Neutral Citation Number: [2021] EWHC 756 (Ch)

Case No: BL-2019-000876

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

Date: 30/03/2021

**Before** :

**JOANNE WICKS QC sitting as a Judge of the High Court**

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**Between :**

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|---|---|
| **SCORE DRAW LIMITED** | **Claimant** |
| **- and -** | |
| **PNH INTERNATIONAL LIMITED** | **Defendant** |

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**Mr C Aylwin** (instructed by **Craig Ferguson & Co LLP**) for the **Claimant**
**Mr R Selwyn Sharpe** (instructed by **Keoghs Nicholls Lindsell & Harris**) for the **Defendant**

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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.

**Covid-19 Protocol: This Judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be 30 March 2021**

**JOANNE WICKS QC sitting as a Judge of the High Court:**

## Introduction

1. This is a claim for breach of a covenant in a shareholders' agreement dated 28 October 2013, by which the Defendant ("**PNHI**") undertook not to solicit or accept custom or business from customers of the Claimant ("**Score Draw**"). Score Draw alleges that PNHI broke this obligation by soliciting and accepting orders for retro football shirts from Liverpool Football Club ("**LFC**") and it claims damages and injunctive relief.

## Parties and People

2. Score Draw is a retailer and wholesale supplier of retro football shirts. Retro shirts faithfully replicate historic shirts worn by football teams and are often associated with a particular period of a club or country's past success or with the career of a particular player. The company was established by Michael ("Mickey") Phillips with another person in 2002 and in 2006 he became its sole director and shareholder.

3. Score Draw's wholesale business involves the import of retro shirts of various football clubs and associations, and their supply either to retailers or to the clubs themselves, for onward sale through their own retail channels. It has intellectual property licences granted by a number of football clubs and in particular held a licence from LFC dated 15 December 2011 granted for a period of four years from 1 June 2012 to 31 May 2016 ("**the Licence**").

4. Chun Kwok Wong, also known as Perhson Wong, is a businessman based in Hong Kong. He has extensive business interests and holds a number of directorships.

5. PNHI is a company registered in Hong Kong, of which Mr Wong is a director. It is part of the PNH group of companies, which may or may not formally constitute a group but are linked in the sense that they are all associated with Mr Wong. The PNH group is in the business of the manufacture and sale of sportswear, including (but not limited to) retro football shirts. For some years prior to the shareholders' agreement, PNHI had been supplying shirts to Score Draw, although the invoicing and payment arrangements between PNHI and Score Draw involved a British Virgin Islands company, Yao Ming Investments Limited.

6. The majority shareholder in PNHI (holding 9,999 of 10,000 shares) is PNH Holdings Ltd, a company which is 50% owned by Mr Wong and of which he is a director. The other share in PNHI is held by PNH Limited ("**PNH Ltd**") of which again Mr Wong is a director. PNHI and PNH Holdings Ltd each own 50% of the shares in PNH Ltd (or at least did on 16 December 2019, the date of the last company return produced in evidence).

7. PNH Holdings Europe Limited ("**PNHE**") is a Jersey company with directors in St Helier, incorporated in July 2013, shortly before the shareholders' agreement. When incorporated, Mr Wong held one of the two shares in PNHE, the other being held by Peter Kenyon, a former managing director of Umbro International, and former CEO of Manchester United Football Club and Chelsea Football Club.

8. Mr Wong is also associated with a brand called "EZ Shopnet", which is an online sportswear retailer selling in Asia. Mr Wong describes EZ Shopnet in his first witness statement as a "*solely owned business of The PNH group*" and the PNH group website treats EZ Shopnet as part of the PNH group. Mr Wong's Hong Kong directorships include EZ Shopnet Limited and EZ Shopnet International Limited. A person who features in the evidence is Ray Evans, whose email footer at the relevant time described him as "*Director, EZ International Ltd, PNH Group Hong Kong*".

