse them the burden of giving evidence and being cross-examined on the ground that they had found the proceedings stressful and might find giving evidence stressful. Conversely, if the evidence was insignificant, there would be little harm to the Claimants if the evidence were admitted but little benefit to Mrs Al-Najar

of doing so. At the hearing, I indicated my provisional view that the evidence was unlikely to influence the outcome of this case. On that basis, I stated that I would give my ruling on Mrs Al-Najar's application when I gave this judgment. That was on the basis that Mrs Al-Najar had made clear that if I did not accede to her application, she would still not call Mrs Larry and Mr Larry. I indicated that the parties could make their closing submissions on the alternative bases of the evidence being admitted or excluded. That is what occurred and it did not cause any difficulty. Following the hearing, when considering the issues and the submissions, I have been aware of what this evidence amounted to and I have reached the conclusion that it is not of any real significance. My conclusions in relation to the issues are the same whether I admit this evidence or not. For that reason, it is not necessary to give a formal ruling as to whether this evidence should be admitted.

The position of Mr Al-Najar

35. As Mr Al-Najar did not participate in the trial, I gave careful consideration at a number of stages during the trial to the procedure which I should adopt. I wished to ensure that, so far as achievable, the trial was fair to all parties, including Mr Al-Najar, even though he did not participate in the trial. The Claimants made serious allegations against Mr Al-Najar and in a witness statement served by Mr Al-Najar, to which I will refer, Mr Al-Najar made serious allegations against the Claimants. So that the course of the trial, and the decisions which I made, are properly understood I fear that it is necessary to set out certain procedural matters in further detail.

36. Mr Al-Najar gave notice of his intention to defend these proceedings and he served a Defence dated 11 June 2018. He did not attend any hearings in the course of the proceedings. In May 2018, he served a witness statement and two affidavits in connection with his obligations under the freezing orders which had been made against him. On 1 October 2020, he served a witness statement of 92 pages and that was replaced on 22 October 2020 by a longer version of 102 pages. At the Pre-Trial Review on 28 October 2020, the court approved a trial timetable which included 1 to 2 days for the evidence to be given by Mr Al-Najar. The court also directed that the trial would take place remotely. When making that order, there was no request from Mr Al-Najar as to the making of special arrangements for him to participate in the trial.

37. Shortly before the trial, Mr Al-Najar served a document dated 25 November 2020 which was headed "Skeleton argument/opening statement". This document did not state that he would not participate in the trial nor did it refer to any difficulties which he would have in doing so. Shortly before the first day of the trial, my clerk enquired of the Claimants' lawyers if it was known whether Mr Al-Najar would participate in the trial and was told that he had not indicated his position.

38. On the first day of the trial, Mr Al-Najar did not participate in the hearing. I wished to ensure that he knew that the trial was happening on that date. Mrs Al-Najar told me that she had received a text from him about 10 minutes before the hearing began. She said that he knew the dates of the trial window but had not known the date of the actual first day of the hearing until the text message to which I referred. Thereafter, Mr Al-Najar did not take any steps to participate in the trial.

39. On the first day of the trial, Mr Chelmick for the Claimants addressed the court in relation to the operation of CPR rule 39.3 on the basis that Mr Al-Najar was absent from the hearing. Mr Chelmick did not ask me to strike out the defence and enter judgment for the Claimants against Mr Al-Najar in default of defence. Mr Chelmick stated that the Claimants wished to have a trial and to have a judgment on the merits. I took the view that if the Claimants asked for a judgment on the merits, they were entitled in this case to take that course and that I could not insist on them applying for a judgment in default of defence. Mr Chelmick raised a question as to the possible application of CPR rule 3.1A and that rule was discussed. I will refer to rule 3.1A again later in this judgment. There was also discussion as to the role of the court in relation to the evidence to be given by the Claimants and their witnesses. Mr Chelmick stated that he would rely on the affidavits and witness statements which had been served on behalf of the Claimants and he would not put Mr Al-Najar's witness statements to his witnesses nor invite them to comment on what Mr Al-Najar had stated. I expressed the view that it was not for the court to take the Claimants to Mr Al-Najar's witness statement and ask for their comments. At that stage, I expected that Mr Al-Najar's witness statement would not form part of the evidence at the trial and the case would be decided on the basis of whatever evidence was given.

40. The trial then proceeded with the taking of evidence in the way I have already described. On the morning of Day 3, after Mrs Al-Najar had completed her evidence and there were no further witnesses to be called, Mrs Al-Najar applied to be allowed to rely on parts of the witness statements of Mrs Larry and Mr Larry. I have described earlier what was said in that respect. At the conclusion of the argument on those matters, Mrs Al-Najar said that as a matter of fairness, the court ought to receive the evidence of Mr Al-Najar, in particular, the evidence in his 102 page witness statement. That matter was then discussed. At times, Mrs Al-Najar indicated that she wished that evidence to be considered in relation to the case against Mr Al-Najar but she also referred to the possibility that Mr Al-Najar's evidence would be admitted in relation to the specific issue which concerned her, in relation to Monkston Park. At the end of that discussion, it appeared to be the case that Mrs Al-Najar was not pursuing an application for Mr Al-Najar's witness statement to be admitted into evidence. I then adjourned the trial for a period of days to allow the parties, in particular the Claimants, to prepare detailed written submissions. I indicated to Mr Chelmick that I would wish to have submissions from him which identified all of the findings of fact that I was asked to make and, in relation to each suggested finding of fact, the evidence which was said to support that finding.

41. Between Day 3 and Day 4 of the trial, the Claimants served written closing submissions. At the beginning of Day 4 of the trial, Mr Chelmick made a submission that Mr Al-Najar had deliberately created difficulties about the Claimants' solicitors communicating with him. He then referred to earlier submissions as to whether the court should admit the evidence of Mrs Larry and Mr Larry. That led him to refer to further rules of the CPR which had not previously been considered at this hearing.

42. That opened up a discussion as to the position in relation to the witness statement of Mr Al-Najar. At that point, Mrs Al-Najar told the court that, contrary to what had been assumed at the earlier stages of the trial, Mr Al-Najar had written to the court directly to explain his absence and to ask the court to take his witness statement into consideration. She then identified two emails sent by Mr Al-Najar to my clerk on 30

November 2020. In the second of these emails, Mr Al-Najar stated that he would not be able to attend the hearing online because he did not have access to the necessary equipment nor a reliable internet connection. He said that he could not afford legal advice or representation. He asked the court to take his written evidence into account. Mrs Al-Najar then provided these emails to the court. She then requested the court to admit Mr Al-Najar's witness statement into evidence.

43. Shortly after that, my clerk informed me (and I informed the court) that she had found Mr Al-Najar's two emails of 30 November 2020 in her junk mail and she had been unaware of their existence until they were referred to by Mrs Al-Najar at the hearing, as I have described. In the course of an ensuing discussion, Mr Chelmick referred to a suggestion I had made that he recall some or all of his witnesses and put parts of Mr Al-Najar's witness statement to them for their comments. In order for the Claimants to consider their position and to make any necessary arrangements, I adjourned the trial to the following day.

44. On Day 5 of the trial, Mr Chelmick made further submissions as to the position of Mr Al-Najar. He said that Mr Al-Najar had deliberately made difficulties about communications with him and about his participation in the trial. He said that Mr Al-Najar should not have written to the court on 30 November 2020 without copying his emails to the Claimants' solicitors: see CPR rule 39.8. Mr Chelmick submitted that Mr Al-Najar could have participated in the trial. Further, he said that Mr Al-Najar did not even try to participate in the trial by telephone and at no point did he ask for an adjournment of the trial. Mr Chelmick then indicated that he did not wish to recall any of his witnesses to ask them to comment on Mr Al-Najar's witness statement. He said that if it would assist the court, the Claimants' witnesses were prepared to say that, having read Mr Al-Najar's evidence, they did not wish to change any of their earlier evidence. He then offered to recall his witnesses so that they could be asked questions by the court or by Mrs Al-Najar but, in her case, only in relation to the specific case against her.

45. I indicated that I did not require Mr Chelmick to recall his witnesses simply for them to say that they did not wish to change their evidence. I also indicated that I had not suggested that he was required to recall his witnesses to put Mr Al-Najar's witness statement to them. I then indicated that I did not consider it to be appropriate for the court to cross-examine the Claimants' witnesses by reference to Mr Al-Najar's witness statement. Finally, Mrs Al-Najar stated that she did not wish to ask any further questions of the Claimants' witnesses. I then adjourned the case for closing submissions.

46. The upshot of what has happened is that the trial of this claim has taken place. At no point did Mr Al-Najar ask for the trial to be adjourned to enable him to attend a court hearing in person. The court directed that the trial would take place remotely and Mr Al-Najar did not object to that course. It is not possible on the material before me to make reliable findings as to whether Mr Al-Najar could have participated in the trial. I am prepared to believe what Mrs Al-Najar told me about internet difficulties in Iraq. There were suggestions that Mr Al-Najar was not in Iraq but was in the United Arab Emirates. It was suggested that he would not have had difficulties with an internet connection if he had been in the UAE. I am not able to rule on that on the material before me. Further, I cannot make a confident finding as to how easy or difficult it would have been for Mr Al-Najar to have come to the United Kingdom to participate

in the trial from there. Mr Al-Najar never provided a reason why he could not have participated by telephone; that would not have been as good as participating by internet but it would surely have been better than not participating at all. There is reason to believe that Mr Al-Najar never did wish to participate in the trial but I cannot make a confident finding as to that.

47. I will now refer to the rules which are relevant as to whether to admit Mr Al-Najar's witness statement into evidence.

48. The first question is whether Mr Al-Najar can put his witness statement in as hearsay evidence. One way of looking at that matter is to say that Mr Al-Najar is not participating in the trial and so is not asking the court to do anything and, accordingly, is not asking the court to admit his witness statement as hearsay evidence. Another way of looking at it is to say that Mr Al-Najar is a party and is asking the court to admit his evidence. This is the view which I take. He is undoubtedly a party. Although he has done very little to communicate with the court, he has done some things which are relevant. He has served the witness statement in question and he has served a skeleton argument. Further, he has written to the court saying that he wants the court to consider the evidence in his witness statement as hearsay evidence. I consider that the case therefore falls to be dealt with in accordance with CPR rule 32.5(1) and CPR Part 33.

49. CPR rule 32.5(1) provides that Mr Al-Najar must give oral evidence in accordance with his witness statement unless the statement is admitted as hearsay evidence. When I considered the witness statements of Mrs Larry and Mr Larry, I referred to the Civil Evidence Act 1995 and CPR rule 33.2. The starting point is that the evidence in Mr Al-Najar's witness statement is admissible as hearsay evidence but the fact that Mr Al-Najar has not made himself available for cross-examination goes to the weight to be given to the evidence. Under CPR rule 33.4, it was open to the Claimants to take steps so that Mr Al-Najar would attend court to be cross-examined on his witness statement. The Claimants did not take those steps but it is obvious that they did not do so because they could see that Mr Al-Najar would not allow himself to be cross-examined in court or by video link. Mr Chelmick submitted that as Mr Al-Najar would not make himself available for cross-examination, it must follow that the court should not admit his witness statement as hearsay evidence.

50. I referred Mr Chelmick to the decision of the House of Lords in *Polanski v Condé Nast Publications Ltd* [2005] 1 WLR 637. The main point in that case was whether the claimant in a libel action should be allowed to give his evidence and be cross-examined by video link, instead of attending the trial in person. However, the House of Lords also considered what attitude the court could adopt if the claimant did not give evidence by video link but instead tendered a witness statement in circumstances where he would not be available for cross-examination. In that case, the Court of Appeal had suggested that if the defendant had applied for an order under CPR rule 33.4 requiring the claimant to attend for cross-examination and if the claimant had not done so then the court ought not to admit his witness statement as hearsay evidence. In the House of Lords, Lord Nicholls at [36] agreed that the court had power to exclude the evidence in those circumstances but was not bound to exclude it; it should exclude it only if, exceptionally, justice so required. Lord Hope agreed with Lord Nicholls, see at [59] and [67]. Baroness Hale dealt with the point in greater detail at [70]-[80]. She said, at [78], that the unreasonable refusal of a party to subject himself

to cross-examination on his witness statement might be a reason for excluding the witness statement.

51. I consider that the decision in *Polanski* allows me to admit Mr Al-Najar's witness statement as hearsay evidence but also allows me to exclude it if that were necessary in the interests of justice. In deciding what course to adopt, I consider that it would be important to know why Mr Al-Najar is not making himself available for cross-examination. His case seems to be that he is in Iraq and he cannot participate in the hearing remotely from there. He would probably also say that he cannot go to another country, or even come to the UK, to participate in the hearing by video link. Mr Chelmick submits that I should not accept these assertions from Mr Al-Najar. I am sceptical about Mr Al-Najar's reasons for not participating in the hearing, to the extent that he has provided reasons, and he has not done very much to persuade the court in these respects. However, I am not able to hold that Mr Al-Najar could without any real difficulty make himself available for cross-examination. If I gave Mr Al-Najar the benefit of the considerable doubt on these matters, I would be inclined to admit his witness statement as hearsay evidence.

52. If I were to admit his witness statement as hearsay evidence, there are a number of considerations which would affect the weight to be given to that evidence. The first point arises from the fact that, on a number of points, Mr Al-Najar's evidence contradicts the evidence given on behalf of the Claimants. However, there has not been any challenge by Mr Al-Najar in the form of cross-examination of the Claimants' evidence. Mr Chelmick submits that the rule in *Browne v Dunne* (1893) 6 R 67 at 71, as further stated in *Markem Corpn v Zipher Ltd* [2005] RPC 31, means that it would not be open to me to prefer the evidence of Mr Al-Najar to that of the Claimants' witnesses where the evidence conflicts. I agree. That leads to the second point. The Claimants have given evidence that Mr Al-Najar has forged certain documents. Mr Al-Najar says that these documents were forged by the Claimants. I will obviously have to make a finding on that matter. In view of the fact that Mr Al-Najar has not cross-examined the Claimants on that matter, it would seem likely that I will accept the Claimants' evidence on that point. That produces the result that I will find that Mr Al-Najar has forged documents and that the evidence to the contrary in his witness statement is not true. Such a finding is likely to be relevant when I consider whether I ought to accept other parts of his witness statement.

53. There are other matters to be considered. As I have explained, I gave the Claimants the opportunity to give further evidence in chief in response to Mr Al-Najar's witness statement but they indicated, through Mr Chelmick, that they did not intend to give further evidence in chief in response, apart from stating that they did not wish to change their evidence. I consider that this stance does not produce the result that the evidence of the Claimants' witnesses should be considered to have been challenged so that I would be free to prefer Mr Al-Najar's evidence to theirs. The other matter which I have considered is whether I ought to have questioned the Claimants' witnesses and, in effect, challenged their evidence, putting to them the rival evidence in Mr Al-Najar's statement. At the hearing, I indicated that I did not consider that I should take that course. My role in this case is to decide the dispute on the evidence which the parties put before me. This case is being tried on the usual adversarial basis and I do not have an inquisitorial role requiring me to inquire into the matter. My role is to remain impartial, not to take sides and not to descend into the arena, challenging

the evidence given by one side or the other. I considered that it would not be consistent with my role as an impartial judge in adversarial litigation to conduct a cross-examination of the Claimants' witnesses. Conversely, it was open to me to ask questions of any witness to clarify the evidence being given and to seek to understand what was being said on a matter which I had to decide.

54. I do not consider that the conclusion expressed in the last paragraph is affected by CPR rule 3.1A. That rule applies in any proceedings where a party is unrepresented. Rule 3.1A(4) provides that, in such a case, the court must adopt such procedure at any hearing as it considers appropriate to further the overriding objective. Rule 3.1A(5) provides that, at a hearing where the court is taking evidence, the procedure adopted may include ascertaining from an unrepresented party the matters on which a witness ought to be cross-examined and the court putting to a witness such questions as appear to the court to be proper. As to the first possibility identified in rule 3.1A(5), I was not in a position to ask Mr Al-Najar what questions he wanted to put to the Claimants' witnesses because Mr Al-Najar was not in contact with the court in the course of the trial. As to the possibility that the court would itself ask questions of the Claimants' witnesses, without knowing what questions Mr Al-Najar wanted the court to put, I did not consider that it was consistent with my role as an impartial judge in adversarial litigation to conduct my own cross-examination of the Claimants' witnesses.

55. Mr Chelmick drew my attention to *LXA v Willcox* [2018] EWHC 2256 (QB) and that case cited *PS v BP* [2018] EWHC 1987 (Fam), [2018] 4 WLR 119. The situation in *PS v BP* was very different from the circumstances of the present case. In that case, the court stepped in to ask questions of a witness to prevent a situation arising where an unrepresented party conducted a cross-examination of that witness in an abusive way. In the present case, there was no need for me to question the witnesses in order to prevent an abusive cross-examination being conducted by Mr Al-Najar.

56. In *LXA v Willcox*, the claimants were adults who had been abused as children by the defendants, their adoptive parents. The claimants claimed damages for the abuse. At the trial, the defendants did not appear and were not represented. One of the defendants wrote to the court stating that she did not intend to attend the trial but asked that her witness statement and her counter-schedule of loss be taken into account. The judge referred to CPR rule 3.1A. He said, at [14], that rule 3.1A(5) was engaged even where the unrepresented party was not present. At [15], the judge said that there must be limits to what a trial judge could or should do and the trial judge should not descend into the arena in such a manner or to such an extent that he might appear to have abandoned his role as an impartial arbiter. On the other hand, he said that the trial judge should seek to put to the witnesses points raised by the absent party in a way which would be of forensic value. At [17], he said that the absent party had raised matters which it was relevant to put to the claimants. At [18], he said that the observations went beyond saying that a judge could seek clarification of the oral evidence which was given; there would be cases where it would be proper for the judge to explore matters on behalf of the absent party.

57. I have concerns about some of the statements made in *LXA v Willcox*. The position of an absent party is not to be equated with that of a present, but unrepresented, party. The absent party may have chosen to stay away from the trial in a way which means that he cannot expect the judge to take on the burden of conducting the case of the

absent party in any way. Further, if a party is absent, it will not be easy, or even possible, for the judge to "ascertain" from the absent party the matters on which the witness ought to be cross-examined. It may not be right for a judge to assume that everything which is denied by a witness statement of an absent party has to be put to the rival witnesses. I consider that the default position is that the court does not have the burden of putting to the witnesses, who have given oral evidence at the trial, the case advanced in a pleading or a witness statement by a party who has not participated in the hearing. Of course, as I have stated, the court may wish to ask questions of its own, for example, where the court wishes to clarify the evidence being given.

58. In any event, CPR rule 3.1A makes it clear that the conduct of the trial in this respect is a matter of case management for the trial judge. In this case, I took the view that there would be no real advantage in simply putting Mr Al-Najar's statement to the Claimants' witnesses as they had already given a detailed account of the relevant events and could be expected to say that their version was right and Mr Al-Najar's version was wrong. If I were to do something which went beyond simply putting Mr Al-Najar's case to the witnesses, that would involve more forceful questioning of the witnesses which would very likely place me in a position which would be inappropriate for an impartial trial judge. There would also have been practical difficulties in my conducting anything approaching a serious forensic examination of the evidence of the Claimants' witnesses. The documents in this case were in electronic form and not many of them were referred to in the Claimants' opening submissions. It was also apparent that the documents were very far from complete. The Claimants' case was that the underlying transactions were conducted orally and without much in the way of documents but, in addition, they blamed Mr Al-Najar for not providing proper disclosure of documents which did exist and would have been relevant. If I had to conduct a more forensic examination of the evidence of the Claimants' witnesses, I would have had to adjourn the trial to enable me to search through the electronic documents for material that might usefully be put to those witnesses. I considered that such conduct was well outside what I ought to engage in as an impartial trial judge.

59. Against the background which I have described, I return to the question whether I should admit Mr Al-Najar's witness statement as hearsay evidence. If I was able to find that Mr Al-Najar has failed to cooperate with these proceedings so that he would not be available for cross-examination, then I would exclude his evidence. If I was able to find that Mr Al-Najar wanted to defend this claim and assist the court with his evidence but found himself unable to participate in the trial, then I would admit his evidence. Unfortunately, the material before me does not allow me to make a proper finding as to why Mr Al-Najar did not participate in the hearing. I am somewhat sceptical about the suggestion that he could not participate. Nonetheless, with certain expectations as to the limited weight which I can place on his evidence where it conflicts with the evidence of others, I will give him the benefit of the doubt and admit his witness statement as hearsay evidence. It is therefore possible that I will be persuaded to rely on his witness statement in relation to certain matters, such as evidence which is corroborated by the documents or evidence which is inherently credible on a matter of which the Claimants have no knowledge and where they are unable to give evidence to the court.

60. In these circumstances, I will not deal separately with the ability of Mrs Al-Najar to put in Mr Al-Najar's witness statement as hearsay evidence pursuant to CPR rule 32.5(5). As I understood it, she did not in the end make an application in her own right to do so and it is not clear whether Mr Al-Najar's witness statement is helpful to her case in relation to Monkston Park.

61. That then is the course which I will take. The conduct of this trial was not ideal. A trial where both sides have been represented, where witnesses have been competently cross-examined and where the court has heard all proper submissions as to the facts and as to the law would have been produced a better guarantee of a fair and correct outcome. Such a trial would also have been much easier for the court to manage and would have greatly reduced the burdens on the court in arriving at a judgment. However, the court did not have that advantage and I must do the best I can with what has actually happened.

Mr Al-Najar's bankruptcy

62. It is convenient to deal at this stage with the implications of the fact that Mr Al-Najar was made bankrupt on 4 June 2018, which was after these proceedings were commenced on 8 May 2018. No one has applied under section 285 of the Insolvency Act 1986 ("the 1986 Act") for a stay of these proceedings as against Mr Al-Najar (or as against Mrs Al-Najar, for that matter). However, section 285(3) of the 1986 Act places certain limits on the remedies of a creditor against a bankrupt.

63. It was explained to me at the trial that the Claimants wish to pursue these proceedings against Mr Al-Najar in order to make progress in relation to proprietary claims which they wish to assert against others. In his closing submissions, Mr Chelmick told me that he wished the court to make findings of fraud against Mr Al-Najar where that was appropriate. I asked him whether that position was attributable to section 281(3) of the 1986 Act and he said that that was a major reason for his request. This exchange came at the very end of his closing submissions in reply to Mrs Al-Najar and at the very end of the trial. Before discussing this point further, I will refer to the position pursuant to section 281(3) of the 1986 Act.

64. Under section 279 of the 1986 Act, a bankrupt is normally discharged from bankruptcy after one year. I was not told anything as to whether Mr Al-Najar has been discharged from his bankruptcy. Section 281(1) of the 1986 Act provides that, subject to certain matters, the discharge of a bankrupt from bankruptcy releases him from his bankruptcy debts. This release is subject to section 281(3) which provides that the discharge from bankruptcy does not release the bankrupt from any bankruptcy debt which he incurred in respect of any fraud or fraudulent breach of trust to which he was a party. Therefore, if any liability which is a bankruptcy debt, incurred by Mr Al-Najar as established by this judgment, comes within section 281(3), Mr Al-Najar will not be released from that liability when he is discharged from bankruptcy.

65. In these proceedings, the Claimants claim different heads of relief against Mr Al-Najar on various grounds. Normally, if I found that a claimant was entitled to the relief which he sought on one ground I would have to consider whether to address other ways of putting the case which would not change the outcome. In some cases, it might not be a good use of the court's time to analyse different ways of putting the case if they did not have the potential to change the outcome. The Claimants did not

identify anywhere in their pleadings that they wished the court to determine whether Mr Al-Najar's liability would not be released because it was a liability in respect of fraud within section 281(3) of the 1986 Act. During the course of the trial, I did not understand that I might be asked to determine whether a liability which arose without fraud had also arisen by reason of a fraud. During the trial, my expectation had been that if I found that Mr Al-Najar was liable and it was not necessary for that finding (or for any finding against any other party) to determine whether Mr Al-Najar was guilty of fraud, then I would not necessarily feel it appropriate to consider whether he was in addition liable for fraud. I thought that it might not be appropriate to go further than I needed in that respect in a case where Mr Al-Najar did not participate in the trial. The possible relevance of section 281(3) of the 1986 Act was only raised at the very end of the trial and in response to a specific question asked by me.

66. In the light of the above, the course I will take is as follows. I will address the claims against Mr Al-Najar and I will decide them. I will decide them in a way which appears to me to be a proportionate and an appropriate use of the time of the court. In relation to a specific head of liability, I will not determine whether that liability is within section 281(3) of the 1986 Act as that determination is not a head of relief sought in these proceedings. It may be that on the findings which I make, it will be reasonably clear whether I am making a finding of fraud which would bring the case within section 281(3). In any event, if the Claimants wish the court to determine whether a particular head of liability is within section 281(3) they should issue an application notice seeking such a determination and serve that notice on Mr Al-Najar. The matter will then proceed in whatever way is appropriate to deal with the relief sought by the application notice.

The payments

67. Mr Abdulrida's evidence was that he had made the following payments which are relevant to this case:

    i) Re Flats 9 and 11 Albion Place

        i) 22 June 2012 - £506,729.80

        ii) February 2013 - £87,000.00

        iii) 13 May 2013 - £27,313.00

    ii) Re Broughton Manor

        i) 24 September 2012 - £1,050,000

        ii) 23 October 2012 - £935,000

        iii) December 2012 - £740,000 (in the form of shares)

        iv) 9 January 2013 - £1,065,000

    iii) Re Seymour Place

        i) 24 September 2012 - £525,000

ii) 9 January 2013 - £787,500

iv) Re Bishops Avenue

i) 13 May 2013 - £2,100,000

v) Re Porcelanosa

i) 3 February 2015 - £500,000 (from the Fourth Claimant)

vi) Re Brooklands

i) 9 January 2013 £500,000

vii) Re Campbell Park

i) 24 September 2012 - £537,500

ii) 10 June 2014 - £500,000

iii) 3 September 2014 - £664,945

iv) 13 November 2014 - £120,000

viii) The total of these payments is £10,645,988.

68. Mr Al-Habib's evidence was that he had made the following payments which are relevant to this case:

i) 29 and 31 Albion Place

i) 26 July 2012 - £236,800

ii) Bishops Avenue

i) 13 May 2013 - £300,000

iii) Monkston Park

i) 3 September 2014 - £200,000

iv) Ashlands

i) 22 December 2015 - £1,300,000

v) The total of these payments is £2,036,800.

69. Mr Khurshed's evidence was that he had made the following payments which are relevant to this case:

i) Broughton Manor

i) 25 July 2012 - £473,750

ii) 16 September 2012 - £237,000

iii) 13 December 2012 - £288,000

iv) 13 February 2013 - £578,250

ii) Seymour Place

i) 13 August 2012 - £262,000

ii) 14 February 2013 - £150,000 (from the Fifth Claimant)

iii) 14 February 2013 - £130,000 (from the Sixth Claimant)

iv) 7 March 2013 - £110,000 (from the Fifth Claimant)

iii) The total of these payments is £2,229,000.

9 and 11 Albion Place: Mr Abdulrida

70. The pleaded case is as follows. In May 2012, Flats 9 and 11 Albion Place were owned by a Mr Al-Farsi. In May 2012, Mr Abdulrida agreed to buy these two flats from Mr Al-Farsi. In June 2012, Mr Abdulrida told Mr Al-Najar that he had experienced difficulties in transferring funds to Mr Al-Farsi on the basis that funds had to be transferred in England and he needed to use an English solicitor in connection with the purchase. At that time, Mr Al-Najar offered to conduct the purchase on Mr Abdulrida's behalf, to which end Mr Abdulrida should transfer £506,729.80 to a company controlled by Mr Al-Najar, Rental Properties, to cover the purchase price, of £490,000, plus stamp duty and legal fees. Mr Al-Najar then agreed with Mr Abdulrida to purchase the two flats in the name of Rental Properties, in the first instance, and later to transfer the flats to Mr Abdulrida. While the flats were registered in the name of Rental Properties, Mr Abdulrida would be issued shares in that company and the value of the shares would be equal to the value of the two flats.

71. It is then pleaded that on 22 June 2012, Mr Abdulrida transferred £506,729.80 to an account which he believed to be the account of Rental Properties. In January 2013, Mr Al-Najar gave to Mr Abdulrida a stock transfer form dated 4 December 2012. The stock transfer form referred to Mr Abdulrida paying £500,000 for the transfer of 100 shares in Rental Properties from Mr Al-Najar to Mr Abdulrida. It is pleaded that the use of this form amounted to a representation by Mr Al-Najar that the shares were "of £5,000 each".

72. It is then pleaded that Rental Properties would manage the two flats so that Flat 11 would be available for Mr Abdulrida's use and Flat 9 would be available to be rented out. It is pleaded that, in 2013, Rental Properties were to carry out renovation to the two flats and for that purpose, Mr Abdulrida paid £87,000 in cash, in Kuwait, to Mr Al-Najar. On 13 May 2013, Mr Abdulrida made a further payment of £27,313. The renovations were carried out in the summer of 2013.

73. It is then pleaded that the two flats were not acquired by Rental Properties as had been agreed. Instead, the two flats were transferred to a Mr Jaffer for the combined price of £490,000. The flats were then mortgaged to Bank of Scotland which registered a

charge over each flat. On 11 April 2013, a restriction was registered in relation to the two flats, in favour of Mr Al-Najar. Mr Abdulrida only became aware of the fact that the flats were registered in the name of Mr Jaffer when he was told that fact by Mr Al-Najar in March 2017. It is said that Mr Abulrida had not consented to these various dealings with the flats.

74. In July 2017, Mr Merali acting for a Prestige company or for Mr Al-Najar had said that there were two outstanding invoices in relation to the flats in the sums of £130,000 for renovation works and of £160,000 for expenses. In August 2017, the restriction in favour of Mr Al-Najar was removed.

75. These proceedings were issued on 8 May 2018. The claim as pleaded sought rescission of the agreement between Mr Abdulrida and Mr Al-Najar and other relief, in particular, against Mr Al-Najar and Mr Jaffer.

76. In Mr Al-Najar's Defence, he accepts that Mr Abdulrida paid £506,729.80 in relation to these two flats. He pleads that the renovation works cost £280,000 and when he asked Mr Abdulrida for this sum, Mr Abdulrida said that Mr Al-Najar should borrow it from a lender with the loan secured by a mortgage over the two flats. As Rental Properties could not arrange a mortgage, Mr Al-Najar asked Mr Jaffer to obtain a loan secured by a mortgage on behalf of Mr Abdulrida.

77. In his evidence, Mr Abdulrida confirmed most of the facts which had been pleaded on his behalf. He also said that he had given Mr Al-Najar a power of attorney for the purpose of buying the two flats. Mr Abdulrida also dealt with other evidence which included a statement which had apparently been made by Mr Jaffer. However, Mr Jaffer did not give evidence at the trial and the claim against Mr Jaffer has been compromised.

78. In his witness statement, Mr Al-Najar accepts that there was an agreement with Mr Abdulrida to buy the two flats. Mr Al-Najar says that the intention at the outset was to spend about £500,000 to buy the flats and to spend another £250,000 to renovate them, with the £500,000 being provided in cash and the £250,000 being borrowed on mortgage. As Mr Abdulrida could not obtain a mortgage, it was agreed that Mr Al-Najar or one of his companies would buy the flats and borrow on mortgage. It transpired that neither Mr Al-Najar or one of his companies could obtain a loan on mortgage and so the flats were registered in the name of Mr Jaffer who was able to borrow in return for a mortgage granted over the flats. Mr Al-Najar says that the flats would be held on trust for Mr Abdulrida until he paid off the loan and redeemed the mortgage and that the difficulties about obtaining the mortgage and the flats being put in the name of Mr Jaffer were all explained at the time to Mr Abdulrida.

79. I was given evidence that the amounts outstanding pursuant to the two mortgages of the flats are £96,250 (Flat 9) and £171,420 (Flat 11) making a total of £267,670.

80. I was told by Mr Chelmick at the trial that the two flats have now been transferred to Mr Abdulrida but subject to the two mortgages granted to Bank of Scotland. The claim against Mr Jaffer has been compromised. Mr Adbulrida therefore claimed compensation for the cost of redeeming the two mortgages and an account of the rent received for one or both of the flats. It was submitted that the flats were held on trust for Mr Abdulrida, that Mr Al-Najar had not used all of the monies paid by Mr

Abdulrida for the purchase price of the flats in order to purchase them but had used some of that money for his own purposes. It was further submitted that the grant of the charges was an unauthorised dealing with the flats and resulted in a transfer of value to Mr Al-Najar so that he had been unjustly enriched. In closing submissions, Mr Chelmick said that the extent of the enrichment was £267,670, the sums outstanding on the two mortgages.

81. There is a clear conflict of evidence between Mr Abdulrida and Mr Al-Najar as to whether Mr Abdulrida agreed to the loans from Bank of Scotland and the grants of the mortgages over the flats and the other matters which took place. On those matters, I accept the evidence of Mr Abdulrida and reject that of Mr Al-Najar. Mr Abdulrida gave oral sworn evidence and his evidence was not challenged by cross-examination. Mr Al-Najar did not give oral evidence and he was not available to be cross-examined. His evidence is in the form of a witness statement which is hearsay evidence and I am not prepared in the circumstances of this case to give it the same weight as that which I give to the evidence of Mr Abdulrida.

82. I hold that Mr Abdulrida is entitled to an award of equitable compensation against Mr Al-Najar in the sum of £267,670 and to an account of the net rental income from the two flats.

83. As regards the claim to equitable compensation, the sum of £506,729.80 was paid to Mr Al-Najar on trust for the purpose of buying the two flats. That sum sufficed for that purpose. There was no need to borrow money on mortgage for the purpose of completing the purchase. If the loans from Bank of Scotland which were secured on the flats were to raise money to be used to complete the purchase then Mr Al-Najar would have committed a breach of the trust of the monies provided by Mr Abdulrida because the money provided by Mr Abdulrida was sufficient to buy the flats. If the sum of £506,729.80 was used to buy the flats but monies were borrowed for other purposes, then on the balance of the probabilities, those steps were taken at the direction of and for the benefit of Mr Al-Najar. Mr Al-Najar accepted in his witness statement that the flats were to be held in accordance with his agreement with Mr Abdulrida and on trust for him. In these circumstances, Mr Al-Najar acted in breach of the agreement which he had made with Mr Abdulrida and was in receipt of the proceeds of trust property derived in breach of trust. It is unconscionable for Mr Al-Najar to retain those receipts and he is liable to Mr Abdulrida in unjust enrichment.

84. As to the claim to an account, Mr Abdulrida is entitled to have an account of the net receipts by Mr Al-Najar from the rents for one or both flats. The net rents are to be arrived at by deducting from the gross rents received all expenses involved in generating those rents.

85. Mr Abdulrida has not claimed an account in relation to the two payments which were made in relation to the costs of renovating the flats.

29 and 31 Albion Place: Mr Al-Habib

86. In summary, the pleaded case is as follows. Mr Al-Habib and Mr Al-Najar agreed that Mr Al-Habib would transfer to Rental Properties the sum of £236,800 to enable Rental Properties to buy Flats 29 and 31 Albion Place. The sum of £236,800 represented the purchase price for the two flats of £228,000 plus stamp duty and legal

expenses. The agreement was that Mr Al-Habib would be given shares in Rental Properties where the value of the shares was to be equal to the value of the flats. After a time, the flats would be transferred to Mr Al-Habib and he would give up his shares in Rental Properties. On 17 July 2012, Mr Al-Habib did transfer £236,800 to what he believed was the bank account of Rental Properties. In December 2012, Mr Al-Najar gave Mr Al-Habib a stock transfer form dated 4 December 2012. The stock transfer form referred to Mr Abdulrida paying £236,800 for the transfer of 47 shares in Rental Properties from Mr Al-Najar to Mr Al-Habib. It is pleaded that the use of this form amounted to a representation by Mr Al-Najar that Mr Al-Habib was the registered owner of 47 shares in Rental Properties with a value of £236,800.

87. It is then pleaded that in January 2017, Mr Al-Najar told Mr Al-Habib that he had sold the two flats for £215,000 in order to fund building work being done by one of Mr Al-Najar's companies on the property at Monkston Park which was to be sold to Mr Al-Habib. The property at Monkston Park is the subject of a separate claim which I will consider later in this judgment.

88. It is next pleaded that Mr Al-Najar did not buy the two flats in Albion Place but used the money transferred by Mr Al-Habib for his own purposes and as a fraud on Mr Al-Habib.

89. Mr Al-Habib then claimed damages in a sum of not less than £236,800, alternatively the return to him of that sum. He also claimed compensation for breach of fiduciary duty and stated that the monies paid to Mr Al-Najar were the subject of a *Quistclose* trust in favour of Mr Al-Habib. A *Quistclose* trust is so named after the leading case of *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567.

90. In Mr Al-Najar's Defence, he pleaded that Mr Al-Habib had changed his mind about buying the two flats in Albion Place and had instead asked Mr Al-Najar to invest the £236,800 in other investments, which Mr Al-Najar duly did.

91. Mr Al-Habib gave evidence which was essentially in accordance with his pleaded case. He also said that he had given a power of attorney to Mr Al-Najar to enable Mr Al-Najar to carry out this transaction on his behalf.

92. Mrs Al-Najar cross-examined Mr Al-Habib in relation to his case against her in respect of Monkston Park. After that cross-examination, I asked him questions to clarify his evidence in relation to Monkston Park. In the course of his answers, he gave evidence which is also relevant to his case in respect of Albion Place. He said that Mr Al-Najar had told him that he had sold the two flats in Albion Place for £215,000. When he was told that, Mr Al-Habib considered that he had another £200,000 to pay towards the purchase of Monkston Park and he considered that the proceeds of the sale of the two flats (as he understood it) would deal with the outstanding £200,000. He said he did not discuss with Mr Al-Najar how the difference of £15,000 was to be treated. At that point in his evidence, he added that he understood that Mr Al-Najar had received rent for the two flats in Albion Place but Mr Al-Habib did not think of asking him for an account of the rents received because in view of their relationship and their culture, he allowed Mr Al-Najar to keep those rents and, in return, Mr Al-Najar would be expected to pay certain expenses for Mr Al-Habib. On that point, there was evidence that Mr Al-Najar did indeed pay expenses for Mr Al-Habib.

93. In his witness statement, Mr Al-Najar accepted that he had made an agreement with Mr Al-Habib about the two flats in Albion Place, essentially as described by Mr Al-Habib. However, he then said that in September or October (I infer in 2012), Mr Al-Habib told him that he did not want to buy the two flats any longer and instead he showed an interest in a property in Huntley Crescent and then a property at 40 Queensbury Lane and then, eventually, in the property at Monkston Park, which is the subject of the claim against Mrs Al-Najar. This was said to be the reason why Mr Al-Najar did not use Mr Al-Habib's £236,800 to buy the two flats in Albion Place. However, this explanation does not deal with the stock transfer form dated 4 December 2012 which came after the alleged instruction not to proceed with the two flats in Albion Place.

94. In his closing submissions, Mr Chelmick said that the payment made by Mr Al-Habib was subject to a *Quistclose* trust and that the money was not used in accordance with the terms of that trust. It was also submitted that Mr Al-Najar was in breach of fiduciary duty and had dishonestly diverted these monies for his own purposes. Mr Al-Habib therefore claimed the return of the £236,800. However, it was said that if the court accepted that some or all of this sum was used as a contribution to the purchase price for the Monkston Park property, then Mr Al-Habib would give credit accordingly.

95. There is a clear conflict of evidence between Mr Al-Habib and Mr Al-Najar. For reasons which are essentially the same as those I gave earlier when resolving a conflict of evidence between Mr Abdulrida and Mr Al-Najar, I prefer the evidence of Mr Al-Habib.

96. I accept that the sum of £236,800 was paid to Mr Al-Najar and it was subject to a *Quistclose* trust in favour of Mr Al-Habib. Prima facie, that sum should be returned to Mr Al-Habib by Mr Al-Najar. I also accept that Mr Al-Najar is liable for a dishonest breach of trust. However, an issue arises as to the effect of the evidence given by Mr Al-Habib as to the fictional proceeds of sale of these two flats being used as a contribution to the purchase price of the property at Monkston Park.

97. I consider that at least £200,000 of the original payment of £236,800 is not to be repaid to Mr Al-Habib in the event that I go on to hold that that sum results in Mr Al-Habib acquiring an interest in Monkston Park by reason of £200,000 being treated as a contribution to the price for Monkston Park. Conversely, if I were to hold that the sum of £200,000 did not have any bearing on Mr Al-Habib's acquisition of an interest in Monkston Park, then I would not hold that any part of Mr Al-Najar's liability to repay the £236,800 was affected. The next question is whether I should treat the additional £15,000 over the £200,000 in the same way as I treat the £200,000. I consider that I should. Mr Al-Habib's evidence was that he considered he had to pay £200,000 for Monkston Park and that the proceeds of sale of the two flats at Albion Place were to be regarded as providing that sum but not so as to give him an entitlement to claim an additional £15,000 from Mr Al-Najar. Mr Al-Habib gave his explanation about the £15,000 when he was describing that he expected Mr Al-Najar to cover certain expenses for him rather than return the £15,000. I appreciate that Mr Al-Najar's story about the £215,000 was, on my findings, not true but on balance I consider that the right response is to give effect to what Mr Al-Habib intended should happen in relation to the additional £15,000. The next question is: what about the difference between £215,000 and £236,800? As to that element, it was held on a

Quistclose trust and I do not think that I can interpret Mr Al-Habib's evidence about £215,000 as exonerating Mr Al-Najar from the obligation to account for that element, now that Mr Al-Habib has discovered the truth that his £236,800 was never used as it ought to have been.