9. Mr Evans and Mr Wong were also involved together in a company originally called Opto Capital Limited but subsequently called Campo Sports Limited ("**Campo Sports**"). During 2013 PNHE and Mr Evans became the shareholders in Campo Sports and Mr Wong, Mr Evans and Mr Kenyon were appointed directors. Campo Sports was a customer of Score Draw.

## The Licence

10. The Licence was dated 15 December 2011 and comprises a "Principal Terms Sheet" together with a set of general terms and conditions. By it, Score Draw agreed to use LFC's intellectual property in accordance with the Licence. By clause 4 of the general terms and conditions

> "*In consideration of the payment of the Advance, any Additional Advance and any Royalties by the Licensee to the Licensor and the due performance by the Licensee of all the terms and conditions to be performed by it under this Agreement, the Licensor HEREBY GRANTS to the Licensee a non-exclusive licence for the Licence Period to use the Licensed IPR for the purposes of:*
>
> *i. developing and manufacturing the Licensed Product; and*
>
> *ii. marketing, distributing, promoting, selling and advertising the Licensed Product in the Territory via the Permitted Distribution Channels in the Language.*"
>
> The "Licence Period" was 4 years from 1 June 2012 to 31 May 2016 but in clause 20(a) provision was made for a run-off period of 3 months, allowing Score Draw to sell shirts which it had in stock or which were in the course of manufacture at expiry. The "*Licensed IPR*" meant LFC's intellectual property and the "*Licensed Product*" was retro football t-shirts and tracksuits (not performance/technical/training t-shirts or tracksuits). The "*Territory*" was the UK and Eire and the Language was English. The "*Permitted Distribution Channels*" were "*All Retail*".

11. In consideration of the Licence, Score Draw was obliged to pay a series of advances totalling £200,000 in accordance with a payment schedule set out in the Principal Terms Sheet: £44,000 in Year 1; £48,000 in Year 2; £52,000 in Year 3 and £56,000 in Year 4. The advances were, in effect, minimum guaranteed royalty payments. Thereafter, if sales exceeded the level at which the advances had been set, royalties were payable at the rates set out in the Principal Terms Sheet, namely

> "*Retail Royalty:* *12.5% of the Net Sales Value in respect of each unit of Licensed Products sold to retail stores direct, who in turn distribute direct to the public*

*Internet Royalty:* *12.5% of the Net Sales Value in respect of each unit of Licensed Products sold via the internet*

*LFC Retail Royalty:* *0% royalty on each unit of Licensed Products sold through LFC Retail Channels."*

"*LFC Retail Channels*" were defined to mean

"*the retail operation run by the Licensor including Liverpool FC official club stores (both online and offline) and its mail order operation".*

By clause 11(d) of the general terms

"*The Licensee agrees that it will sell the Licensed Product to the Licensor for sales through LFC Retail Channels at a price equal to or lower than the price offered by the Licensee to any other customers. Any Licensed Product sold through LFC Retail Channels will be subject to a 0% Royalty rate."*

**Background to the Shareholders' Agreement**

12. In 2012, Mr Wong acquired 20% of the shareholding in Score Draw.

13. By February 2013, Score Draw had built up a debt to PNHI, in respect of goods supplied, of about US $3.5 million. The shareholders' agreement was entered into as part of a debt-for-equity swap, under which:

    i) The shares in Score Draw were reorganised to create 80 A ordinary shares of £1 each held by Mr Phillips and 80 B ordinary shares of £1 each, of which 20 were held by Mr Wong;

    ii) On 28 October 2013:

        a) PNHE subscribed for 60 of the B shares, the price being a reduction of US $2 million in the trading indebtedness due from Score Draw (via Yao Ming Investments Limited) to PNHI; Mr Wong's shares were also transferred to PNHE. Consequently all of the A shares were (and remain) held by Mr Phillips and all of the B shares were (and remain) held by PNHE;

        b) the shareholders' agreement was entered into between Score Draw, Mr Phillips, PNHE and PNHI; and

        c) PNHI and Score Draw entered into an agreement under which PNHI agreed to provide rolling credit facilities to Score Draw ("**the Credit Agreement**"). This required Score Draw to pay PNHI's invoices up to and including 30 June 2014 within 180 days and invoices thereafter within 120 days. It gave PNHI the right to terminate the Credit Agreement in certain events, including if

        "*Score Draw fails to pay any undisputed amount due to* [PNHI] *on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment*".