The rescission claims

98. The next claims to be considered are all claims in which the Claimants seek rescission of the contracts which they said they made with Mr Al Najar and with the relevant Prestige companies. In relation to these contracts, the Claimants have pleaded claims to a range of remedies, such as damages for breach of contract, and have not just claimed rescission. However, Mr Chelmick made it clear that the Claimants sought rescission as their preferred remedy. He explained that if the Claimants obtained orders for rescission of the contracts and consequential orders against Mr Al Najar and/or the relevant Prestige company for the return of the monies invested, they would say that title to those monies revested in them in equity and that would enable them to bring claims involving third parties to trace those monies. Mr Chelmick said that this approach was supported by the reasoning in *Shalson v Russo* [2005] Ch 281; see also *Goff & Jones, The Law of Unjust Enrichment, 9th ed.*, at paragraph 40-20. In this judgment, I am not dealing with the abilities of the Claimants to trace the monies they originally invested but I note this submission in order to explain why the Claimants seek rescission rather than the other remedies which they have pleaded. I will therefore not deal with the issues which arise in relation to *Shalson v Russo* such as the effective date of the revesting of title in the Claimants and the possible effect of Mr Al Najar's bankruptcy or the liquidation of any relevant Prestige company.

99. The claims to rescission relate to the following projects: Broughton Manor, Seymour Place, Bishops Avenue, Porcelanosa, Brooklands and Campbell Park.

Broughton Manor: Mr Abdulrida

100. Mr Al-Najar said that Broughton was formed on 13 January 2012. The share capital of the company was 1,000 shares of £1 each. All of the shares were issued to Mr Al-Najar and the shares were said to be fully paid up.

101. Mr Abdulrida gave evidence as to his investment in Broughton in relation to the land at Broughton Manor. Mr Abdulrida's business relationship with Mr Al-Najar began in June 2012. They socialised together and they discussed possible investments. Mr Al-Najar suggested a number of investments for Mr Abdulrida. Mr Abdulrida trusted Mr Al-Najar and thought that Mr Al-Najar was giving him good investment advice. Mr Abdulrida did not check the various facts and figures which were provided to him by Mr Al-Najar.

102. The project in relation to Broughton Manor was the first of the projects in which Mr Abdulrida decided to invest. The project was discussed with Mr Al-Najar in June 2012. Mr Al-Najar told Mr Abdulrida that he was putting £3.79 million of his own money into the project and he was seeking an investor to invest the same amount in return for a 50% share of the project. The remaining funds which were needed were to be borrowed. Mr Abdulrida said that he agreed to the proposal. He was influenced by the fact that Mr Al-Najar was investing his own money in the project.

103. Prestige Homes Ltd had prepared a brochure in relation to what was described as an investment opportunity in a residential development at The Avenue, Broughton Manor, Milton Keynes. Mr Al-Najar provided a copy of this brochure to Mr Abdulrida by email dated 21 August 2012. As described in the brochure, the development was to comprise 14 new houses. An executive summary stated that the project value was £21 million, the profit forecast was £5.84 million, the return on investment was said to be 77%, or an annual return of 25.7%, and funding was said to be available for up to 50% of the total project cost. The brochure contained information for development investment partners which stated that: "Capital secured on the land held within a SPV company". The brochure stated that the development site extended to 4.5 acres "with outline planning permission for 14 large detached houses".

104. The brochure contained further financial information. It stated that the land purchase cost was £4.5 million, the development costs were £9.1 million and the total cost was £15.16 million. The gross total revenue was stated to be £21 million showing a projected total development profit and a return on investment of 77%. The brochure said that the Principality Building Society and HSBC had both stated that they would be happy to fund the project at 50% of cost (land and build cost) i.e. £7.58 million, with the borrowings secured by a first charge. The brochure stated that the promoter was looking to cover the additional 50% of costs via the operation of an SPV company "Prestige Homes Broughton" Limited (co. no. 7909062). The brochure then stated that Prestige Homes would have an equity share of 50% (£3.790 million) and potential investors would have an equity share of 50% (£3.790 million) which could be divided into 10 stakes, each of 5% or £379,000.00.

105. The brochure described the Promoter, the Equity Partner and the Project Manager. It appeared that all three of these roles were to be taken by "Prestige Homes" which seemed to be a reference to Prestige Homes Ltd. It referred to Prestige Homes as the leading developer of individual, luxury homes in the Milton Keynes and Buckinghamshire area. It stated that Prestige Homes had continued to trade successfully and enjoy significant growth since its inception 13 years earlier and that the annual turnover in 2010 totalled £20 million. The brochure referred to Prestige Homes' development for 2011 equating to more than £20 million and there were three additional development opportunities which had arisen. Mr Abdulrida considered that Prestige Homes/the Prestige Group were financially successful entities.

106. The email of 21 August 2012 which accompanied the brochure stated that Mr Al-Najar had already invested £237,000 in the project. Mr Al-Najar later told Mr Abdulrida that Mr Al-Najar's share of the project would be reduced from 50% to 25% in view of others agreeing to invest in the project.

107. Mr Abdulrida made the following payments, on the following dates, in relation to Broughton Manor; the payments totalled £3,790,000:

    i) 24 September 2012 - £1,050,000

    ii) 23 October 2012 - £935,000

    iii) December 2012 - £740,000 (in the form of shares)

iv) 9 January 2013 - £1,065,000

108. In December 2012, Mr Al-Najar gave Mr Abdulrida a list of names of buyers who had paid initial deposits for 12 of the 14 plots at Broughton Manor.

109. Broughton did not issue shares to Mr Abdulrida. Instead, in around December 2012, Mr Al-Najar gave Mr Abdulrida a Stock Transfer Form. The Stock Transfer Form was back-dated to 21 June 2012. It referred to there being 500 shares in Broughton registered in the name of Mr Al-Najar which he thereby transferred, or purported to transfer, to Mr Abdulrida. The form stated that the consideration money for the transfer was £3,790,000. This figure accorded with the payments made by Mr Abdulrida as set out above. However, Mr Abdulrida had not paid that sum by the date of the Stock Transfer Form, nor even by December 2012. Mr Abdulrida gave Mr Al-Najar a note which explained that, at the date of the note, he had only paid part of the sum stated in the Stock Transfer Form. Mr Al-Najar did not provide Mr Abdulrida with a share certificate relating to the shares which were the subject of the purported transfer. No steps were taken to register Mr Abdulrida as a member of Broughton at that time.

110. In around December 2012, Broughton and Mr Abdulrida entered into an agreement which has been referred to as a shareholder's agreement. The agreement was back-dated to 12 June 2012. The agreement recited that Broughton had an authorised share capital of £7,580,000 divided into 1,000 ordinary shares of £7,580 each, all of which were issued and fully paid. The agreement further recited that Mr Abdulrida was the registered owner of 500 shares of £7,580 each, with a combined value of £3,790,000. Under the heading "Business of the Company", clause 2.1 provided:

> "The business of the Company is related to and restricted to the purchase of land, development and sale of 14 luxury houses known as "The Avenue, Broughton Manor, Milton Keynes". The document "The Avenue, Broughton Manor" forms part of this agreement, a copy of which is attached as appendix 1 and was provided to the shareholder at the outset. The details of the document form an integral part of this agreement."

111. Clause 2 of the agreement then set out certain obligations on the part of the shareholder. These provisions required "each shareholder" to do certain things although the agreement was between the company and a single shareholder and was not an agreement between shareholders. Clause 2.4 provided that the company reserved the sole right to the management of the funds and the work in progress of the day to day business, without interference by the shareholders, either directly or indirectly.

112. In January 2013, Mr Al-Najar provided various documents to Mr Khurshed with the intention of demonstrating to him that the development at Broughton Manor was proceeding. These documents purported to be a contract to purchase the site from Places for People, proof of payment to Places of People and a transfer of title by Places for People, as I will now describe. The Claimants did not say that Mr Khurshed showed these documents to Mr Abdulrida at or around the time he received them from Mr Al-Najar.

113. The first of the documents which were said to demonstrate Broughton's progress in relation to a development of Broughton Manor was a purchase agreement said to have been made on 14 March 2011 between Broughton (as purchaser) and an entity referred to as "Places for People" (as vendor). The sale agreement related to land at Broughton Manor which was agreed to be sold for £4,500,000; this was the figure in the brochure referred to earlier. The agreement referred to Broughton's intentions to develop the land the subject of the agreement. Although the agreement was expressed to be with Broughton, the agreement stated that the purchase would be by a SPV subsidiary of Prestige Group UK Ltd or by Prestige Group UK Ltd itself. The agreement provided for a 10% deposit to be paid by the purchaser, not later than 30 April 2011, with a further payment of 15% of the price, not later than 30 August 2011. The agreement stated that it was subject to the grant of full planning permission for, presumably, Broughton's intended development. In view of this, the agreement then stated that Broughton had a 24-month option period to deal with the conditions in what was referred to as an existing planning permission for the land. The agreement then provided for circumstances in which Broughton could withdraw from the agreement and recover the sums it had paid. Then the agreement provided for completion of the purchase to be within 3 months of exchange of contracts at which time the remaining 75% of the purchase price would be payable. This document was signed by Mr Al-Najar on behalf of Broughton and also contained a signature purportedly on behalf of Places for People. The agreement was not in a typical form which one would expect for an agreement of this kind.

114. Mr Al-Najar also provided Mr Khurshed with documents which purported to show that Mr Al-Najar of Prestige Homes had made various payments to Places for People Ltd. The documents referred to the following payments on the following dates: £450,000 on 5 April 2011 (i.e. 10% of the alleged purchase price), £675,000 on 29 July 2011 (i.e. 15% of the alleged purchase price), £800,000 on 12 January 2012 and £2,575,000 on 26 March 2012. These alleged payments totalled £4,500,000.

115. Mr Al-Najar also provided Mr Khurshed with a copy of a purported transfer of the land at Broughton Manor, in the form of a Land Registry TR1, dated 30 March 2012. The transfer gave the title number as BM328206. The transferor was stated to be Places for People Ltd, with a company registration number of 04086030. The transferee was stated to be Broughton. The transfer stated that the sum of £4,500,000 had been paid by Broughton to the transferor. The transfer was signed by Mr Al-Najar on behalf of Broughton and bears a signature purportedly on behalf of Places for People Ltd.

116. The Claimants' solicitors have contacted Places for People Homes Ltd and asked them to comment on the documents to which I have referred which purported to show the dealings of Mr Al-Najar and/or Broughton with "Places for People" or "Places for People Ltd". On 29 March 2018, a Mr Hardeley of Places for People Homes Ltd sent an email to the Claimants' solicitors and that email has been admitted as evidence under the Civil Evidence Act 1995. The email stated the following:

    i) Places for People Homes Ltd ("PPH") owns a development site at Broughton Manor which has been "in development" for many years;

ii) PPH was engaged in negotiations with Broughton in 2011 for the sale of that site to Broughton but these negotiations did not progress beyond the heads of terms stage;

iii) in 2013, contracts were exchanged with Broughton for the sale of the site; Broughton failed to complete the purchase in accordance with the contract and after service of a notice to complete on Broughton, the contract was rescinded;

iv) PPH had no further dealings with Broughton after the rescission of the contract;

v) PPH does not accept that the document of 14 March 2011, referred to above, was a valid contract of sale and does not accept that it was signed on behalf of PPH;

vi) there is no company with the name of "Places for People" in the Places for People Group;

vii) PPH has no record of the document of 14 March 2011 or anything like it;

viii) as to the documents produced by Mr Al-Najar recording payments to "Places for People Ltd", there was no company of that name in the Places for People Group and the bank account referred to is not an account operated by any company in that group;

ix) as to the TR1, PPH does not accept that this was a valid transfer and it was not executed by them;

x) the site is not registered at the Land Registry under the title number referred to in the TR1 and there is no record that it ever had been; Mr Hadeley's search of the Land Registry indicated that the title number in the TR1 did not exist;

xi) PPH has no record of the TR1 or anything like it.

117. On 29 April 2013 and 5 May 2013, Mr Al-Najar sent emails to Mr Abdulrida giving encouraging information as to the progress of the development at Broughton Manor. On 17 June 2013, Mr Al-Najar emailed Mr Abdulrida and said that all 14 plots at Broughton Manor had been sold. On 2 August 2013, Mr Al-Najar provided Mr Abdulrida with further encouraging information about the progress of the project.

118. On 14 May 2014, Mr Al-Najar met Mr Al-Habib to update him on various projects, including Broughton Manor. Mr Al-Najar told Mr Al-Habib that the predicted completion date for the project was October 2015. Mr Al-Habib passed that information on to Mr Abdulrida. At the same meeting in May 2014, Mr Al-Najar told Mr Al-Habib that that the money invested, some £7.58 million, was "in the bank".

119. On 3 September 2015, Mr Al-Najar told Mr Al-Habib of proposed changes to the project at Broughton Manor in order to provide better returns for investors. At that meeting, Mr Al-Najar told Mr Al-Habib that there was a contract with a company called Places for People who were referred to as the original sellers of the site.

120. The Annual Return dated 13 January 2017 for Broughton shows that Mr Abdulrida was registered as the owner of 500 shares and Mr Khurshed's brother was registered as the owner of 250 shares. It seems that these registrations were pursuant to transfers made on 1 May 2016.

121. The accounts for Broughton do not show that it ever owned the land at Broughton Manor or that it had held £7.58 million in its bank account.

122. In Mr Al-Najar's witness statement, he accepts that the documents which showed the dealings and payments between Broughton and Places for People were not genuine. He says that he did not forge these documents and it must be the case that one or other of the Claimants forged them. Because he did not participate in the trial, this allegation that one or other of the Claimants forged these documents was not put to any Claimant. Further, there is no evidence to support that allegation apart from Mr Al-Najar's statement. In these circumstances, I accept the evidence of Mr Khurshed that Mr Al-Najar provided these documents to him in January 2013. That finding means that I regard Mr Al-Najar's denial of his forgery as untrue and the consequence of that is that Mr Al-Najar has deliberately given untrue evidence to the court.

123. Where there is a conflict between Mr Abdulrida's evidence and that of Mr Al-Najar, I accept the evidence of Mr Abdulrida and reject the evidence of Mr Al-Najar.

124. Mr Abdulrida's pleading in support of his claim to rescission of the contract with Mr Al-Najar and/or Broughton in relation to Broughton Manor alleges a large number of misrepresentations. However, in the course of his submissions, Mr Chelmick began to accept that many of the pleaded allegations faced difficulties of various kinds. These included questions as to whether the alleged representations were representations of existing fact or were statements of intention or statements of opinion which did not contain within them, expressly or impliedly, statements of existing fact. There were other questions as to whether the Claimants could sustain their allegations that representations were to be implied. Further, there were issues as to the timing of the representations and whether they had induced a contract made after the alleged representation.

125. In any event, in his closing submissions, Mr Chelmick relied on only one alleged representation in relation to Mr Abdulrida and Broughton Manor. The allegation was that Mr Al-Najar had said in or around 22 June 2012 that he would invest his own money (initially £3.79 million, subsequently changed to £1.895 million for a 25% share) into the project and would own part of the equity in the project. This statement by Mr Al-Najar was said to amount to an implied representation that his intention to invest was genuinely held at the time of his statement.

126. Mr Chelmick then says that the accounts of Broughton show that Mr Al-Najar did not make any investment of £1.895 into Broughton. It is said that Mr Al-Najar did not invest any of his own monies in any of the other projects either and, instead, the monies invested by the Claimants were withdrawn from the companies who were intended to carry out the relevant projects so that it can be inferred that Mr Al-Najar never had the genuine intention of investing in any of the projects and, therefore, including Broughton.

127. Mr Chelmick's written submission on this point said that Mr Al-Najar's initial trial witness statement of 1 October makes an allegation that he informed Mr Abdulrida and Mr Al-Habib that Mr Al-Najar's 25% stake would be accounted for from profits made by other Prestige companies rather than being paid up front. Whilst Mr Abdulrida and Mr Al-Habib deny that Mr Al-Najar ever told them that, Mr Chelmick says that Mr Al-Najar's allegation shows that he did not intend to invest in the various companies, including Broughton. Mr Chelmick's reference in his written submissions does not seem to be accurate but there is a statement by Mr Al-Najar in his witness statement of 22 October 2010, at [81], to the effect, that he would contribute his 25% "on a drip feed as the project progressed and the additional monies were needed". This statement was not, of course, put to the Claimants in cross-examination and it is contrary to their evidence, which I accept.

128. Mr Abdulrida's evidence was that he was told at the outset by Mr Al-Najar that the latter would invest £3.79 million of his own money in the project at Broughton Manor. It may well be the case that Mr Abdulrida understood that Mr Al-Najar would put in money from time to time rather than in one lump sum up front. However, there is no evidence that Mr Al-Najar ever put any of his own money into the Broughton project. Instead, the evidence is that when the investors put their money into the Broughton project it was withdrawn by Mr Al-Najar and used for his own purposes. On that basis, I conclude that Mr Al-Najar made a misrepresentation as to what he intended to do and that misrepresentation included within it a misrepresentation as to an existing fact, namely, Mr Al-Najar's actual intentions at the time of the statement. I also find that the misrepresentation induced Mr Abdulrida to contract to invest in the project at Broughton.

129. The result is that Mr Abdulrida is prima facie entitled to rescind any contract which he made with Mr Al-Najar personally. If and in so far as Mr Abdulrida made a contract with Broughton which was induced by the misrepresentation made by Mr Al-Najar, then it is said that Broughton had notice of the misrepresentation and rescission can be claimed against it. Mr Chelmick relies in this respect on *Barclays Bank plc v O'Brien* [1994] 1 AC 180 at page 194 G-H. I consider that as Mr Al-Najar was the managing director of Broughton, his knowledge and his actions can be attributed to Broughton so that Mr Abdulrida is also prima facie entitled to rescind any contract made with Broughton.

130. I next need to consider what were the contract or contracts which Mr Abdulrida made in relation to his investment in the project at Broughton. Mr Abdulrida's pleading appears to allege a number of contracts, some with Mr Al-Najar and one, or possibly more, with Broughton. Mr Abdulrida seeks rescission of all of those contracts. It is not completely straightforward to identify the contract or contracts which Mr Abdulrida made in this case.

131. Mr Abdulrida's decision to invest was based on his relationship with Mr Al-Najar. On balance, I consider that the contract under which Mr Abdulrida made his investment was a contract made with Mr Al-Najar although there appears also to have been a contract between Mr Abdulrida and Broughton in the form of the shareholder's agreement. That is how the case has been pleaded and Mr Al-Najar's Defence did not challenge that way of putting it. Further, that way is not challenged in Mr Al-Najar's witness statement. Accordingly, Mr Abdulrida is prima facie entitled to rescission of

all of the contracts which he made with Mr Al-Najar and with Broughton in relation to this investment.

132. Mr Al-Najar does not put forward any equitable bar to the court granting to Mr Abdulrida the rescission to which he is prima facie entitled. Accordingly, I will order rescission of the contracts which Mr Abdulrida made with Mr Al-Najar and with Broughton in relation to his investment in the Broughton project.

133. To give effect to the rescission of the relevant contracts, Mr Abdulrida must give restitution of any benefits he took under those contracts. In view of the belated registration of Mr Abdulrida as a shareholder in Broughton, he must be prepared to give up those shares which I expect he is entirely willing to do. Someone must return to Mr Abdulrida the monies he invested in the Broughton project. I was not addressed on the form of the order I should make in this respect but, prima facie, if the monies invested were paid by Mr Abdulrida to Broughton then the obligation to restore those monies will be on Broughton. If Mr Abdulrida agrees with this analysis, then I will give effect to it in an order of the court. However, if he does not agree, and if it is material, then the point can be considered following the handing down of this judgment.

134. Mr Abdulrida has made other claims against Mr Al-Najar some of which depend upon Mr Abdulrida showing that he has the benefit of a contract with Mr Al-Najar and with Broughton. In view of the fact that Mr Adbulrida has elected to rescind those contracts, and such rescission operates retrospectively, he cannot pursue his claims for breach of contract or for inducing breach of contract or for breach of a fiduciary duty arising from the existence of the contractual relationship.

135. Mr Chelmick also argued that the monies paid by Mr Abdulrida to Broughton were held by Broughton pursuant to a *Quistclose* trust so that they could only be used for the purposes for which the monies were advanced and in the event that the monies were not used for those purposes then they were held on a resulting trust for Mr Abdulrida. As advanced, the argument depended on clause 2.1 of the shareholder's agreement which stated that the business of the company was restricted to, in effect, the development at Broughton Manor. A contrary argument might be that the monies paid by Mr Abdulrida were the purchase price of the shares in Broughton which were transferred to him by Mr Al-Najar and belatedly registered in his name, so that no *Quistclose* trust arose in relation to the monies which vested at law and in equity in Broughton. Further, if clause 2.1 were to be read as giving rise to a *Quistclose* trust, there would be a question as to whether that trust survives rescission of the shareholder agreement with retrospective effect giving Mr Adbulrida a right against Broughton to the restitution of the monies he invested. These points were not argued at the trial. The resolution of these points does not affect the result of the claim against Mr Al-Najar and Broughton but might affect third parties against whom Mr Abdulrida might wish to assert a right to trace. I consider that it is not appropriate for me to express a view on this point which would, in any event, not be binding on persons who are not parties to this action. If the point needs to be considered later, then it can be argued in an action to which the relevant persons are parties.