## Shareholders' Agreement

14. In the Shareholders' Agreement, Mr Phillips and PNHE are referred to as "*the Original Shareholders*", with "*A Shareholder*" meaning the holder of the A shares from time to time; "*B Shareholder*" meaning the holder of the B shares from time to time and together being "*the Shareholders*". "*The Covenantors*" means each of the Shareholders and PNHI, whilst "*the Parties*" also includes Score Draw.

15. Clause 3 provides that there are to be two directors and that the A Shareholder has the right to appoint, remove and replace one A director, and the B Shareholder has the right to appoint, remove and replace one B director. Clause 4 makes provision for the holding of board meetings.

16. Clause 5.1 provides for the way in which Score Draw is to be managed. It states:

> "*5.1.1 Subject to clause 5.1.4 below, the Parties acknowledge and agree that day to day management of the Group [i.e. Score Draw and any subsidiary] shall be the sole responsibility of the A Director (in his capacity as managing director), who shall run the business in accordance with the Business Plan.*
>
> *5.1.2 The Shareholders further acknowledge and agree that, notwithstanding the other provisions of this agreement, the A Director shall have sole responsibility for all matters relating to the Group's supply arrangement and sourcing of products by the Group.*
>
> *5.1.3 The Board shall have responsibility for the supervision and management of the Group and the Business and all significant policy and strategy decisions of the Group and/or the Business shall be referred to the Board.*
>
> *5.1.4 Notwithstanding any other provisions of this agreement, no decision or action shall be taken by the Directors (or any of them) in relation to any of the matters set out in Schedule 4 without the prior written consent of each Shareholder at the relevant time*."
>
> "*The Business*" means
>
> "*the business of sportswear retail supply and distribution as carried on by the Group from time to time"*
>
> and "*Business Plan*" means
>
> "*the business plan of the Group approved and adopted in accordance with this agreement".*

17. By clause 9.3, the Business Plan is to be prepared by the A Director, in consultation with the Board, and approved by the Board. Amongst the matters reserved for shareholders in Schedule 4 by clause 5.1.4 is "*the Company incurring any Borrowings other than as provided for in the Business Plan*".

18. By clause 5.2.2

"*Each Shareholder undertakes to the other Shareholder that at all times during the continuance of this agreement it shall:*

*5.2.2.3 procure that its Nominated Directors and other representatives will support and implement all reasonable proposals put forward at Board and other meetings of the Company for the proper development and conduct of the Business as contemplated in this agreement and the Business Plan and procure that all third parties, directly or indirectly under its control, shall refrain from acting in a manner which is likely to hinder or prevent the Company from carrying on the Business in a proper and reasonable manner".*

19. By clause 5.2.3:

"*The Company shall, and the Shareholders shall procure that the Company shall, conduct the Business:*

*5.2.3.1 on sound commercial profit-making principles so as to generate the maximum achievable and maintainable profits available for distribution;*

*5.2.3.2 on arms' length terms;*

*5.2.3.3 in accordance with the Business Plan; and*

*5.2.3.4 in the best interests of the Company*."

20. Clause 5.3 contains various covenants by the Shareholders with each other Shareholder and (as a separate obligation) by the Company with each Shareholder, including at clause 5.3.4 to

"*take all steps required or necessary to implement and carry into effect the Business Plan*".