136. Mr Abdulrida makes other claims against Mr Al-Najar and Broughton which are not based on the existence of a relevant contract or contracts. It is said that Mr Al-Najar and Broughton are liable for an unlawful means conspiracy to defraud Mr Abdulrida.

In accordance with my earlier findings, I find that Mr Al-Najar made a representation to Mr Abdulrida which he knew to be untrue and which caused loss to Mr Abdulrida and Mr Al-Najar is therefore liable in the tort of deceit. I would also hold that either Mr Al-Najar's actions are to be attributed to Broughton or the matter can be analysed in the way contended for by Mr Chelmick as a combination between Mr Al-Najar and Broughton to commit the tort of deceit with the intention to injure Mr Abdulrida, in the sense that Mr Abdulrida was the target of the unlawful act, and loss was foreseeable. Mr Abdulrida is therefore entitled to damages to be assessed in tort against both Mr Al-Najar and Broughton. A claim under the Misrepresentation Act 1967 would add nothing to the liability of Mr Al-Najar and Broughton.

137. I do not think it is necessary to consider a claim in unjust enrichment separately from Mr Abdulrida's right to restitution following rescission of the contracts.

Broughton Manor: Mr Al-Habib

138. Mr Al-Habib did not invest in the project at Broughton Manor although he was involved in a number of relevant ways. I take account of the evidence he gave in relation to Broughton Manor when considering the claims by Mr Abdulrida and Mr Khurshed in relation to that project.

Broughton Manor: Mr Khurshed

139. Mr Khurshed gave evidence in relation to the project at Broughton Manor and I have already referred to some of that evidence when considering the claim by Mr Abdulrida.

140. Mr Khurshed made the following payments on the following dates in relation to Broughton Manor, making a total sum of £1,577,000:

i) 25 July 2012 - £473,750

ii) 16 September 2012 - £237,000

iii) 13 December 2012 - £288,000

iv) 13 February 2013 - £578,250

141. Mr Khurshed's brother introduced him to Mr Al-Najar in April 2011. He said that his relationship with Mr Al-Najar was not particularly formal. There was limited written communication between them and some of the communications on Mr Khurshed's side were via his brother or Mr Al-Habib or Mr Abdulrida.

142. In March or April 2012, Mr Khurshed and his brother met Mr Al-Najar in his office in Milton Keynes. Mr Al-Najar invited them to invest in a project at Broughton Manor. He referred to the likely return on such an investment and he gave them the brochure to which I referred earlier. Mr Al-Najar made statements about the financial standing of Prestige Homes Ltd. Mr Al-Najar told them that the investment would be in a single purpose vehicle called Broughton. Mr Al-Najar was to own 50% of the shares in Broughton and 50% of the shares would be made available to investors.

143. Mr Khushed decided to invest in the project at Broughton Manor on the basis of what Mr Al-Najar had told him and on the basis of the brochure. Specifically, he agreed with Mr Al-Najar to invest £1,895,000 in return for a 25% share in the project.

144. On 2 September 2012, Mr Al-Najar sent an email to Mr Khurshed saying that Mr Al-Najar had invested £947,500 in the project. Mr Khurshed was reassured that Mr Al-Najar was investing his own money in the project.

145. In January 2013, Mr Khurshed met Mr Al-Najar who gave Mr Khurshed the forged documents relating to Broughton Manor and Places for People to which I have referred earlier. At around that time, Mr Al-Najar gave Mr Khurshed a document stating that 12 of the 14 properties had been sold with initial deposits paid by purchasers.

146. In or around January 2013, Broughton and Mr Khurshed executed a shareholder agreement. Mr Al-Najar signed for Broughton. The agreement was back-dated to 30 July 2012. The agreement stated that Mr Khurshed was the registered owner of 250 shares of £7,580 each. In other respects, the shareholder agreement with Mr Khurshed was in the same terms as the agreement with Mr Abdulrida to which I referred earlier.

147. Also, in or around January 2013, Mr Al-Najar gave Mr Khurshed a Stock Transfer Form whereby Mr Al-Najar transferred to Mr Khurshed 250 shares in Broughton. The Stock Transfer Form was dated 1 December 2012. The consideration for the transfer was stated to be £1,895,000.

148. On 3 February 2013, Mr Al-Najar emailed Mr Khurshed with a schedule of payments made and to be made. The email stated that Mr Al-Najar had made a number of payments totalling £1,895,000 and held a 25% share in the project.

149. On 2 August 2013, Mr Al-Najar emailed Mr Khurshed and the other Claimants and stated that all of the payments from investors had been made, that all 14 houses had been sold and completion would be in stages from August to November 2014.

150. Mr Khurshed's pleaded case was that Mr Al-Najar had made multiple misrepresentations to induce Mr Khurshed to invest in the Broughton project. However, in his closing submissions Mr Chelmick concentrated on two alleged representations.

151. The first matter relied on by Mr Chelmick was the statement in the brochure for Broughton Manor that the monies invested would become "Capital secured on the land held within a SPV company". It was pointed out that all monies paid by the Claimants to Broughton were promptly taken out of the company by Mr Al-Najar. This pattern of diversion was also said to apply to all the projects in which the Claimants invested. On that basis, it is said that Mr Al-Najar never intended that the monies invested by Mr Khurshed, in particular, would remain in the SPV Broughton so that the statement in the brochure amounted to a misrepresentation as to the fact of Mr Al-Najar's intentions. It could be said that the statement in the brochure was a continuing representation made by Mr Al-Najar at all times until Mr Khurshed contracted with Mr Al-Najar and with Broughton in relation to this investment.

152. The Claimants have instructed forensic accountants to examine the various bank accounts connected with Mr Al-Najar and the companies which are relevant in this case. That examination shows a clear pattern of conduct on the part of Mr Al-Najar. The usual position was that when one of the Claimants invested monies by paying into the bank account of the SPV in question, Mr Al-Najar promptly withdrew the monies and paid them into his own bank account. This has been shown by the forensic accountants in relation, in particular, to the payment of £473,500 which Mr Khurshed paid on 25 July 2012. This sum was credited to Broughton's bank account on 26 July 2012. Mr Al-Najar then promptly withdrew a total of £400,000 from Broughton's bank account and paid the monies into his own account. The withdrawals took place on 26, 27, 30 July 2012 and 1, 8 and 9 August 2012.

153. The pattern of behaviour referred to above shows that at all times at which the representation in the brochure relating to Broughton remained in force, to the effect that the monies invested would be held within Broughton, the representation was false. The express representation contained an implied representation that the statement represented Mr Al-Najar's intentions and the evidence shows that he did not have those intentions at any relevant time.

154. I find that Mr Khurshed relied on the representation as to the intention to retain the monies invested in Broughton when he contracted to invest in that company. I also find, in the same way as in the case of Mr Abdulrida, that Mr Khurshed made relevant contracts with both Mr Al-Najar and with Broughton and those contracts were induced by this misrepresentation.

155. Mr Chelmick submitted that there was a second representation made by Mr Al-Najar to Mr Khurshed. The brochure relating to the project at Broughton referred to the financial position of Prestige Homes Ltd, which was described in the brochure as the Promoter, the Equity Partner and Project Manager. The brochure stated that the annual turnover of Prestige Homes Ltd in 2010 totalled £20 million. I was shown the filed accounts for Prestige Homes Ltd for the years ending 31 December 2009, 2010 and 2011. The 2009 accounts disclosed a turnover for the company of approximately £2.6 million; the turnover of the company for 2008 was also approximately £2.6 million. The accounts for 2010 and 2011 were abbreviated accounts which did not disclose the turnover of the company in those years. The accounts for 2010 and 2011 stated that the company was entitled to exemption under section 477(2) of the Companies Act 2006 and further stated that the accounts had been prepared in accordance with the provisions applicable to companies subject to the small companies regime. Section 382 of the Companies Act 2006 defines which companies qualify as "small". Section 477 of the Companies Act 2006, in relation to small companies, specifies the conditions for exemption from audit. One of the conditions specified in section 477, for the period relevant in this case, is that the turnover in the relevant year is not more than £6.5 million. Therefore, the accounts of Prestige Homes Ltd show that its turnover in 2010 was not £20 million. There is no other evidence as to its turnover in that year. Accordingly, I conclude that I ought to find that the brochure contained a misrepresentation of fact as to the turnover of Prestige Homes Ltd. As before, I find that this misrepresentation induced Mr Khurshed to make the contracts he made with Mr Al-Najar and Broughton in relation to this project.

156. Based on these findings I reach the same conclusions, for the same reasons, as I reached in relation to the claims by Mr Abdulrida as regards the Broughton project as regards:

i) rescission of the contracts;

ii) restitution;

iii) the other claims in contract;

iv) the claim to a *Quistclose* trust;

v) the tort of deceit and conspiracy to injure by unlawful means.

Seymour Place: Mr Abdulrida

157. The company used by Mr Al-Najar in connection with the project at Seymour Place was Prestige Civil Constructions Ltd ("Civil Constructions") but (before 6 November 2012) it was known as Prestige Global Investment Ltd or Prestige Global Consolidated Ltd. I was not given the date of its incorporation. The share capital of the company was 1,000 shares of £1 each. All of the shares were issued to Mr Al-Najar and the shares were said to be fully paid up. Mr Al-Najar remained registered as the owner of 1000 shares but on 1 January 2014, he transferred 200 shares each to Mrs Al-Najar and the trustees of three trusts which were respectively named after his three daughters, retaining 200 shares for himself; the transferees of the shares were duly registered as shareholders. The company subsequently changed its name to FAPCC Ltd but I will continue to refer to it as Civil Constructions.

158. Mr Abdulrida made the following payments on the following dates in relation to the Seymour Place project, making a total sum of £1,312,500:

i) 24 September 2012 - £525,000

ii) 9 January 2013 - £787,500

159. In June 2012, Mr Al-Najar told Mr Abdulrida that he, Mr Al-Najar, was working on a project to demolish a building in Seymour Place, Marylebone, London and to build a block of 14 apartments. Mr Al-Najar invited Mr Abdulrida to invest in this project. Mr Al-Najar took Mr Abdulrida to see the building and told him that he had reached an agreement with the owner of the building to purchase the building on terms that completion of the sale would be conditional on obtaining the appropriate planning permission.

160. On 29 July 2012, Mr Al-Najar sent to Mr Abdulrida a financial summary in relation to this project. The summary stated that the land purchase cost would be £10.5 million, the development costs would be £13.93 million, the total costs would be some £26.2 million and the gross total revenue from the development would be £41.3 million, based on the sale of 14 apartments at an average sale price of £2.95 million each. The summary stated that the projected total development profit would be £15,062,040. The summary referred to the extent to which bank funding was required. It stated that Mr Al-Najar/the Prestige Group would fund 25% of the project and additional

investors were sought in relation to 75% of the costs which were stated to be £9,335,970. The return on investment was said to be 121%.

161. Initially, Mr Abdulrida was to contribute 50% of the equity investment with Mr Al-Najar providing the other 50%. Later it appeared that Mr Al-Najar would provide only 25% having persuaded Mr Khurshed to invest 25%.

162. On 15 August 2012, Mr Al-Najar emailed Mr Abdulrida and stated that a deposit of 10% of the purchase price, the deposit being £1.05 million, had been paid and it was intended that Mr Abdulrida would pay 50% of this sum and Mr Khurshed had already paid 25% of it. The email then stated that a further 15% (of the purchase price) was due on exchange of contracts on 10 October 2012. Completion was expected to occur on 25 November when stamp duty of 7% plus legal fees would be required to be paid. Attached to the email of 15 August 2012 was a marketing brochure for the flats in the intended development.

163. On 24 September 2012, Mr Abdulrida paid £525,000 as a 50% contribution to the deposit of £1.05 million which had allegedly been paid for the property.

164. In early December 2012, at a meeting of Mr Al-Najar, Mr Abdulrida and Mr Al-Habib, Mr Al-Najar gave Mr Abdulrida a Stock Transfer Form, signed by Mr Al-Najar, by which he transferred 500 shares in Civil Constructions to Mr Abdulrida. The form stated that the consideration for the transfer was £7,500,000. Mr Abdulrida asked Mr Al-Najar why the consideration was stated to be £7.5 million which exceeded the sum which Mr Abdulrida was to invest in the company. Mr Al-Najar replied that £7.5 million was the future value of the shares. He claimed that the flats had already been sold off-plan and the value of Mr Abdulrida's investment would be £7.5 million.

165. At the same meeting, Mr Al-Najar provided Mr Abdulrida with a shareholder agreement to be entered into by Civil Constructions and Mr Abdulrida. The agreement was already signed by Mr Al-Najar on behalf of Civil Constructions. The agreement recited that the authorised share capital of the company was £15,000,000 divided into 1,000 shares of £15,000 all of which had been issued and were fully paid. The agreement also stated that Mr Abdulrida was the registered owner of 500 of these shares and the figure of £7,500,000 was put beside the number of shares. Clause 2.1 of the agreement provided that the business of the company was related to and restricted to the purchase of land and the development and sale of 16 luxury apartments to be known as "The Prestige Residence" in Seymour Place. Clause 2.1 also stated that a document entitled "The Prestige Residence, Seymour Place, London" formed part of the agreement and the details of that document formed an integral part of the agreement. It is not clear whether this was intended to be a reference to the marketing brochure to which I referred earlier. In other respects, this shareholder agreement was in the same terms as the shareholder agreement between Broughton and Mr Abdulrida in relation to the project at Broughton Manor.

166. In January 2013, Mr Al-Najar provided Mr Abdulrida with a copy of a purported purchase agreement between Prestige Group UK Ltd and HOLBUD Investment Ltd ("Holbud") dated 13 August 2012. By this agreement, it was stated that the Prestige Group agreed to buy the land and buildings at Seymour Place for £10.5 million. The agreement said that the Prestige Group intended to demolish the building and erect a

block of 14 to 18 apartments to be offered for sale. It was said that the purchase would be through an SPV subsidiary of The Prestige Group UK Ltd or else in the name of The Prestige Group UK Ltd. The agreement stated that a 10% deposit had been paid on 15 August 2012 and a second payment of 15% was due by 15 September 2012. The agreement provided that the purchase was subject to obtaining an appropriate planning permission so that The Prestige Group were to have a six month option to obtain planning permission and the agreement then provided for exchange of contracts and completion of the purchase.

167. In relation to Holbud, Mr Abdulrida wrote to Holbud and referred to the fact that Holbud was later known as Merchant Land Investments Ltd. Mr Abdulrida referred to the written agreement with Holbud and the payment of monies to Holbud and asked for further information. Clyde & Co, the solicitors for Holbud replied by letter dated 18 October 2017. The letter stated that neither Holbud nor Merchant Land Investments Ltd had entered into any agreement to dispose of the freehold interest in the property at Seymour Place nor had they received any payments from a Mr Al-Najar or any other prospective purchaser of the property. They added that having seen the correspondence which Mr Abdulrida had sent, it appeared that he had been the victim of what looked like a fraud. The letter dated 18 October 2017 was admitted as hearsay evidence under the Civil Evidence Act 1995.

168. Mr Abdulrida, and the other Claimants, contend that the purported written agreement with Holbud was a forgery. In his witness statement, Mr Al-Najar says that he did not provide Mr Abdulrida or any of the Claimants with the purported agreement with Holbud. Mr Al-Najar says that this document was created by the Claimants. As Mr Al-Najar did not participate in the trial, this allegation was not put to Mr Abdulrida or any of the Claimants in cross-examination. In these circumstances, I am able to find that the purported agreement with Holbud was a forgery and I accept the evidence of Mr Abdulrida that it was provided by Mr Al-Najar to him in January 2013 when Mr Al-Najar pretended that it was a genuine agreement. I find that Mr Al-Najar's witness statement in this respect is untrue and was known by him to be untrue.

169. On 29 April 2013, Mr Al-Najar emailed Mr Abdulrida and said that he was working hard to obtain planning permission for Seymour Place and was expecting to demolish the building in the summer of that year with completion of the project being forecast for August 2015. Thereafter, when asked, Mr Al-Najar put forward various reasons as to why the development was not proceeding. In early September 2015, Mr Al-Najar told Mr Al-Habib that the property had been sold to another party and he was seeking to obtain the return of the deposit from Holbud.

170. Mr Al-Habib's evidence corroborated the evidence given by Mr Abdulrida.

171. In his witness statement, Mr Al-Najar gave a different account of his dealings with Mr Abdulrida and the other Claimants in relation to Seymour Place. I am not able to accept his evidence in so far as it conflicts with the evidence of the Claimants.

172. Mr Chelmick presented Mr Abdulrida's claim to rescission of the contracts in relation to the Seymour Place project on the basis of what were said to be two relevant misrepresentations. The first misrepresentation relied on was said to have been made to Mr Abdulrida in June 2012 and was to the effect that Mr Al-Najar, or a company owned and controlled by him, had agreed with the owner of the land and building at

Seymour Place to purchase the property and that completion of the contract was conditional on obtaining planning permission.

173. I find that Mr Al-Najar did in June 2012 make the representation to Mr Abdulrida which is now relied on by Mr Chelmick. In his witness statement, Mr Al-Najar does not assert that he did conclude a contract of purchase with the owner of the site at any material time. Mr Al-Najar later produced a purported contract between the Prestige Group UK Ltd and Holbud but Mr Al-Najar does not now contend that this was a genuine document and I find that this document was forged by him. Instead, in his witness statement, Mr Al-Najar said that someone called "Andy" had an option of some kind in relation to this site and that, in mid-July 2102, Civil Constructions paid a 10% non-refundable deposit to Andy. Mr Al-Najar said that he tried to obtain planning permission for the development of the site, but later Andy dealt with the owners of the site and then demolished the building and developed the site. Mr Al-Najar said that there was some attempt to recover the deposit but this was not possible. Mr Al-Najar has not produced any documents or other evidence to support his account of his involvement with Andy. I am not able to accept his evidence in view of the fact that I have found him to be an unreliable witness. What he told the Claimants at the relevant time is completely different from the account given in his witness statement. In any event, the representation relied on by Mr Abdulrida was made in June 2012 (and was made to Mr Khurshed in March 2012) and cannot be explained by the alleged agreement with Andy in mid-July 2012.

174. Accordingly, I find that Mr Abdulrida has established this misrepresentation made in June 2012. I also find that he relied on this misrepresentation when entering into the relevant contracts with Mr Al-Najar and Civil Constructions.

175. The second alleged misrepresentation relied upon by Mr Chelmick for Mr Abdulrida is said to have been made in July 2012. It is said that Mr Al-Najar represented that he intended to carry out a development at Seymour Place and that he had a real prospect of doing so. In view of my earlier conclusion that Mr Al-Najar made a specific but false representation that he had a conditional contract to buy the site, it is not necessary to deal with this further alleged misrepresentation. I comment that while it is clear that Mr Al-Najar was saying that he wanted to obtain funds to enable him to carry out the development at Seymour Place and he encouraged the belief that the project would be a financial success, the matters which are alleged to be misrepresentations of existing fact relate to Mr Al-Najar's intentions and the prospects of the development proceeding. In order to rule in Mr Abdulrida's favour on this alleged misrepresentation, it would be necessary for me to make findings that at the relevant time, Mr Al-Najar did not genuinely intend to carry out his development but the whole scheme was a fraud from the outset. Further, I would have to have material to assess what the prospects of success were in relation to this scheme, assuming that Mr Al-Najar did genuinely intend to carry it out. This alleged representation therefore takes the court into areas of fact which are much more difficult to assess and determine and on which I have, at best, only limited evidence. As it is not necessary to do so for the purpose of determining Mr Abdulrida's claim to rescission in relation to Seymour Place, I will not do so.

176. The above findings mean that Mr Abdulrida is prima facie entitled to rescission of the contracts in question. The position in relation to Seymour Place is essentially the same as was Mr Abdulrida's position in relation to Broughton Manor. Accordingly, I find

that Mr Abdulrida is entitled to rescission of the contracts between him on the one hand and Mr Al-Najar and Civil Constructions on the other hand. Mr Abdulrida is entitled to restitution of his investment from Civil Constructions.

177. As to the other claims in relation to Seymour Place which are based on the existence of contracts with Mr Al-Najar and with Civil Constructions and in relation to claims which are not based on the existence of such contracts, the position is the same as that explained earlier in relation to Broughton Manor.

Seymour Place: Mr Al-Habib

178. Mr Al-Habib did not invest in the project at Seymour Place although he was involved in a number of relevant ways. I take account of the evidence he gave in relation to Seymour Place when considering the claims by Mr Abdulrida and Mr Khurshed in relation to that project.

Seymour Place: Mr Khurshed

179. Mr Khurshed made the following payments on the following dates in relation to the Seymour Place project, making a total sum of £652,000:

i) 13 August 2012 - £262,000

ii) 14 February 2013 - £150,000 (from the Fifth Claimant)

iii) 14 February 2013 - £130,000 (from the Sixth Claimant)

iv) 7 March 2013 - £110,000 (from the Fifth Claimant)

180. In March 2012, Mr Khurshed discussed with Mr Al-Najar a possible project in relation to Seymour Place. The project involved the demolition of the existing building and the erection of a new block comprising 145 apartments. Mr Al-Najar told Mr Khurshed that one of his companies already had an agreement for the purchase of the property and he had made a part payment for the purchase and that completion was conditional on obtaining planning permission. Mr Al-Najar gave Mr Khurshed the marketing brochure in relation to the proposed new apartments. He told Mr Khurshed that the investment would yield a return of 121%. Mr Al-Najar said that the Prestige Group would hold a 25% share in the project.

181. On 23 July 2012, Mr Al-Najar emailed Mr Khurshed asking for a payment of £262,000 as 25% of a deposit of 10% of the purchase price. On 24 July 2012, Mr Al-Najar emailed Mr Khurshed to confirm the deal between them. The email referred to Mr Khurshed investing in return for a 25% share in the project.

182. On 7 August 2012, Mr Khurshed emailed Mr Al-Najar to say that he had not transferred any monies by way of investment because he was waiting for a contract which Mr Al-Najar had earlier stated he would send. On 8 August 2012, Mr Al-Najar sent to Mr Khurshed a financial summary which was similar to, but not the same as, the financial summary provided to Mr Abdulrida to which I referred earlier. The summary provided to Mr Khurshed used a figure of £3.5 million (instead of the earlier figure of £2.95 million) as the sale price of each apartment. This increased the gross total revenue to £49 million and the projected development profit to some £22.8

million. The summary stated that the payment due from Mr Khurshed in August was 25% of the deposit of £1.05 million, that a further 15% was required on 10 October 2012 and that completion was expected by 25 November 2012.

183. On 13 August 2012, Mr Khurshed made his first payment of £262,000. Mr Khurshed paid at a time when Mr Al-Najar had told him that he would provide Mr Khurshed with a formal written agreement at a later date; he said that lawyers were working on the form of the agreement which would be available shortly.

184. On 27 November 2012, Mr Al-Najar emailed Mr Khurshed to say that he was expecting to exchange contracts for this property on 7 December 2012 with completion in February 2013.

185. On or about 2 December 2012, Mr Khurshed met Mr Al-Najar and signed a shareholder's agreement with Civil Constructions. The agreement had been signed by Mr Al-Najar on behalf of Civil Constructions. The agreement was dated 1 December 2012. This agreement was in essentially the same terms as the shareholder agreement provided by Civil Constructions to Mr Abdulrida save that the agreement with Mr Khurshed recited that he held 250 shares in the company and the figure of £3,750,000 was placed alongside the number of shares. At this meeting, Mr Al-Najar told Mr Khurshed that the flats which were to be built had been sold off-plan.

186. At around this time, Mr Abdulrida gave to Mr Khurshed in Kuwait a copy of a Stock Transfer Form dated 1 December 2012 and signed by Mr Al-Najar whereby he transferred to Mr Khurshed 250 shares. The form stated that the consideration for the transfer was £3,750,000.

187. On or about 23 January 2013, Mr Al-Najar gave Mr Khurshed a copy of the forged agreement with Holbud to which I referred earlier. At around the same time, Mr Al-Najar gave Mr Khurshed two documents which purported to show that Prestige Group UK Ltd had paid £1,050,000 (on 17 August 2012) and £1,575,000 (on 5 December 2012) to Holbud. In view of the letter dated 18 October 2017 from Clyde & Co to which I referred earlier, I find that these documents were forged by Mr Al-Najar.

188. Mr Chelmick relies on three alleged misrepresentations in support of Mr Khurshed's claim to rescission of his contracts with Mr Al-Najar and Civil Constructions in relation to Seymour Place.

189. The first representation relied on by Mr Khurshed is the same as the first representation relied upon by Mr Abdulrida which I have considered earlier. The alleged representation is the same in both cases although it was made to Mr Khurshed in March 2012 whereas it was made to Mr Abdulrida in June 2012. Otherwise the same result follows for Mr Khurshed as it did for Mr Abdulrida.

190. The second alleged representation relied on by Mr Khurshed is much the same as the second representation relied on by Mr Abdulrida in relation to Seymour Place. In view of the fact that Mr Khurshed succeeds on the first misrepresentation in relation to Seymour Place, I will not deal with the second alleged representation which raises much wider matters of fact. The position in his case is the same as the position I have explained earlier in relation to the similar representation alleged by Mr Abdulrida.

191. The third alleged representation relied on by Mr Khurshed concerns the false statement, as I have already found, in the Broughton Manor brochure as to the turnover of Prestige Homes Ltd. Mr Khurshed's evidence supports the finding that this false representation played a part in relation to all of the various investments made by Mr Khurshed, and he relied on it throughout, and therefore including for the purposes of his investment in the project at Seymour Place.

192. The above findings mean that Mr Khurshed is prima facie entitled to rescission of the contracts in question. The position in relation to Seymour Place is essentially the same as was his position in relation to Broughton Manor. Accordingly, I find that Mr Khurshed is entitled to rescission of the contracts between him on the one hand and Mr Al-Najar and Civil Constructions on the other hand. Mr Khurshed is entitled to restitution of his investment from Civil Constructions.

193. As to the other claims in relation to Seymour Place which are based on the existence of contracts with Mr Al-Najar and with Civil Constructions and in relation to claims which are not based on the existence of such contracts, the position is the same as that explained earlier in relation to Broughton Manor.

Bishops Avenue: Mr Abdulrida

194. On 13 May 2013, Mr Abdulrida invested £2,100,000 in relation to a project at Bishops Avenue, London.

195. In October 2012, a Mr Al Nesnas had introduced to Mr Al-Najar, Mr Abdulrida and Mr Khurshed's brother a possible project concerning a large house in Bishops Avenue, London. In December 2012 and January 2013, Mr Al-Najar discussed this project further with Mr Abdulrida.

196. On 6 February 2013, Mr Al-Najar emailed to Mr Abdulrida a proposal in relation to this project. Mr Al-Najar referred to the purchase of the property. The price was to be £9.3 million to which were to be added stamp duty, and various fees and charges. It was stated that the build cost would be £5 million. It was proposed to borrow £10.725 million and raise just under £6 million from investors who were referred to as "Partners". It was stated that the Prestige Group would pay the interest on the loans for the land and the building costs for a period of 24 months. The period of 24 months was the expected development period which was to begin the day following completion of the purchase. Mr Al-Najar said that the SPV company which would be used in connection with this project was Developments. It was also said that the sale of the redeveloped property would achieve in excess of £30 million.

197. On 21 February 2013, Mr Al-Najar emailed to Mr Abdulrida the bank account details for Developments, another copy of the proposal which had been sent on 6 February 2013, an unsigned shareholder's agreement between Developments and Mr Khurshed and a document dealing with the design of the property.

198. In around April 2013, Mr Abdurida decided to invest in this project. On 29 April 2013, Mr Al-Najar emailed Mr Abdulrida stating that the project was ready to go and that there was a deadline of 10 May 2013 so that he asked Mr Abdulrida for the monies he was investing in the project. Mr Al-Najar added that the completed development was valued by the bank at £34 million.

199. In early May 2013, Mr Al-Najar told Mr Al-Habib that Developments was not an SPV but had other property interests. Nonetheless, Mr Al-Najar told Mr Al-Habib that any monies transferred to Developments for the Bishops Avenue project would be used only for that project. Mr Al-Habib passed this information on to Mr Abdulrida.

200. As indicated earlier, Mr Abdulrida invested £2.1 million in this project on 13 May 2013. The £2.1 million was 35% of the investment of £6 million which had been referred to earlier by Mr Al-Najar. By this point, Mr Al-Najar had told Mr Abdulrida that Mr Al-Najar had secured a contract to purchase the property and that Mr Al-Najar was investing 25% of the £6 million investment needed.

201. Shortly after Mr Abdulrida made his payment of £2.1 million, Mr Al-Najar gave him a shareholder's agreement to be entered into by Mr Abdulrida with Developments. This agreement was in essentially the same form as the shareholder's agreement for other projects to which I referred earlier. The agreement had been backdated to 1 February 2013. The agreement stated that Mr Abdulrida owned 250 shares in Developments and the figure of £1,500,000 was written alongside the number of shares. Mr Al-Najar also provided Mr Abdulrida with the memorandum and articles of association of Developments. These showed that Developments had been formed on 13 March 2009 when two shares with a nominal value of £1 each were issued, one to Mr Al-Najar and one to his brother. Mr Abdulrida asked Mr Al-Najar for a Stock Transfer Form in relation to Developments but none was provided.

202. It was later discovered that Mr Al-Najar had taken steps to register Mr Abdulrida (and Mr Al-Habib) as shareholders in Developments. The registration referred to transfers of shares on 18 March 2017. The transfers were of 1,000 shares for Mr Abdulrida and 350 for Mr Al-Habib. Neither Mr Abdulrida nor Mr Al-Habib were aware of these transfers at the time they were allegedly made.

203. Mr Chelmick relies on four alleged misrepresentations in support of Mr Abdulrida's claim to rescind the contracts he made with Mr Al-Najar and Developments.

204. The first alleged misrepresentation is the representation I have considered earlier that Prestige Homes Ltd had a turnover in 2010 of £20 million. I have already held that this representation was made and was false. I also accept that Mr Abdulrida continued to rely on that representation when he contracted to invest in the Bishops Avenue project. Accordingly, Mr Abdulrida is prima facie entitled to rescind the contracts he made to give effect to that investment.

205. The second alleged misrepresentation is that Mr Al-Najar had represented to Mr Abdulrida that he had a genuine intention to carry out a development at Bishops Avenue and that there was a real prospect that the development would be carried out. It is said that these representations were misrepresentations because Mr Al-Najar did not have that genuine intention at the time of the representations and there was not a real prospect that the development would be carried out.

206. In view of my earlier conclusion that Mr Al-Najar made a specific but false representation as to the turnover of Prestige Homes Ltd, which induced his investment in the Bishops Avenue project, it is not necessary to deal with this second alleged misrepresentation. The matters which are alleged to be misrepresentations of existing fact relate to Mr Al-Najar's intentions and the prospects of the development

proceeding. In order to rule in Mr Abdulrida's favour on this alleged misrepresentation, it would be necessary for me to make findings that at the relevant time, Mr Al-Najar did not genuinely intend to carry out his development but the whole scheme was a fraud from the outset. Further, I would have to have material to assess what the prospects of success there were in relation to this scheme, assuming that Mr Al-Najar did genuinely intend to carry it out. This alleged representation therefore takes the court into areas of fact which are much more difficult to assess and determine on the basis of very limited evidence. As it is not necessary to do so for the purpose of determining Mr Abdulrida's claim to rescission in relation to the Bishops Avenue project, I will not do so.

207. The third alleged misrepresentation was that Mr Al-Najar represented that Developments was an SPV and the monies invested with Developments would be used to purchase the land and carry out the development. In fact, in early May 2013, before Mr Abdulrida invested in this project, Mr Al-Najar told Mr Al-Habib that Developments was not an SPV and Mr Al-Habib passed that information to Mr Abdulrida. However, at that time, Mr Al-Najar did say that he would ensure than the monies invested in Developments in relation to this project would be used only for this project. In fact, Mr Al-Najar withdrew the monies paid in by Mr Abdulrida and Mr Al-Habib shortly after they were invested in Developments. Mr Al-Najar withdrew £275,000 between 20 and 25 May 2013 and paid that sum into an account in his name; he withdrew £2 million on 6 June 2013 and paid that sum into an account in the name of himself and his wife. The monies were not used in connection with the Bishops Avenue project. In view of what Mr Al-Najar did with the funds invested shortly after they were received by Developments and in view of the established pattern of Mr Al-Najar withdrawing funds invested in SPVs shortly after they were invested and not using them for their intended purpose, I find that when he made his representations to Mr Abdulrida as to the use of the monies invested he did not have a genuine intention to use the monies for their intended purposes.

208. The fourth alleged representation appears to involve elements of the second and third representations. I do not consider that I need to consider the fourth representation separately.

209. I find that Mr Abdulrida relied on the representations which he has established and he is entitled to rescind the contracts he made with Mr Al-Najar and Developments in relation to his investment in respect of the Bishops Avenue project. As explained with earlier projects, Mr Abdulrida is entitled to restitution of the monies invested. The position in relation to Mr Abdulrida's claims based on a contract and his claims not so based is the same in this case as in the case of the earlier projects.

Bishops Avenue: Mr Al-Habib

210. On 13 May 2013, Mr Al-Habib invested £300,000 in the Bishops Avenue project.

211. In relation to the period from October 2012 to Mr Al-Habib gave evidence to the same effect as the evidence I have summarised above in relation to Mr Abdulrida. In early May 2013, Mr Al-Najar told Mr Al-Habib that Developments was not an SPV but had other property interests. Nonetheless, Mr Al-Najar told Mr Al-Habib that any monies transferred to Developments for the Bishops Avenue project would be used only for that project. Mr Al-Habib passed this information on to Mr Abdulrida.

212. On 13 May 2013, Mr Al-Habib transferred £300,000 to Developments. Mr Al-Najar did not provide a shareholder's agreement to Mr Al-Habib in relation to this project but Mr Al-Habib was aware that Mr Al-Najar had provided a shareholder's agreement to Mr Abdulrida. Mr Al-Habib asked Mr Al-Najar for a Stock Transfer Form in relation to Developments but none was provided. It was later discovered that Mr Al-Najar had taken steps to register Mr Al-Habib as a shareholder in Developments. The registration referred to transfers of shares on 18 March 2017. The transfers were of 350 shares to Mr Al-Habib. Mr Al-Habib was not aware of these transfers at the time they were allegedly made.

213. In May 2014, Mr Al-Najar told Mr Al-Habib that the property at Bishops Avenue had been purchased and was being rented out at £9,300 per month while planning permission was awaited for the development.

214. In September 2015, Mr Al-Najar told Mr Al-Habib that there was an agreement to sell the property, when completed, to a Mr Alobaidi for £28 million.

215. In August 2017, Mr Al-Habib's son carried out a search at the Land Registry in relation to the property. The search revealed that neither Mr Al-Najar nor any Prestige company have ever owned the property.

216. Mr Chelmick relies on four alleged misrepresentations in support of Mr Abdulrida's claim to rescind the contracts he made with Mr Al-Najar and Developments.

217. The first alleged misrepresentation is the representation I have considered earlier that Prestige Homes Ltd had a turnover in 2010 of £20 million. I have already held that this representation was made and was false. I also accept that Mr Al-Habib continued to rely on that representation when he contracted to invest in the Bishops Avenue project. Accordingly, Mr Al-Habib is prima facie entitled to rescind the contracts he made to give effect to that investment.

218. The second alleged misrepresentation in the case of Mr Al-Habib is the same as that alleged in the case of Mr Abdulrida. For the reasons which I gave when dealing with the case of Mr Abdulrida, I will not deal with this second alleged misrepresentation in the case of Mr Al-Habib either.

219. The third alleged misrepresentation was that Mr Al-Najar represented that Developments was an SPV and the monies invested with Developments would be used to purchase the land and carry out the development. In fact, in early May 2013, before Mr Al-Habib invested in this project, Mr Al-Najar told him that Developments was not an SPV. However, at that time, Mr Al-Najar did say that he would ensure than the monies invested in Developments in relation to this project would be used only for this project. In fact, Mr Al-Najar withdrew the monies paid in by Mr Al-Habib (and Mr Abdulrida) shortly after they were invested in Developments. Mr Al-Najar withdrew £275,000 between 20 and 25 May 2013 and paid that sum into an account in his name; he withdrew £2 million on 6 June 2013 and paid that sum into an account in the name of himself and his wife. The monies were not used in connection with the Bishops Avenue project. In view of what Mr Al-Najar did with the funds invested shortly after they were received by Developments and in view of the established pattern of Mr Al-Najar withdrawing funds invested in SPVs shortly after they were invested and not using them for their intended purpose, I find that when he

made his representations to Mr Al-Habib as to the use of the monies invested he did not have a genuine intention to use the monies for their intended purposes.

220. The fourth alleged representation appears to involve elements of the second and third representations. I do not consider that I need to consider the fourth representation separately.

221. I find that Mr Al-Habib relied on the representations which he has established and he is entitled to rescind the contracts he made with Mr Al-Najar and Developments in relation to his investment in respect of the Bishops Avenue project. As explained with earlier projects involving Mr Abdulrida, Mr Al-Habib is entitled to restitution of the monies invested. The position in relation to Mr Al-Habib's claims based on a contract and his claims not so based is the same in this case as in the case of the earlier projects involving Mr Abdulrida.

Porcelanosa: Al-Areen Towers Real Estate Company

222. Al-Areen Towers Real Estate Company ("Al-Areen") is a company incorporated in Kuwait. It is majority owned and controlled by Mr Abdulrida. On 3 February 2015, Al-Areen invested £500,000 in what has been described as the Porcelanosa project.

223. In October 2012, Mr Al-Najar told Mr Abdulrida, Mr Khurshed and Mr Al-Nesnas that he was going into a venture with a Spanish ceramic and homeware company called Porcelanosa. The venture involved the sale of tiles, sanitary ware and kitchen units in Milton Keynes. Mr Al-Najar that he would be involved in the venture through an SPV, Improvements.

224. In December 2012 or January 2013, Mr Al-Najar told Mr Abdulrida that he had reached an agreement with Porcelanosa to establish a branch store in Milton Keynes. Mr Abdulrida agreed to invest £500,000 in the venture for a one-quarter share in Improvements. In the event, Mr Abdulrida did not invest that sum in the project but Al-Areen, acting through Mr Abdulrida, did invest on 3 February 2015.

225. I will refer to the principal matters which occurred between January 2013 and February 2015. On 21 February 2013, Mr Al-Najar emailed Mr Abdulrida. The attachment to the email stated that the UK director of Porcelanosa had confirmed the agreement of Porcelanosa to an immediate go ahead to the launch of a joint venture to be known as Porcelanosa Prestige. The attachment also contained other information about the likely success of the joint venture. Mr Al-Najar also sent to Mr Abdulrida a shareholder's agreement in relation to Improvements. The agreement stated that Improvements had an authorised share capital of £4,000,000 divided into 1,000 ordinary shares of £4,000 each and that Mr Abdulrida was the registered owner of 125 shares and the figure of £500,000 was placed alongside the number of shares. In other respects, the shareholder's agreement was in the same terms as the other shareholder's agreements to which I referred earlier.

226. On 29 April 2013, Mr Al-Najar emailed Mr Abdulrida referring to the Porcelanosa project and reporting good progress and an agreement with Porcelanosa Spain. On 5 May 2013, Mr Al-Najar emailed Mr Abdulrida reporting further progress with the project and being committed to a partnership with Porcelanosa.

227. On 4 August 2014, Mr Al-Najar emailed Mr Abdulrida to say that due to difficulties in obtaining funds from investors, he had to place the Porcelanosa project on hold.

228. On 23 August 2014, Mr Al-Najar emailed Mr Abdulrida to record that they had agreed to transfer £500,000 from Mr Abdulrida's future profit from Broughton Manor to the Porcelanosa project.

229. On 28 January 2015, Mr Al-Najar emailed Mr Abdulrida to express his disappointment that the various investors had not provided funds as agreed. Mr Al-Najar said that he had no choice but to dissolve Improvements due to the contractors and the landlord taking Improvements to court for non-payment. Mr Al-Najar gave the investors until 31 January 2015 to make the outstanding payments. He said that Improvements had committed to the property in Milton Keynes for 20 years and the cost of penalties was somehow in excess of £8 million. He suggested that all the investors were responsible for that and he and Prestige Homes Ltd had given guarantees pursuant to which they would be liable for this amount.

230. Following Mr Al-Najar's email of 28 January 2015, Mr Abdulrida spoke to Mr Al-Najar and then emailed Mr Al-Najar. The email referred to Mr Al-Najar having promised that the expected return would be from 20% to 40%. The email also recorded Mr Abdulrida's understanding based on what he had been told by Mr Al-Najar that Mr Al-Najar had himself invested £500,000 in the project and Mr Khurshed had invested £300,000. Following these exchanges, Al-Areen acting through Mr Abdulrida invested £500,000 in this project.

231. In the summer of 2015, Mr Al-Najar provided to Al-Areen a Stock Transfer Form dated 18 June 2015 whereby Mr Al-Najar transferred 250 shares to Al-Areen. The Form stated that the consideration was £500,000.

232. On 27 October 2015, Al-Areen wrote to Mr Al-Najar at Improvements and asked for information and documents relevant to its investment. Mr Al-Najar responded to this request on 13 February 2016 and provided or purported to provide some information. Mr Al-Najar's letter stated that Improvements had leased an empty warehouse and were fitting it out and installing an extra floor. He stated that construction should be completed in the next 3 months followed by a further 2 months to fit out the unit and connect utilities.

233. On 15 May 2016, Mrs Al-Najar wrote to Mr Al-Habib, who had been asking for information, and enclosed documents which showed the work which had been done on the unit.