21. Clause 6.1 contains the restrictive covenants on which Score Draw founds its cause of action. It provides:

"*6.1 Each Covenantor severally undertakes with the other Covenantors and, as a separate undertaking, with the Company that he will not, either solely or jointly with or through any other person, on its own account or as agent, manager, advisor or consultant for any other person or otherwise howsoever:*

*6.1.1 for so long as that Covenantor is a registered holder of any Shares (or, in the case of [PNHI], for so long as [PNHE] is a registered holder of any Shares), solicit or accept custom or business from any Restricted Person in respect of Restricted Products supplied by the Company from time to time.*

*6.1.2 during the Restricted Period for that Covenantor (or, in the case of [PNHI], the Restricted Period for [PNHE], solicit or accept custom or business from any Restricted Person in respect of Restricted Products supplied by the Company as at the relevant Cessation Date."*

The "*Restricted Period*" means

*"in relation to each Shareholder, the period commencing on the date such Shareholder ceases to be the registered holder of any Shares (Cessation Date) and ending on the date which is 24 months after the relevant Cessation Date*."

22. Clause 9 contains a series of obligations on the Company as regards the provision of accounts and information to the shareholders and directors.

23. Clause 8 contains dividend sharing arrangements, under which the A Shareholder is to receive the first US $800,000-worth of dividends, the B Shareholder the next US $800,000-worth, with dividends thereafter shared equally.

24. Immediately following the Shareholders' agreement, PNHE appointed Mr Kenyon as the B Director, with Mr Phillips continuing as the A Director.

**Witnesses**

25. I heard oral evidence from Mr Phillips and Mr Wong, both of whom had made a number of witness statements.

26. Mr Phillips was well prepared to give evidence, familiar with the documents and had good recall of events. He was sometimes reluctant to give a straight answer which he perceived to be against Score Draw's interest, but generally I accept that he was attempting to assist the Court and, subject to two exceptions, I consider his evidence to be reliable. The first exception relates to Mr Phillips' attribution of motives to Mr Wong and his companies. In this respect I consider Mr Phillips has developed a conspiracy mindset and sees a grand scheme to take over Score Draw which did not exist. The second exception is in relation to his forecasts of the sales which would have been made of LFC retro shirts if Score Draw's relationship with LFC had continued, where I consider he has painted an overly optimistic picture.

27. Mr Wong speaks Cantonese, with English as a second language. Whilst he has a relatively good understanding of spoken English and writes emails in English, he is not completely fluent. His witness statements (and other documents such as disclosure statements) were made in English in relatively simple language and read over to him by his solicitors before signature and I am confident that he understood what they said. He gave his oral evidence from Hong Kong, partly in English, but mostly in Cantonese through an interpreter. Despite the skills of the interpreter, hearing evidence through an interpreter in an entirely remote hearing presented challenges. There were a number of technical hitches during the trial and the audio feed was not always very clear for all participants; moreover, the remote hearing platform does not cope well with overspeaking, which naturally occurs more frequently when questions and answers need to be interpreted from one language to another, and in particular when witnesses, Counsel and interpreter may miss out on the visual clues they would have had if all had been present in the same court room. Mr Wong was considerably less familiar than Mr Phillips with the documents, issues and detailed facts of the case. Whilst this in part reflected his management style, which is relatively "hands-off", in my judgment it also reflected a desire to distance himself from responsibility for his actions and those of his companies. When considering his evidence, I have borne very much in mind the risks of misunderstanding or loss of nuance when evidence is given through an interpreter or by a witness in their second language and the additional challenges which a remote hearing brought. I accept some parts of Mr

Wong's evidence but there are other aspects which are not, in my view, consistent with the contemporaneous documentary evidence or the inherent probabilities and which I do not accept.

28. Mr Aylwin for Score Draw urged me to draw adverse inferences against Mr Wong because a significant number of important, and obviously relevant, documents had been produced by PNHI only as a consequence of an order for extended disclosure made on 4 September 2020. Whilst it is clear that the disclosure initially given by PNHI (in respect of which Mr Wong had signed the disclosure certificate) was inadequate, I do not find that the documents were deliberately withheld in order to obscure the nature of the relationship between Mr Wong's companies and LFC. In initially giving disclosure, documents had been disclosed which revealed that relationship, in particular two invoices and a large spreadsheet showing orders placed by LFC. In my judgment the failure to give proper disclosure was attributable to a lack of care rather than anything else.