234. At some point, Al-Areen was registered as the owner of 250 shares in Improvements.

235. On behalf of Al-Areen, Mr Chelmick claims rescission of the contracts made by Al-Areen with Mr Al-Najar and Improvements on the basis of seven alleged misrepresentations. In summary, the seven representations are:

    i) In December 2012 to January 2013, Mr Al-Najar orally represented that he had reached an agreement with Porcelanosa for a joint venture for a Porcelanosa branch in Milton Keynes;

ii) On 21 February 2013, Mr Al-Najar represented in writing that the Porcelanosa project would be operated under an SPV, Improvements, and this comprised an implied representation that the investment funds would be held in the SPV and used only for the purposes of the project;

iii) On 5 May 2013, Mr Al-Najar represented in writing that Porcelanosa was obliged to contribute £2 million to the joint venture;

iv) By the written shareholder's agreement, Mr Al-Najar and Improvements represented that Improvements had an authorised share capital of 1,000 ordinary shares of £4,000 each all of which were issued and fully paid;

v) On 28 January 2015, Mr Al-Najar represented in writing that Improvements needed to make payments to contractors and a landlord for which funds were needed from investors, and that the cost of penalties would be £8 million;

vi) On 29 January 2015, Mr Al-Najar orally represented to Mr Abdulrida that he had already paid £500,000 in relation to this project and that Mr Khurshed had invested £300,000;

vii) The brochure in relation to Broughton Manor had represented that the turnover of Prestige Homes Ltd in 2010 totalled £20 million.

236. I will defer discussion of the first and the third of these representations.

237. I find that on 21 February 2013, Mr Al-Najar sent to Mr Abdulrida the shareholder's agreement for Improvements which stated that the business of Improvements was restricted to the joint venture with Porcelanosa. By submitting this shareholder's agreement, Mr Al-Najar represented that he intended that the funds invested would be used only for this project. Al-Areen paid £500,000 into Improvements' bank account on 3 February 2015 and Mr Al-Najar withdrew some £380,000 the following day. There was no evidence as to what these payments were for. On the balance of probabilities, in view of the pattern of Mr Al-Najar withdrawing monies invested in SPVs and using them for other purposes, it is more likely than not that these monies were not used for the purposes of Improvements. The representation involved a representation that Mr Al-Najar intended that the monies would be used for the purposes of the SPV. It was also a continuing representation. Based on the evidence as to Mr Al-Najar's pattern of withdrawals, I find that Mr Al-Najar did not intend at any relevant time to retain the monies invested in Improvements and so the representation was a misrepresentation.

238. I find that the fourth representation was made and was false.

239. As to the fifth representation, it is unclear whether Improvements owed money to contractors and to the landlord but it is possible that it did. However, on the balance of probabilities, I find that it was unlikely that Improvements was liable to penalties of £8 million.

240. I find that the sixth representation was made and was false.

241. As to the seventh representation, I have already found that this representation was made and was false.

242. As to the first and third representations, these related to the arrangements made or allegedly made by Mr Al-Najar and/or Improvements with Porcelanosa. It seems likely that Mr Al-Najar had some discussions of some kind with Porcelanosa. The fact that Improvements took a lease of a warehouse and began to fit it out in connection with this project suggests that Mr Al-Najar did intend to trade pursuant to a joint venture with Porcelanosa. However, there was no reliable evidence as to what Mr Al-Najar might have discussed with Porcelanosa and how far those discussions went and whether they were correctly reported in the form of the first and third representations. In view of the fact that the contracts between Al-Areen and Mr Al-Najar and Improvements were induced by a number of other representations, I will leave matters undecided in relation to the first and third representations.

243. I find that Al-Areen relied on the representations which it has established. Accordingly, Al-Areen is entitled to rescission of the contracts with Mr Al-Najar and Improvements and to the return of its investment in Improvements. As regards Al-Areen's other claims, the position is the same as with the claims by Mr Abdulrida which I have discussed earlier.

Brooklands: Mr Abdulrida

244. On 9 January 2013, Mr Abdulrida invested £500,000 in a project relating to Brooklands.

245. In his witness statement, Mr Al-Najar said that Prestige Homes Brooklands Ltd was formed on 5 February 2013. The issued share capital was 1,000 shares with a nominal value of £1 each.

246. In late 2012, Mr Al-Najar suggested to Mr Abdulrida that he invest in a large development referred to as the Brooklands project which involved the construction of 147 houses on a site at Brooklands, Milton Keynes. In early 2013, possibly in January, Mr Al-Najar showed the site to Mr Al-Habib who viewed it on behalf of Mr Abdulrida and himself. Mr Al-Habib reported to Mr Abdulrida after his visit to the site.

247. In December 2012 or January 2013, Mr Abdulrida agreed with Mr Al-Najar to invest £1 million in the Brooklands project in return for a 20% stake in the project. It was also agreed that £500,000 of this investment would come from the profits said to be due to Mr Abdulrida from the project at Broughton Manor. On 25 December 2012, Mr Al-Najar emailed Mr Abdulrida referring to an investment of £500,000 into the Brooklands project. Mr Al-Najar asked for the monies to be paid into the account of Prestige Homes Broughton Ltd, possibly because Brooklands did not have a bank account at that stage. On 9 January 2013, Mr Abdulrida invested £500,000 in the Brooklands project.

248. On 21 February 2013, Mr Al-Najar emailed Mr Abdulrida with information about the Brooklands project. An attachment to the email was a financial summary which referred to the purchase cost for the land of £20 million and development costs of £47.5 million and a total cost (including other items) of £74.5 million. The gross total

revenue was stated as being £112.5 million with a projected total development profit of just under £38 million. The summary referred to the bank funding which was required and stated that investors funds of some £25 million were sought. Another attachment to the email was a draft shareholder's agreement to be entered into by Brooklands and Mr Abdulrida. The draft agreement stated that Mr Abdulrida was the registered owner of £250 shares of £5,000 each in Brooklands. The draft agreement was in essentially the same terms as the other shareholder's agreements to which I have referred earlier. The last attachment to the email was a brochure in relation to the proposed development.

249. On 29 April 2013, Mr Al-Najar emailed Mr Abdulrida and stated that he had "secured" the site at Brooklands, apparently meaning that Brooklands had acquired the right to the site.

250. On 2 August 2013, Mr Al-Najar emailed Mr Abdulrida with more information about the Brooklands project. The email stated that Mr Al-Najar had invested £685,000 in the project. It also said that he was working to complete the master plan for the development in October with a view to marketing the project in the UK and the Middle East.

251. On 10 January 2014, Mr Al-Najar emailed to Mr Abdulrida a copy of a brochure for the Brooklands project.

252. On 14 May 2014 and 3 September 2015, Mr Al-Habib discussed the Brooklands project with Mr Al-Najar.

253. In August 2017, Mr Al-Habib asked Ms Larry about the development at Brooklands. She said that a development was proceeding on the site but it did not involve Prestige Homes.

254. Mr Al-Najar did not provide Mr Abdulrida with a Stock Transfer Form in relation to Brooklands.

255. There is no evidence that Mr Al-Najar ever acquired an interest of any kind in the site at Brooklands.

256. The first representation relied upon in support of Mr Abdulrida's claim for rescission of the contracts with Mr Al-Najar and Brooklands is the representation about the turnover of Prestige Homes Ltd. I have already found that that representation was made and was false.

257. The second representation relied on by Mr Abdulrida in relation to the Brooklands project was that Mr Al-Najar impliedly represented that the project was not a sham, that Mr Al-Najar had a real intention to carry out the project and that he had a real prospect of purchasing the site and building 147 homes. It is then alleged that the project was a sham from the outset, that Mr Al-Najar never had a genuine intention of carrying out the project and there was not a real prospect of carrying it out.

258. In view of my finding as to the first misrepresentation, it is not necessary to rule on the second alleged misrepresentation. The second alleged misrepresentation involves matters as to Mr Al-Najar's state of mind and his intentions and his prospects of

success at a very early point. These matters are difficult to determine on the limited evidence before me and I will leave them undecided.

259. Based on the first misrepresentation, I find that Mr Abdulrida relied on that representation in relation to this investment and he is entitled to rescind the contracts he made with Mr Al-Najar and Brooklands in relation to the Brooklands project and is entitled to restitution of his investment. In relation to Mr Abdulrida's other claims in respect of the Brooklands project, the position is the same as in the case of his claims in relation to the other projects.

Campbell Park: Mr Abdulrida

260. Mr Abdulrida invested the following sums on the following dates in the Campbell Park project (an aggregate of £1,822,445):

i) 24 September 2012 - £537,500

ii) 10 June 2014 - £500,000

iii) 3 September 2014 - £664,945

iv) 13 November 2014 - £120,000

261. Mr Abdulrida's evidence was that, in the summer of 2012, Mr Al-Najar suggested to Mr Abdulrida that he join with Mr Al-Najar by investing in a further project which was to develop a complex of 61 flats at Campbell Park for resale to Kuwaiti nationals. Mr Abdulrida agreed to invest in return for a 50% share in the project. Mr Al-Najar said that this would mean that Mr Abdulrida would invest £1.83 million which was 25% of the purchase price for the flats. Mr Al-Najar also explained that the project would be carried out by Prestige Rental Properties Ltd ("Rental Properties"). Mr Al-Habib corroborated Mr Abdulrida's evidence as to the proposal to buy 61 flats. I will discuss later whether I am able to accept this evidence about the original discussions with Mr Al-Najar.

262. On 8 August 2012, Mr Al-Najar emailed Mr Abdulrida with a list of sale prices for a total of 61 flats. Attached to the email was a marketing brochure for the freehold of Campbell Heights.

263. On 21 August 2012, Mr Al-Najar emailed Mr Abdulrida stating that a 10% deposit of £1,075,000 had already been paid and that 50% of that sum was due from Mr Abdulrida. As requested, Mr Abdulrida paid £537,500 on 24 September 2012. Mr Abdulrida said in his evidence that this deposit related to the purchase of 13 flats.

264. On 29 April 2013, Mr Al-Najar emailed Mr Abdulrida and said that he had completed the sale of 6 flats and he would complete the sale of another 7 flats in May 2013. He repeated this statement on 5 May 2013.

265. On 8 October 2013, Mr Al-Najar emailed Mr Abdulrida a financial statement relating to the purchase of 13 flats in Campbell Park. The statement sought reimbursement of £664,945 from Mr Abdulrida in relation to the purchase of the 13 flats. The statement said that Rental Properties held a purchase option on all 61 flats at Campbell Park. On

9 October 2013, Mr Al-Najar emailed Mr Abdulrida with a financial forecast for the project based on rental income and expenses.

266. On 13 February 2014, Mr Al-Najar emailed Mr Abdulrida and asked him to pay the sum of £664,945 referred to in the statement sent on 8 October 2013. The email referred to the profit earned on the flats up to 31 January 2014 and stated that he had paid 10% of the prices for a further 48 flats.

267. On 6 March 2014, Mr Al-Najar sent to Mr Abdulrida a financial statement for phase 2 of the project which concerned 9 flats. The statement said that the further sum of £362,350 was due from Mr Abdulrida. On 15 April 2014, Mr Al-Najar emailed Mr Abdulrida again asking for payment of the sums sought on 8 October 2013 and 6 March 2014.

268. In the summer of 2014, Mr Al-Najar provided three Stock Transfer Forms to Mr Abdulrida. Each form referred to a transfer of shares in Rental Properties to Mr Abdulrida. The first form was dated 25 July 2013 and was in respect of 71 shares for a consideration of £352,710. The second from was dated 30 July 2013 and was in respect of 132 shares for £664,495. The third form was dated 10 April 2014 and was in respect of 72 shares for a consideration of £362,350.

269. On 10 June 2014, Mr Abdulrida transferred £500,000 to a bank account in the name of Mr Al-Najar in relation to the Campbell Park project.

270. On 21 July 2014, Mr Al-Najar asked Mr Abdulrida to pay £527,295 which he said was outstanding for this project. Later that day, Mr Al-Najar emailed Mr Abdulrida referring to a profit on the Campbell Park project up to 30 June 2014.

271. In August 2014, Mr Abdulrida met Mr Al-Najar and discussed the project. On 23 August 2014, Mr Al-Najar emailed Mr Abdulrida referring to further sums said to be due from Mr Abdulrida. Around this time, Mr Al-Najar showed Mr Abdulrida documents showing that 22 flats had been purchased. It now appears that these documents were incomplete, unexecuted and partially redacted leases.

272. On 3 September 2014, Mr Abdulrida transferred £900,000 to Mr Al-Najar's bank account and £664,495 of that sum related to Campbell Park. On 13 November 2014, Mr Abdulrida transferred a further £120,000 in relation to this project.

273. On 23 April 2015, Mr Al-Najar emailed Mr Abdulrida and referred to rental receipts from the flats and to renovation works being carried out to Campbell Park.

274. In 2017, Mr Al-Habib carried out investigations into the purchase by Rental Properties of flats in Campbell Park. Rental Properties had bought three flats, numbered 9, 20 and 27 Huntley Crescent. Two persons who were associates of Mr Al-Najar had bought two flats, numbered 45 and 62.

275. Mr Abdulrida was never registered as a shareholder in Rental Properties.

276. In support of his claim to rescission of his contracts with Mr Al-Najar and Rental Properties, Mr Abdulrida relies on four representations made by Mr Al-Najar.

277. The first representation is that at a meeting in the summer of 2012 and in writing on 8 and 21 August 2012, Mr Al-Najar represented that he intended, acting through Rental Properties, to buy 61 flats and that he had a real prospect of doing so.

278. In his Defence, Mr Al-Najar pleaded that it would have been ridiculous for Mr Abdulrida to expect that Mr Al-Najar would buy 61 flats as that total cost would have been £15 million. In his witness statement, Mr Al-Najar gives more credence to the idea that all 61 flats were to be purchased but that was on the basis that the proposal to buy 61 flats came from Mr Abdulrida and not from Mr Al-Najar. Insofar as there is a conflict between Mr Abdulrida and Mr Al-Habib on the one hand and Mr Al-Najar on the other, I prefer the evidence of the former two witnesses. However, that does not mean that I accept as accurate their evidence that Mr Al-Najar proposed that all 61 flats would be purchased. For this purpose, I take into account what actually happened, or what Mr Al-Najar told them was happening, which was that he was negotiating to buy, first, 13 flats and, then, a further 9 flats. The evidence is unclear as to what was envisaged as to the number of flats to be purchased and when they would be purchased. I am not able to find on the balance of probabilities that when Mr Al-Najar discussed this project with Mr Abdulrida in the summer of 2012 and when he wrote his emails in August 2012 that Mr Al-Najar did not genuinely intend to buy flats in Campbell Park from time to time if he could raise the necessary funds from investors. As to why Mr Al-Najar did not in the end buy more flats in Campbell Park, it is relevant that Mr Abdulrida was much slower to invest than he originally promised to be. I am not persuaded that, in 2012, Mr Al-Najar misrepresented his state of mind or the prospects of the project proceeding.

279. The second representation is that on 21 August 2012, Mr Al-Najar represented that he had paid a 10% deposit of £1,075,000 in respect of a number of flats. It is clear that Mr Al-Najar did represent that he had paid a 10% deposit of £1,075,000. In his witness statement, Mr Al-Najar says that he did pay this deposit.

280. Mr Al-Najar did not produce any evidence to show that he paid this deposit. I bear in mind that he claims that he cannot access all of the documents which might be relevant. However, the Claimants have obtained access to a large number of banking documents relating to the Prestige companies, including Rental Properties. Those documents do not show any payment which could be the payment of this deposit. Rental Properties did buy three flats in Campbell Park but that was in late September 2014 much later than when the deposit was allegedly paid. Two other flats were bought by persons who might be nominees for Mr Al-Najar but they were bought in August 2013 which, again, is a good deal after the time when the alleged deposit was paid. On the material before me, I find that the representation was false.

281. The third representation is the representation as to the turnover of Prestige Homes Ltd. I have already held that this representation was made and was false.

282. The fourth representation is that on 8 October 2013, Mr Al-Najar represented that Rental Properties had purchased 13 flats and had paid £1,329,890 on behalf of investors so that Mr Abdulrida was liable to reimburse the sum of £664,495. I find that Mr Al-Najar did make this representation and it was false.

283. I find that Mr Abdulrida relied on the representations which he has established and, accordingly, he is entitled to rescission of the contracts he made with Mr Al-Najar and

with Rental Properties in relation to the Campbell Park project and is entitled to restitution of the monies he invested in that project.

284. As to the other claims made by Mr Abdulrida in relation to this project, the position is the same as with the other projects where Mr Abdulrida has established a right to rescission and return of the monies he invested.

The Ashlands project

285. On 29 September 2014, Prestige Homes (Developments) Ltd entered into a written contract with Paul Newman New Homes Ltd ("PNNH") in respect of land at Ashlands, Milton Keynes. The contract described the land at Ashlands as "PNNH's Land". The contract recited that PNNH had the benefit of a building lease in relation to that land. The freeholder of that land was the Homes and Communities Agency which was formerly known as the Commission for the New Towns. By the contract, PNNH agreed to procure the sale and Developments agreed to buy the freehold interest in 17 plots comprising part of the PNNH Land for a specified purchase price for each plot. The contract also provided for PNNH to build a house on each plot. Clause 13 provided for Developments to pay deposits and the balance of the purchase prices for the plots. The contract contained a list of the 17 plots, specified the type of house to be built on each plot and the agreed price for each plot. The total of the prices was £5,440,000. In his witness statement, Mr Al-Najar said, however, that he agreed to buy the 17 plots for £4.8 million plus costs.

286. On 21 December 2015, Developments and Mr Al-Habib entered into a contract in relation to six of these plots. The contract was in Arabic and I have been provided with an English translation of it. The contract related to plots 143, 148, 158a, 159, 159a and 160. The contract stated the price for each plot in accordance with the agreement with PNNH and then referred to the "current sale price". For example, for plot 160, the PNNH price was £305,000 and the current sale price was given as £350,000. The contract then stated that the total of the PNNH prices for the six plots was £1,790,000. From this figure was deducted £358,000 which was said to be "20% paid" leaving a balance of £1,432,000. It was then agreed that the six plots would be sold to Mr Al-Habib for £1,300,000. This was the total sum to be paid by Mr Al-Habib and, notwithstanding what was stated in the contract, he had not paid the sum of £358,000.

287. The contract with Mr Al-Habib also stated that there were no third-party interests in the six plots. Developments then agreed to complete on its purchase of the six plots in accordance with its agreement with PNNH. The contract then stated that Mr Al-Habib had full Power of Attorney to market the properties at a price of his choosing. Prestige Estate Agents were available to assist with marketing in return for their standard commission. It was then provided that Developments was "to hold in trust 100% of the property value for each of the above plots until completion of each market sale". It was further provided that on completion of each market sale, Mr Al-Habib was to receive the net sale proceeds "including the 20% deposit payment which will be retained by [Mr Al-Habib]" and "any and all profit will be to the benefit of [Mr Al-Habib]".

288. On 22 December 2015, Mr Al-Habib transferred £1.3 million to a bank account which he believed to be the bank account of Developments.

289. Pursuant to its contract with PNNH, Developments did acquire the freehold of two of the six plots which were the subject of the agreement with Mr Al-Habib. Prior to 5 May 2016, Developments had acquired the freeholds of the plots which were given the addresses, 59 (or 55) Shelsey Avenue and 14 Genesis Green Road. On 5 May 2016, Developments entered into charges whereby it charged both plots to Portman Finance (London) Ltd ("Portman"). Both charges were signed by Mr Al-Najar on behalf of Developments.

290. In February 2017, Mr Al Nesnas obtained a freezing order in relation to Mr Al-Najar and Developments. Mr Al-Najar said in his witness statement that the effect of the freezing order was that Developments could not function. PNNH then terminated the contract with Developments. On 11 May 2017, pursuant to its charges, Portman appointed receivers in relation to both plots. In due course, they sold both plots.

291. The result is that Mr Al-Habib paid £1.3 million to Developments and received nothing in return for it. As regards four of the six plots the subject of the agreement with Mr Al-Habib, Developments committed a breach of contract by failing to complete its purchase of those plots pursuant to its contract with PNNH. In relation to two of the six plots, Developments did complete its purchase of the plots. However, Developments then charged those two plots and the receivers appointed by the chargee sold the two plots with the result that those two plots were not made available to Mr Al-Habib for him to sell. Accordingly, Developments committed a breach of the agreement with Mr Al-Habib in relation to all six of the plots the subject of that agreement.

292. Mr Al-Habib is entitled to damages from Developments. In his closing submissions, Mr Chelmick submitted that Mr Al-Habib was entitled to damages by reference to the sums for which he could have sold the six properties if the contract had been performed. That is the normal basis for assessing damages. However, elsewhere in his closing submissions, Mr Chelmick sought damages on the reliance basis which would allow him to recover the £1.3 million he paid to Developments. That is a permissible way of assessing damages in a case, like the present, where Developments has not established that Mr Al-Habib would have made a loss if the contract had been performed. In the alternative to claiming damages, Mr Al-Habib would also be entitled to restitution of the £1.3 million on the basis of a total failure of consideration. I will hear Mr Chelmick on the hand down of this judgment as to which remedy Mr Al-Habib elects to take for the breach of contract by Developments.

293. Mr Chelmick also submitted that Mr Al-Najar was liable in tort for the losses suffered by Mr Al-Habib as Mr Al-Najar was said to have procured the breach of contract by Developments. This submission was not developed in any detail. I am able to hold that Mr Al-Najar procured a breach of contract in relation to the two plots which were acquired by Developments and then charged to Portman. Under the agreement with Mr Al-Habib, Developments had contracted to make those two plots available for resale by Mr Al-Habib. The resales by Mr Al-Habib were to be free of incumbrances. Further, the agreement provided that Developments was to hold "the property value" of the plots on trust for Mr Al-Habib. I will discuss later the effect of this wording as regards the possible creation of a trust but the wording was also a contractual term which was broken when Developments granted charges over the two plots and took for itself the sums advanced by Portman in return for the charges. Mr Al-Najar procured those breaches of trust when, as the director of Developments, he signed the

relevant charges. It is also to be inferred that he negotiated the loans with Portman. The consequence of the grant of the charges, in breach of contract, was that receivers were later appointed and the two plots were not made available for resale by Mr Al-Habib. Mr Al-Najar is responsible for these losses which resulted from his tort of procuring the breach of contract by Developments.

294. The argument that Mr Al-Najar procured a breach of contract by Developments in relation to the four other plots involves different facts. Mr Chelmick relies on the fact that when Mr Al-Habib's payment of £1.3 million was made into the bank account of Developments, the sums in that account were under £1,000. Mr Al-Najar then made substantial withdrawals from that account so that by the end of December 2015, the sums in the bank account were under £10,000. If Developments had contracted with Mr Al-Habib that it would retain the £1.3 million in its bank account and would use it only for the purposes of buying six plots for Mr Al-Habib, then the withdrawal of these monies would be a breach of contract. Mr Chelmick relies on the provision in the agreement which refers to the property value being held on trust for Mr Al-Habib. I am not persuaded that that provision meant that Developments was not entitled to draw on the £1.3 million paid by Mr Al-Habib into its bank account. It may be that the case is put on a different basis, namely, that when the time came for Developments to complete the purchase of the four plots under the contract with PNNH, Developments had no funds available to it because the £1.3 million paid by Mr Al-Habib had been withdrawn from its bank account. However, I do not have the material which would enable me to hold that Mr Al-Najar had procured that breach of contract. I do not know when Developments was obliged to complete the purchase of the four plots and I do not know whether Developments' inability to complete was caused by Mr Al-Najar withdrawing the £1.3 million from its bank account in around December 2015. Mr Al-Najar says that Developments was unable to complete the purchase of the four plots because of the freezing order against it. I do not have the material I would need to decide these questions of fact one way or the other. There is the further difficulty that for Mr Al-Najar to be liable for procuring a breach of contract by Developments, it must be shown that the relevant breach of contract was an end in itself for Mr Al-Najar or a means to an end as distinct from it being a natural consequence of his actions. Given the lack of evidence on that questions, Mr Al-Habib has not established the requisite intention on the part of Mr Al-Najar.

295. Mr Chelmick also asserted that the agreement with Mr Al-Habib created a trust. He relied on the wording in the agreement which stated that Developments were "to hold in Trust 100% of the property value for each of the above plots under completion of each market sale".

296. Mr Chelmick submitted that the express trust declared by the agreement with Mr Al-Habib attached to the £1.3 million which he paid to Developments. If that were the case, then that might assist Mr Al-Habib in tracing the £1.3 million when it was withdrawn from Developments' bank account. However, I do not consider that the express trust extended to the payment of £1.3 million. The express trust related to "the property value" and so one has to ask what is meant by that term. I consider that it could extend to (possibly) the interest in the six plots which Developments had under its contract with PNNH, the title to the two plots which Developments acquired, the monies lent to Developments by Portman and any surplus on the sale of the two plots by the receivers.

297. In the alternative to the submission that there was an express trust of the £1.3 million, Mr Chelmick submitted that the £1.3 million was the subject of a *Quistclose* trust. I do not agree. It is correct that Developments was sub-selling six plots which it had contracted to buy from PNNH but that fact is not sufficient to impress the £1.3 million with a trust so that it was only available to Developments to be used for the specific purpose of buying the plots from PNNH and otherwise held on a resulting trust for Mr Al-Habib.

The claim against Mrs Al-Najar

298. The claim against Mrs Al-Najar is confined to a claim by Mr Al-Habib in relation to the property which has been referred to as 42 Queensbury Lane, Monkston Park, or Plot 4. For convenience, I will refer to it as Plot 4.

299. Mr Al-Habib's pleaded case in relation to Plot 4 is as follows. In the summer of 2014, Mr Al-Najar offered to sell Plot 4 to Mr Al-Habib and so that a Prestige company would construct a house for Mr Al-Habib on the plot. The price for the land and building was to be £900,000. The plot would be temporarily registered in the name of Mrs Al-Najar who would hold it on trust for Mr Al-Habib. In relation to the purchase price, £500,000 would be raised pursuant to a mortgage granted in relation to the plot. Mr Al-Habib would be responsible for the payments under the mortgage and other expenses in relation to the property. After a time, title to the land and building would be transferred to Mr Al-Habib. On 3 September 2014, Mr Al-Habib paid £200,000 to Mr Al-Najar as a part payment of the purchase price. The pleading does not refer to any other payment made by Mr Al-Habib towards the purchase price of Plot 4. The pleading then alleges various breaches of contract by Mr Al-Najar and claims damages for such breaches. The pleading also alleges breach of trust by Mrs Al-Najar and alleges that she was and is liable to transfer title to the property to Mr Al-Habib and to pay him equitable compensation.

300. In his Defence, Mr Al-Najar referred to "a complication" in relation to the sale of Plot 4 to Mr Al-Habib due to the fact that the local authority had placed a restriction on the property so that it could not be registered in Mr Al-Habib's name for two years. Mr Al-Najar then explained that Mrs Al-Najar would become the owner of the property and would hold it on trust for Mr Al-Habib but only after the full price had been paid by him. It was pleaded that as Mr Al-Habib had not paid the full price nor signed any contract, Mrs Al-Najar did not hold the property on trust for him. Mr Al-Najar admitted that Mr Al-Habib had paid £200,000 towards the purchase price. It was also pleaded that Mrs Al-Najar had mortgaged the property.

301. Mrs Al-Najar filed a detailed Defence, settled by counsel. She pleaded that Mr Al-Najar held the net proceeds of a property originally owned by her (Corner Cottage) on terms that he would invest the same in the family businesses and that he would account to her for the investment and she would be able to withdraw her investment at some point in the future. She pleaded that Mr Al-Najar suggested that she buy Plot 4 and that Prestige Homes Ltd would develop it. She then exchanged contracts to buy Plot 4 from Milton Keynes Development Partnership on 11 February 2015 for £309,000. She pleaded details of the sources of the purchase price. She mortgaged the property to one lender who was replaced by Secure Trust Bank plc in late 2016. She pleaded that she understood that when the property was developed, Prestige Homes Ltd would find a buyer for it and she would transfer title to that buyer. She

would then receive the value of the land and a percentage, to be worked out later, of the profits of the development. During the development of the property, Mr Al-Najar told her that Mr Al-Habib wished to buy the property. She denied that she held Plot 4 on trust for Mr Al-Habib.

302. Mr Al-Habib gave relatively brief evidence in chief in relation to Plot 4. He explained that he wanted to buy a family house in Milton Keynes. He had originally orally agreed to buy 40 Queensbury Lane, Monkston Park from Prestige Homes Ltd for £1.2 million. In July 2014, Mr Al-Najar told him that he wanted to sell 40 Monkston Park to a third party for £1.3 million and as a replacement he offered to sell Plot 4 to Mr Al-Habib and to build a house on the plot for him.

303. Mr Al-Najar then said that the price for Plot 4 and the completed building would be £900,000 with £500,000 to be raised on a mortgage. Mr Al-Najar had said that the price of £900,000 did not involve any profit for him (or his company). He said that the property would be registered in the name of Mrs Al-Najar who would hold it for Mr Al-Habib who would pay the mortgage and other expenses. Eventually, the property would be transferred to Mr Al-Habib, subject to the mortgage. Mr Al-Habib agreed to Mr Al-Najar's proposal.

304. Mr Al-Habib said that in September 2014, he paid £200,000 to Mr Al-Najar as a part payment of the purchase price. Construction work began in 2016 but did not progress as it ought to have done. In around January 2017, Mr Al-Najar told Mr Al-Habib that he needed more funding for the development of the plot and he informed Mr Al-Habib that he had sold his two flats at Albion Place for £215,000 and had used the proceeds to fund the development of Plot 4.

305. Mr Al-Habib also said that Mrs Al-Najar knew that he had made payments to purchase Plot 4 and that she and Mrs Larry had provided him with documents showing the design and layout of the house to be built on the plot. He said she acted as if he were the real owner of the property.

306. Mr Al-Habib was cross-examined by Mrs Al-Najar. She asked him about the intended purchase of 40 Queensbury Lane at a time before he agreed to buy Plot 4. Mr Al-Habib agreed that he had instructed solicitors to act for him on the proposed purchase of 40 Queensbury Lane. It was proposed that Mr Al-Habib would exchange contracts to buy that property with completion fixed for a date three years later. On 16 January 2014, the solicitors referred to their understanding that Mr Al-Habib had paid some £300,000 to the seller and they advised that Mr Al-Habib may have difficulties in recovering that money if the seller had financial difficulties. Mr Al-Habib's evidence was that he had not paid this sum to the seller in relation to 40 Queensbury Lane.

307. Mrs Al-Najar asked Mr Al-Habib if he had ever discussed the sale of Plot 4 with her. He confirmed that he had discussed the sale with Mr Al-Najar and not directly with her. He said that she was aware he was discussing the design of the house with Mrs Larry. He agreed that he had requested significant changes to the design and layout of the house to be built on the plot.

308. Mr Al-Habib answered further questions which I put to him. He said that he had some knowledge of the self-build scheme operated by the local authority. He did not know if the proposed delay before Mrs Al-Najar transferred the title to the property to him

was attributable to the self-build scheme. He did not know why there was to be a delay before he acquired the title to the property. He explained that the proceeds of the sale of the flats in Albion Place of £215,000 were to be treated as a payment by him for Plot 4 and would bring the sum paid by him up to £400,000 but not more than that. I asked him why he was content to make payments to Mr Al-Najar and not to receive anything of a legal nature in return. He said that he trusted Mr Al-Najar. He referred to the other projects where he had invested with Mr Al-Najar. He was content to rely on word of mouth rather than having legal documents. He said that in his culture (and that of Mr Al-Najar) word of mouth was worth thousands of written things. He explained that when he had stated in his witness statement that Mrs Al-Najar would hold the property for him, that meant that the property would be in her name but that he would be the actual owner and the official paperwork would follow later.

309. Mrs Jamal is Mr Al-Habib's wife and gave evidence at the trial. She was aware that her husband had agreed with Mr Al-Najar for the construction of a house on Plot 4 as a home for Mr Al-Habib and his family. She referred to an occasion in the summer of 2014 when she visited Mr and Mrs Al-Najar. During the visit she asked Mr Al-Najar, in English, when "my house" would be completed and he replied it should be completed in about 14 months from payment. She said that Mrs Al-Najar had heard the question and she added "inshallah" i.e. if Allah is willing. Mrs Jamal also referred to the discussions which she had with Mrs Larry about the layout of the house and Mrs Larry referred to the property as "your house". She also referred to a further conversation with Mrs Larry at Christmas 2016 when they discussed when the house would be completed and she said that Mrs Al-Najar would have heard this conversation. Mrs Al-Najar did not cross-examine Mrs Jamal but when she gave her own evidence she said that she disputed Mrs Jamal's account.

310. Mr Mohammad Al-Habib is the son of Mr Al-Habib and gave evidence at the trial. He referred to the occasion in the summer of 2014 which had been referred to by his mother. His account of the conversation was that his mother asked Mr Al-Najar when "our house" would be ready and Mr Al-Najar replied that it would be in 14 months. Mr Mohammad Al-Habib said that Mrs Al-Najar would have heard the question and the answer. Mrs Al-Najar did not cross-examine Mr Mohammad Al-Habib.

311. The Claimants called Mr Shabbir Merali to give evidence. Mr Merali had been employed by Mr Al-Najar and/or his companies. Mr Merali gave evidence about Plot 4. He said that the plots at Monkston Park were self-build plots that could not be bought by developers but only by individuals who were going to live in the houses built on the plots. He said that when plots at Monkston Park came on the market in 2014, Mr Al-Najar said to Mr Merali that he owed Mr Al-Habib a house and he asked Mr Merali to bid for one of the plots. Mr Merali said that in the end Mr Al-Najar used Mrs Al-Najar to bid for Plot 4 and the bid was successful. He said it was common knowledge within the Prestige companies that Plot 4 was being held by Mrs Al-Najar for Mr Al-Habib due to the restrictions on who could own a house in Monkston Park. Mr Merali said that Mr Al-Najar had asked him to make the payment of £31,000 from Mr Al-Najar's trading account. Mr Merali said that Prestige Homes Ltd did not invoice Mrs Al-Najar for the building work on Plot 4 until after the company went into administration.

312. Mr Al-Najar referred to Plot 4 in his witness statement. He said that there was an established process by which Prestige Homes Ltd sold its houses. This involved a buyer paying a non-refundable deposit to persuade Prestige Homes Ltd to take the property off the market, followed by exchange of contracts and payment of 20% of the purchase price, following which the house would be built followed by completion of the sale. He said that he agreed to sell Plot 4 and to build a house on it for Mr Al-Habib for the price of £1.2 million, not £900,000. He referred to a planning condition on Plot 4 whereby it could not be sold immediately after completion of the house. He said that he proposed to Mr Al-Habib that Prestige Homes Ltd would build a house on Plot 4 to his specification and then exchange contracts on completion of the house with completion two years later. Following exchange of contracts, Mr Al-Habib could live in the house and pay rent for it with the rent being used to service a mortgage on the house.

313. Mrs Al-Najar gave evidence in relation to Plot 4, in particular. She produced a document which had been executed by Mr Al-Najar and herself on 7 December 2003, following their marriage in August 2001. The document was called a Statement of Intention and confirmed that they had agreed that all their assets were to be shared 50:50 both in life and in death with the exception of the matrimonial home, Broadacre. The Statement provided that Broadacre was considered to be for her sole benefit and formed the *mahr* of their marriage as required by Islamic law. A *mahr* is a gift from a husband to his wife on the occasion of their marriage. When cross-examined, she suggested that the Statement of Intention was inaccurate because the net proceeds of sale of Corner Cottage were not to be owned 50/50 but she said that that was the only respect in which the Statement was inaccurate.

314. In her witness statement dated 9 July 2018, Mrs Al-Najar explained that she had owned Corner Cottage and, when it was sold, she provided the net proceeds of its sale to Mr Al-Najar for him to invest them for her. She said that she did not have any formal arrangement in relation to this investment and she trusted him to act in her best interests. Mr Al-Najar did not generally report back to her about her investment or discuss it with her. She said that they proceeded on the basis that if she needed access to the money, he would provide her with access.

315. In her witness statement of 9 July 2018, Mrs Al-Najar said that Mr Al-Najar spoke to her about the purchase of Plot 4 and explained that it was being purchased with her investment money and a loan. Mr Al-Najar paid £31,000 as a deposit for the purchase with a further sum of £71,134 on completion of the purchase. Mrs Al-Najar said that she had never made any arrangement with Mr Al-Habib to hold Plot 4 on his behalf. She said that she had never been privy to any discussion of that kind between Mr Al-Najar and Mr Al-Habib.

316. In her witness statement of 2 September 2020, Mrs Al-Najar confirmed that which was pleaded in her Defence. She commented, in relation to her pleaded case that Mr Al-Najar had said that she would benefit from a share of the profits on the sale of Plot 4, that she did not really care about that and would have left the profits with her husband to use or invest as she saw fit. She stated that she did not keep track of the money which she had given him when she sold Corner Cottage and she did not intend to act any differently later.

317. When cross-examined, Mrs Al-Najar said that the net proceeds of sale from Corner Cottage were about £270,000. She described the basis on which she allowed this sum to be used by Mr Al-Najar for the purposes of his businesses. She said she was investing the money in the family business with a view to the family benefitting from that money. She said that if she needed money and if the business was making a good profit, then she would be able to benefit from that.

318. Mrs Al-Najar was asked what Mr Al-Najar had said to her when he suggested that Plot 4 would be bought in her name. She said that she thought he had said to her that Plot 4 would be bought as part of her investment in the business. She was asked to give more detail as to how Mr Al-Najar had described the nature of her investment and the money which was to be used. She said that she did not remember the words he had used.

319. As I explained earlier, Mrs Al-Najar wished to rely upon certain evidence contained in the witness statements of Mrs Larry and her son, Mr Larry. Mrs Larry had sought to describe the procedures which were usually followed by Prestige Homes Ltd in connection with the exchange of contracts, the building of a house and the sale of the completed house. She also gave evidence about conversations which she had with Mr Al-Habib where she disagreed with some of the evidence he had given. She also disagreed with the evidence given by Mr Merali that it was common knowledge that Mrs Al-Najar held Plot 4 for Mr Al-Habib. Mr Larry gave similar evidence as to the alleged common knowledge, which he denied. As I indicated earlier, with one possible exception, the evidence of Mrs Larry and of Mr Larry is not of any real relevance to the issues which I have to decide. The exception relates to Mrs Larry's disagreement with Mr Merali's evidence that it was common knowledge that Mrs Al-Najar held Plot 4 for Mr Al-Habib because of the restriction on selling the completed house within two years. That may have been what Mr Merali believed and it may be the conclusion I myself arrive at having considered all of the evidence in this case, not all of which would have been known to Mr Merali. I consider that I ought not to attach any weight to Mr Merali's unparticularised suggestion as to what was "common knowledge" and I will treat that as merely a statement of his own state of mind.

320. The documents relating to Plot 4 show that in 2014 the Milton Keynes Development Partnership LLP ("MKDP") invited bids for a number of plots at Monkston Park. It seems that a bid for Plot 4 was made by someone relevant in this case but the bid documents are not available and the original bidder has not been identified.

321. On 18 November 2014, MKDP sent an email which Mrs Larry forwarded to Mr Al-Najar with the revised terms on which the plots were available. These terms referred to the purchaser agreeing that he intended to construct a new home on the plot and to occupy the property as his primary residence for a minimum period of two years. It was pointed out that there was no sign of Mrs Al-Najar being involved in the bid for Plot 4 at his stage even though Mr Al-Najar had proposed Plot 4 to Mr Al-Habib earlier in 2014.

322. On 19 January 2015, Mr Al-Najar emailed a property solicitor who worked for the Prestige companies, with a copy of the email being sent to Mrs Al-Najar. This seems to have been the first time that her name appears in the documents relating to Plot 4. The email stated that "we" had brought Plot 4 and that it would be bought in the name

of Mrs Al-Najar and the development would be carried out by Prestige Homes. Mr Al-Najar then instructed the solicitor to act on "our" behalf and the email was sent on behalf of Mr and Mrs Al-Najar.

323. On 21 January 2015, an application was made in the name of Mrs Al-Najar, acting through Mrs Larry, for planning permission to construct a house on Plot 4.

324. On 26 January 2015, the solicitors instructed by Mr Al-Najar in connection with the purchase of Plot 4 emailed Mrs Al-Najar with a copy to Mr Al-Najar. The email enclosed a draft contract for the purchase of Plot 4. The email pointed out that the purchaser of the property must occupy it once built for a period of two years. The property could not be sold within the period of two years without the consent of MKDP. There would be a restriction on the title to protect the interest of MKDP in this respect.

325. On or about 9 February 2015, Al-Najar Trading transferred £31,000 to be used for the purpose of paying the deposit on the purchase of Plot 4. Mrs Al-Najar accepted when cross-examined that she could not show any direct connection between the proceeds of sale of Corner Cottage and this payment of £31,000. She said that how her money had been accounted for was left to Mr Al-Najar and the company's accountants. At this point, Mrs Al-Najar said that she had been given shares in some Prestige companies. She added that she did not know whether the money she had put into the business had been shown as a loan from her to a company.

326. On 11 February 2015, MKDP and Mrs Al-Najar exchanged contracts for the sale and purchase of Plot 4 for £309,000, with a deposit paid of £30,900. Clause 28 of the contract provided that it was personal to Mrs Al-Najar and could not be assigned by her. Clause 29 was the provision which stated her intention to occupy the house when built on Plot 4 as her primary residence for a minimum period of two years. Mrs Al-Najar accepted in her evidence that she did not intend to live in a house on Plot 4 but she said she thought the provision would be later discharged.

327. On 16 July 2015, the solicitors acting on the purchase of Plot 4 wrote to Mr Al-Najar and stated that the contract was in the name of Mrs Al-Najar and Mr Al-Najar had instructed the solicitors that the property was to be transferred to Mr and Mrs Al-Najar on completion. Mrs Al-Najar agreed that this instruction was inconsistent with the property being bought with her money. In the event, as will be seen, the property was transferred into the sole name of Mrs Al-Najar.