**Events after the Shareholders' Agreement**

29. My findings of fact as to the events which took place after the Shareholders' Agreement was entered into are as follows.

30. In the period immediately after the Shareholders' Agreement was made, the business relationship between Mr Phillips, Mr Kenyon and Mr Wong was a good one. Under the terms of the Shareholders' Agreement, management responsibilities fell on Mr Phillips, who kept Mr Kenyon, as his co-director, up to date with information on the financial performance of Score Draw.

31. Whilst Mr Phillips generally copied in Mr Wong to his emails to Mr Kenyon, Mr Wong was not closely involved in the day-to-day affairs of Score Draw. He saw Score Draw and Campo Sports as investments which were for others to manage.

32. Within months of the Shareholders' Agreement, Score Draw was suffering cashflow issues because of, or exacerbated by, Campo Sports' failure to pay Score Draw for supplies to it. An indebtedness of about £30,000 in December 2013 had grown to nearly £140,000 by the end of March 2014 and was more than £300,000 by June of that year. This in turn was impacting on Score Draw's ability to meet the terms of the Credit Agreement with PNHI for supplies from it, causing PNHI its own cashflow difficulties. Discussions took place between Mr Phillips, Mr Wong and Mr Kenyon as to how to resolve this situation, and between Mr Phillips and Mr Evans, representing Campo Sports, but the Campo Sports debt to Score Draw continued to grow. By September 2014, the situation was serious. In an email of 17 September, Mr Phillips expressed himself to Mr Kenyon and Mr Wong as being "*stressed and anxious in my determination to resolve the Campo Account as an absolute priority to Score Draw!*". Mr Wong, for his part, referred to the "*urgent situation*" of PNHI.

33. A schedule for payment of Score Draw's outstanding liabilities to PNHI was agreed and recorded in an email from Mr Phillips to Mr Wong dated 28 September 2014, copied to Mr Kenyon. Under this, Score Draw was to pay PNHI some US $754,000 by the end of September and some US $923,000 by the end of October, with the benefit of two loans from Mr Wong, each of £250,000, which were to be repaid by

Chinese New Year 2015. Having received the September payment, Mr Wong made the first loan in early October.

34. In the meantime, both Score Draw and EZ Shopnet were, independently, dealing with LFC. In September 2014, EZ Shopnet International Ltd was appointed the online partner to LFC for certain territories across South East Asia. Mr Phillips, on the other hand, was negotiating with Vicky Powell, LFC's Head of Buying and Merchandising, in relation to the prices of goods to be supplied to LFC for sale through its retail channels. Although Ms Powell was bargaining hard on price, that did not prevent her placing an order with Score Draw on 15 September. Mr Phillips had been trying since mid-July 2013 to persuade Ms Powell that LFC needed an official retro collection, i.e. a portfolio of Score Draw products rather than a series of single items. He had discussed the position with Mr Wong, who had suggested that he might be able to broker a deal directly between PNHI and LFC.

35. On 24 October 2014, Mr Phillips emailed Mr Wong, attaching the email threads he had had with Ms Powell. He continued:

"*Liverpool FC remain the ONLY football club to which we have failed to supply a heritage collection of commercial consequence.*

*Please find attached our FINAL OFFER (Order Form – Liverpool '14) as a compromise to the demands on PRICE.*

*My suggestion is to attend my arranged meeting with Paul Owen (& Lee Dwerryhouse) on 06/Nov with an intention to…*

- *Introduce the core ethics and market position of Score Draw*
- *Present our Liverpool FC SS'14 Collection (to demonstrate an enhanced synergy with our collection distributed under Licence)*
- *Extend an invitation to Liverpool FC to engage freely with PNH International to source a heritage collection."*

36. On 30 October, however, Mr Phillips received an email from Ian Christie of LFC to say that Ms Powell had left the business and that he had assumed responsibility for retro. On 31 October, Mr Phillips informed Mr Wong of Ms Powell's departure and said that he would "*attend Liverpool FC offices on Thurs 06/Nov to progress PNH contribution*". On the same day he responded to Mr Christie saying that he was eager

*"to encourage a broader perspective of our contribution at Liverpool FC to include LFC Retail, distribution under Licence and sourcing direct from our Investor Partner in HK/China, PNH International*".