328. On 20 July 2015, the solicitors acting in relation to the purchase of Plot 4 wrote to a potential funder and stated that their client (meaning Mr Al-Najar) had purchased Plot 4 "through his wife Julie".

329. In September 2015, Mr Al-Najar sought bridging finance from Paxton Secured Income Fund LLP to assist with the purchase of Plot 4. Mrs Al-Najar was not involved in the raising of finance save that she said she signed the paperwork.

330. On September 2015, the solicitors prepared a draft completion statement referring to the receipt of approximately £220,000 from Paxton Secured Income Fund LLP and showing a balance due of £71,098. This statement was sent to Mr Al-Najar but not to Mrs Al-Najar. The balance due was paid by Mr Al-Najar. The sale was completed on

25 September 2015. The property was transferred into the sole name of Mrs Al-Najar. Thereafter, Mrs Al-Najar was duly registered as the proprietor of Plot 4 at the Land Registry.

331. The bridging finance which was obtained to assist with the purchase of Plot 4 was on terms that the interest due was rolled up and payable on redemption of the charge. The loan was expected to be a short-term loan. Mrs Al-Najar stated in her evidence that she did not make any payments in relation to this loan and she had not expected to be asked to do so.

332. Mrs Al-Najar stated that at some point she knew that Mr Al-Habib wished to buy Plot 4 and have a house constructed on it. She said that she did not know what had been agreed between her husband and Mr Al-Habib and she left that matter to her husband to deal with.

333. Mrs Al-Najar could not recall when construction works began on Plot 4 but she thought that might have occurred at the end of 2015.

334. In late 2016, Mr Al-Najar negotiated with Secure Trust Bank plc ("Secure Trust") a facility agreement under which Prestige Homes Ltd would be able to draw down funds up to a total of £2,188,000. On 15 December 2016, Prestige Homes Ltd entered into the facility agreement. The purpose of the facility was stated to be to enable the development of 50 and 52 Ashford Crescent and Plot 4. The facility agreement provided that Mr and Mrs Al-Najar would guarantee repayment of the loan up to the principal amount of £1.4 million and 50 and 52 Ashford Crescent and Plot 4 would be the subject of three separate charges to secure repayment of the loan. 50 Ashford Crescent was owned by Prestige Homes Ltd, 52 Ashford Crescent was owned by Mr Al-Najar and Plot 4 was in the name of Mrs Al-Najar. The agreement was signed by Mr Al-Najar on behalf of Prestige Homes Ltd and by Mr and Mrs Al-Najar in their personal capacity. Some of the funds advanced under the facility agreement were used to repay the bridging loan in respect of Plot 4.

335. The construction of the house on Plot 4 proceeded as far as the building of the ground floor, "the first lift", and then stopped.

336. On 24 April 2017, Prestige Homes Ltd entered administration. This was an event of default under the facility agreement and the charges dated 15 December 2016. Thereafter, as a result of a payment of £155,000 made by Mrs Al-Najar and the sale of 50 Ashford Crescent, Secure Trust provided forms DS1 in relation to 50 and 52 Ashford Crescent and Plot 4, discharging the charges over those properties.

337. In proceedings which Mrs Al-Najar brought against her husband in relation to 52 Ashford Crescent, she said that she was subrogated to the charge of Secure Trust over that property to secure a sum of £155,000 paid by Mrs Al-Najar to Secure Trust. In June 2018, the court made an order for possession of 52 Ashford Crescent against Mr Al-Najar. As a result of a freezing order made against Mrs Al-Najar, she was unable to sell 52 Ashford Crescent and she was made bankrupt on 15 October 2018. In her witness statement, she said that her rights in relation to 52 Ashford Crescent were being dealt with by her trustee in bankruptcy.

338. I can now proceed to make my findings based on the evidence which I have summarised.

339. I accept, as Mrs Al-Najar submitted, that the proceeds of the sale of Corner Cottage initially belonged to her and that she invested them in what she described as the family business. Mrs Al-Najar sought to link this investment by her to the purchase of Plot 4. I do not accept that there was any connection. The monies she initially invested were not in any way treated as continuing to belong to her. Those monies belonged to whichever company received them from her, following the sale of Corner Cottage. Mrs Al-Najar's evidence as to her expectations as to the business providing for her if she needed such provision and if the business was profitable does not establish that the monies she initially invested were held for her on any kind of trust or that she retained any interest in them.

340. Mrs Al-Najar gave evidence that her husband said to her that the purchase of Plot 4 was being purchased with her investment money and further sums which were to be borrowed. As against that, there is evidence which points to the money used for the deposit and for the balancing payment on completion being the money of Mr Al-Najar or one of his companies (as he throughout treated the money of his companies as his own). When he first contemplated bidding for Plot 4, Mr Al-Najar asked Mr Merali to make a bid in his name. That suggestion would obviously involve Mr Merali being a nominee for Mr Al-Najar. There was a clear reason why Mr Al-Najar wished to use a nominee to make the bid rather than the bid being made by Prestige Homes Ltd. The reason was the restriction imposed by the MKDP which required the purchaser of the plot to declare an intention to occupy the house built on the plot as his primary residence for at least two years. So far as can be seen from the documents, the bid made by Mrs Al-Najar came after MKDP had clearly explained, on 18 November 2014, that it required such a restriction (although it may be that this restriction had always been imposed by MKDP). Further, on 19 January 2015, Mr Al-Najar told the solicitors acting on the purchase of Plot 4 that "we" had bought Plot 4 "in Julie's name". Although there is room for argument as to who "we" was, the reference to the property being bought in the name of Mrs Al-Najar suggests that she was being used as a nominee. Further, Mr Al-Najar had obviously explained to his solicitors that he had bought Plot 4 "through his wife": see the solicitors' email of 20 July 2015. In addition, Mrs Al-Najar's evidence was that she did not really remember what her husband said to her about Plot 4 being bought in her name.

341. There is clear evidence that Mrs Al-Najar had only nominal involvement in the purchase of Plot 4 which was handled by her husband. Of course, if Mr and Mrs Al-Najar had made a clear express agreement that she was to be the beneficial owner of the property, the fact that Mr Al-Najar handled the purchase on her behalf would not necessarily be inconsistent with such an agreement. Nonetheless, in the absence of any agreement that she was to be the beneficial owner of the property, her lack of involvement in the purchase tends to support the conclusion that she was being used as a nominee purchaser.

342. It might be said to be relevant that Mrs Al-Najar entered into a charge over Plot 4 to obtain bridging finance. The fact that she made herself personally liable pursuant to that charge might be said to show that she was to be the true owner of Plot 4. However, as against that, her evidence was that she did not make any payments under the charge and did not expect to be asked to do so. Further, Mrs Al-Najar entered into

the facility agreement of 15 December 2016 providing for a possible loan of up to £2.188 million and she gave a personal guarantee of up to £1.4 million even though the debt was incurred for the benefit of Prestige Homes Ltd and not in relation to property which she personally owned.

343. On the balance of probabilities, I find that Plot 4 was purchased in the name of Mrs Al-Najar because of the restriction imposed by MKDP which required the purchaser to declare an intention to occupy the house on the plot and that declaration could not be made by Prestige Homes Ltd. Mr Al-Najar had intended to use Mr Merali as a nominee purchaser and instead he used Mrs Al-Najar as a nominee purchaser. I also find that Mrs Al-Najar must have known, and did know, that she was a nominee purchaser and why this was the case.

344. Mr Chelmick submitted that Mrs Al-Najar held Plot 4 on a direct trust for Mr Al-Habib and she knew that that was the case. I am not persuaded that the evidence establishes either of those propositions. Instead, what Mrs Al-Najar knew was that Mr Al-Habib had made some arrangement with Mr Al-Najar but she did not know the detail of that arrangement. She did know, however, that under whatever the arrangement was, the intention was that a house would be built on Plot 4 in accordance with a design and layout chosen by Mr Al-Habib and that in due course it was expected that Mr Al-Habib would buy Plot 4, together with the completed house. I find that no one ever said to Mrs Al-Najar that she held Plot 4 on trust for Mr Al-Habib or even "for" Mr Al-Habib in the sense that he had some legal rights or rights of ownership in relation to it. Mrs Al-Najar was not concerned with the detail of any arrangement between Mr Al-Najar and Mr Al-Habib because the arrangement did not concern her. She knew she was a nominee for Mr Al-Najar and she left arrangements with Mr Al-Habib to her husband.

345. In these circumstances, any rights which Mr Al-Habib has in relation to Plot 4 must depend on the arrangements which he made with Mr Al-Najar. I accept Mr Al-Habib's evidence as to the agreement he made with Mr Al-Najar pursuant to which Prestige Homes Ltd would build a house on Plot 4 and Mr Al-Najar would procure the transfer of Plot 4 and the completed house to Mr Al-Habib. I also accept that the arrangement was that Mr Al-Habib would pay Mr Al-Najar and Prestige Homes Ltd the total sum of £900,000 and that, of that sum, £400,000 would be paid in cash and £500,000 would be raised by Mr Al-Habib on a mortgage although the mortgage would be arranged for him by Mr Al-Najar.

346. In so far as the agreement between Mr Al-Najar and Mr Al-Habib related to the sale of the land, it was accepted by Mr Chelmick that any such agreement was not a binding contract for the sale of land but was void by reason of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. However, section 2(5) of the 1989 Act provides that section 2 does not affect the creation or operation of resulting, implied or constructive trusts. Insofar as it might be said that Mr Al-Najar had declared a trust of the property for Mr Al-Habib, that declaration was unenforceable because it was not evidenced in writing, signed by Mr Al-Najar, as required by section 53(1)(b) of the Law of Property Act 1925. In any case, I do not find that Mr Al-Najar orally declared a trust of Plot 4 for Mr Al-Habib. So far as relevant, section 53(2) of the 1925 Act provides (in the same way as section 2(5) of the 1989 Act) for a limitation on the effect of section 53(1).

347. I also find that Mr Al-Habib paid an initial £200,000 to Mr Al-Najar and is to be treated as having made a contribution of a further £200,000 following what he was told by Mr Al-Najar about the sale of the flats in Albion Place. Thus, Mr Al-Habib performed his side of the bargain as regards making the cash payment of £400,000. Mr Al-Najar and Prestige Homes Ltd did not complete the construction of a house on the plot and the house remains only partly built.

348. If Mr Al-Najar and/or Prestige Homes Ltd had made a contract with Mr Al-Habib on the terms of the oral agreement which was made, then Mr Al-Habib would have certain remedies in contract. He could treat the contract as repudiated and sue for damages, which would reflect any loss of the profit or gain in value he would have made if the contract had been performed. Alternatively, he could recover the payment of £400,000 unless Mr Al-Najar/Prestige Homes Ltd could establish that the contract would have been loss making for Mr Al-Habib. In the further alternative, Mr Al-Habib could obtain specific performance of the contract and sue for damages because the house had not been completed.

349. Because Mr Al-Habib does not have a contract with Mr Al-Najar/Prestige Homes Ltd, he cannot pursue contractual remedies against those parties. However, he ought to be able to recover the sum of £400,000 in restitution. That gives him a personal claim against Mr Al-Najar. Because a personal claim against Mr Al-Najar may prove to be of limited value, Mr Al-Habib wishes to be able to assert a proprietary claim in relation to Plot 4.

350. Mr Chelmick submitted that I should hold that Plot 4 was held on a constructive trust for Mr Al-Habib, alternatively, Mr Al-Habib had acquired an equity in Plot 4 pursuant to a proprietary estoppel; it seemed to be submitted that the relevant equity comprised the entire beneficial interest in Plot 4. In the further alternative, it was submitted that Plot 4 was held on a resulting trust for Mr Al-Habib.

351. I consider that the most appropriate legal analysis to be considered is an analysis based on proprietary estoppel. The relevant principles are sufficiently flexible to produce an equitable result in a case like the present. Further, the argument that Mr Al-Habib owns the entire beneficial interest in Plot 4 does not adequately deal with two matters; the first is that Mr Al-Habib agreed to pay £900,000 for the land and the house and has only paid £400,000; the second matter is that the house has been partly built, but not completed. There was some unreliable evidence as to the value of Plot 4 in its current uncompleted state but the evidence would not enable me to make any finding as to its value.

352. When considering whether Mr Al-Habib has acquired an equity in Plot 4 pursuant to a proprietary estoppel, I attach importance to the evidence as to the relationship between Mr Al-Habib and Mr Al-Najar. Mr Al-Habib and, indeed, the other Claimants stressed the depth of the trust which they placed in Mr Al-Najar. They explained that the degree of trust reposed in Mr Al-Najar derived from their shared culture and the way of doing business in the Arab world. The Claimants and Mr Al-Najar acted in a way which was quite different from a normal business approach in this country. They did not attach the significance which one would expect to committing agreements and understandings to writing or to taking legal advice and acting upon it. They regarded an oral agreement as binding on the basis of trust. Mr Al-Habib gave evidence that an oral agreement was worth a thousand documents. A

lawyer would certainly not agree with that statement but it is clear from their conduct in relation to all of the projects discussed in this judgment that that was what the Claimants genuinely thought. I find that Mr Al-Najar well knew that that was the basis of the arrangements he made with Mr Al-Habib in relation to Plot 4.

353. I can take the legal principles as to proprietary estoppel from Snell's Equity, 34th edition, beginning at paragraph 12-032. Paragraph 12-036 describes the existence of the "promise-based principle" as a strand of proprietary estoppel. In this case, Mr Al-Najar made a clear promise to build, or procure the building of, a house on Plot 4 and to transfer or procure the transfer of Plot 4 to Mr Al-Habib. Mr Al-Habib believed that that promise was binding on Mr Al-Najar and that he could rely on it. Mr Al-Habib had no understanding as to the effect of section 2 of the 1989 Act on oral agreements to sell land. Given the common culture of the two parties, it was reasonable for Mr Al-Habib when dealing with Mr Al-Najar to consider that he could rely on Mr Al-Najar's promise. Mr Al-Habib did rely on Mr Al-Najar's promise, most notably by paying him £400,000. That payment constituted detriment suffered by Mr Al-Habib. If Mr Al-Najar were solvent and could pay that money back to Mr Al-Habib then it might be said that the principal detriment would be removed. However, Mr Al-Najar is bankrupt and I proceed on the basis that a personal remedy in relation to the recovery of £400,000 would be of limited value to Mr Al-Habib.

354. At paragraph 12-046 of Snell, there is a discussion of the effect of section 2 of the 1989 Act and section 53(1)(b) of the 1925 Act. Having considered that paragraph, I conclude that it is open to me to hold that the better view is section 2 of the 1989 Act regulates the requirements for a contract for the sale of land and a claim to a proprietary estoppel, even if promise based, is distinct from a contractual claim. I explained earlier that the present is not a case of an oral express declaration of trust and so section 53(1)(b) of the 1925 Act is not directly engaged and I note the comments in Snell, paragraph 12-046 at footnote 406 as to treating section 53 of the 1925 Act in a way similar to the better view as to section 2 of the 1989 Act.

355. The next matter which I will consider concerns the form of any relief to be granted to Mr Al-Habib, if I conclude that he ought to be granted relief. Snell, at paragraphs 12-047 to 12-051, explains the relevant legal principles. When deciding what relief to grant, I am to consider Mr Al-Habib's expectation based on the promise made to him and I am also to consider the extent of the detriment he would suffer absent any relief. As to his expectations, I have explained what his rights would have been if he had had a binding contract with Mr Al-Najar/Prestige Homes Ltd. Those rights would have included a right to the return of the £400,000. His rights would also have included a proprietary interest in Plot 4 in the form of an equitable purchaser's lien: see Snell, at paragraph 44-014. As to the detriment to Mr Al-Habib, the principal detriment results from the payment of £400,000. These considerations point to a form of relief by reference to Mr Al-Habib's payment of £400,000. In the absence of evidence as to what Plot 4 with a partly built house upon it is worth, I do not consider that it would be right to hold that equity requires that Mr Al-Habib should be awarded the entire beneficial interest in the property. If the property is worth significantly more than £400,000, then the grant of such an equity might be too generous to Mr Al-Habib. Nor do I consider that Mr Al-Habib should only be awarded 4/9 of the equity in the property. It is true that he has only paid £400,000 out of the agreed price of £900,000 but conversely, the house on Plot 4 has not been completed.

356. In these circumstances, I consider that equity would give Mr Al-Habib, at least, a personal claim against Mr Al-Najar for the return of the £400,000, to which interest should be added. That brings me to the real question in this case: should the court confer on Mr Al-Habib a proprietary interest in the form of an equitable purchaser's lien or an equitable charge in relation to the money which ought to be paid to him? A question of this type was identified in Snell at paragraph 12-051 in the following terms:

> "A particular question arises where the basic order of the court will be that A should pay B a sum of money: should A's duty to do so be secured by a charge on A's land? The courts' approach does not appear to be consistent, and there has been little discussion of the relevant principles. If B's reliance does not consist of having increased the value of A's land, it is not obvious why B should gain the advantages over unsecured creditors of A entailed by a charge."

357. I have considered the authorities cited in the footnotes to this paragraph in Snell. As Snell points out, the authorities provide examples of cases where the relief awarded to a successful claimant is an order that he receive a sum of money secured on the property but also of cases where the order is for the payment of a sum of money which is not secured on the property. The cases do not involve any discussion of when it is appropriate to order security and when it is appropriate to withhold the provision of security. Of course, in some cases the provision of security is not needed to give the claimant an effective remedy.

358. The discussion in Snell might point in the direction of leaving Mr Al-Habib to his personal unsecured claim against Mr Al-Najar which, I take it, would not give Mr Al-Habib anything of any real value. This is not a case such as that referred to in Snell where Mr Al-Habib has increased the value of the land. Conversely, it is a case where an order that Mr Al-Habib should have a secured interest in the land would give him advantages over the unsecured creditors of Mr Al-Najar.

359. I consider that the way to respond to the question raised in paragraph 12-051 of Snell is to apply the principles as to the relevance of expectation and detriment when determining the relief to be granted. As regards Mr Al-Habib's expectation, his expectation was the same as if he had had an actual contract and had paid £400,000 as part payment of the price under that contract. If there had been an actual contract, Mr Al-Habib would have had a purchaser's lien securing repayment to him of the £400,000 plus interest. As regards the detriment to Mr Al-Habib, he needs an equitable charge or lien over Plot 4 to avoid the detriment of losing the £400,000. If there is no equitable charge or lien, then Mr Al-Habib will be an unsecured creditor and, as far as I am aware, will not recover anything of any real value.

360. One of the curiosities of the claim in relation to Plot 4 is that it was defended by Mrs Al-Najar when, as I understand it, she had nothing personal to gain from the successful defence of the claim, as a result of her bankruptcy. Her trustee in bankruptcy and Mr Al-Najar's trustee in bankruptcy have been aware of Mr Al-Habib's claim in relation to Plot 4 but have not sought to defend it. This has meant that the court has not heard any argument as to why the interests of the creditors of the bankrupts (Mr and/or Mrs Al-Najar) should prevail over Mr Al-Habib's claim to a

proprietary interest in Plot 4. In the event, I conclude that the right result to give effect to the equity established in Mr Al-Habib's favour, reflecting my earlier comments as to expectation and deteriment, and to avoid unconscionability on the part of Mr Al-Najar (and those claiming under him such as his trustee in bankruptcy) is to hold that Mr Al-Habib is entitled to the return of the £400,000 plus interest, which entitlement is protected by an equitable charge or lien over Plot 4.

361. There is one final matter I wish to address in relation to Plot 4. Plot 4 is at present not subject to a charge. The charges granted to Secure Trust over 50 and 52 Ashford Crescent and the charge over Plot 4 were redeemed when Secure Trust received a payment of £155,000 from Mrs Al-Najar and the proceeds of sale of 50 Ashford Crescent. I have described earlier how Mrs Al-Najar asserted that her payment of £155,000 resulted in her being subrogated to the rights of Secure Trust as chargee in relation to 52 Ashford Crescent. At the trial, a question was raised as to whether, in a similar way, Mrs Al-Najar would have been subrogated to the rights of Secure Trust as chargee in relation to Plot 4. I expect that it did not occur to Mrs Al-Najar to contend that she was subrogated in that way because Plot 4 was registered in her name.

362. Although the question of a possible subrogation in favour of Mrs Al-Najar over Plot 4 was raised at the trial, Mrs Al-Najar has not at any time pleaded that case. Accordingly, I need not deal with it. I will however comment that such a claim would not necessarily have succeeded. One reason would be that the court does not know the extent to which Mrs Al-Najar's claim to be subrogated to the charge over 52 Ashford Crescent to the extent of her payment of £155,000 has been fully satisfied. Her evidence was that her claim in relation to 52 Ashford Crescent was no longer available to her as it was part of her bankrupt estate for the benefit of her trustee in bankruptcy. Further, any claim which she might have had to be subrogated to the charge over Plot 4 in relation to any part of the £155,000 which had not been satisfied would appear, similarly, to have vested in her trustee in bankruptcy. That trustee is fully aware of these proceedings but has not advanced a claim of that kind.

The overall result

363. I will make orders to give effect to the findings in this judgment. I invite counsel for the Claimants to prepare a draft order to be submitted to me for my approval.