It is apparent from these emails, and Mr Phillips acknowledged in his evidence, that he was planning to canvass with LFC the potential for LFC to purchase retro shirts direct from PNHI.

37. Mr Philips and Lee Attfield of Scoredraw met with Paul Owen, Ian Christie and Christina Kilkenny of LFC on 6 November. I accept Mr Phillips' evidence that he considered the meeting a success, and that the willingness of LFC to buy from Score

Draw meant there was no need for him to raise the prospect of LFC purchasing direct from PNHI. He recorded the outcome of the meeting in an email to Mr Owen that evening, including

"- *Appointed Liverpool FC Partners in Global territories should have preferred access to the LFC Retail Collection direct from HK/China source (eg EZ-shop, MAP, Stream…)*

- *Score Draw have appointed PNH International as our Approved source for ALL products*"

38. Thus, rather than agreeing that LFC should buy direct from PNHI (cutting out Score Draw), the proposal discussed with LFC on 6 November was that approved retailers in Asia should have access to a supply of Score Draw products direct from PNHI as the manufacturer. Following the meeting, LFC confirmed the order placed by Ms Powell and placed further orders with Score Draw on 11 November 2014 and 6 March 2015.

39. Meetings and discussions continued to take place regarding management of Campo Sports and resolution of its liabilities to Score Draw. By email of 29 October 2014 to Mr Wong, Mr Evans and Mr Phillips, Mr Kenyon recorded his understanding of the proposal then on the table, namely that Score Draw and Campo Sports should be consolidated into one business "*with two fascias*". Mr Phillips expressed his "*full support and eager participation*" in the proposals.

40. However, by November 2014 Mr Wong was increasingly impatient. Score Draw had not made the payments due by the end of October under the payment schedule agreed on 28 September. By email of 5 November 2014 Mr Wong complained that PNHI had not been paid, saying "*it make me look stupid in front of my banker*". In response, Mr Phillips sought to dress up the failure to meet the October target as having "*been remunerated with a £GBP 200k 'on account*'" and asked for the second loan of £250,000 from Mr Wong. Mr Wong responded expressing his disappointment with Mr Phillips' email, saying that he was jeopardizing their relationship and insisting that the October payment had to be made within a week. By email of 7 November, Mr Phillips apologised and praised Mr Wong's generosity in providing the first loan, but said that Score Draw would have been able to meet its commitments to PNHI were it not for the Campo Sports liability, for which Score Draw had received no payment whatsoever. This apology and explanation did not sufficiently repair the relationship and PNHI started diverting Score Draw consignments to Campo Sports, leaving Score Draw without the necessary documentation to obtain customs clearance. Mr Phillips wrote to Mr Kenyon by email of 11 November

"*Needless to say that aggregated with a Campo £500k 'default' and late PNH deliveries the position is critical and I am becoming anxious*".

41. Mr Kenyon's solution was to bring in new accountants to Score Draw to provide a more robust and transparent accounting system, to assist with the preparation of management accounts and to install a new purchase order system. However, Mr Phillips' willingness to co-operate with this process still did not satisfy Mr Wong, who continued to accuse Mr Phillips of "*pretending to stay at the Cuckooland*" and "*spinning yarn*". On 5 December Mr Wong emailed Mr Phillips to say that unless he

heard from Mr Phillips regarding the schedule of outstanding payments to PNHI that day, he would be "*forced to take the necessary action*."

42. LFC placed two orders with Score Draw for shirts commemorating the 2005 UEFA Champions League Final which took place in Istanbul ("**the Istanbul shirts**"), one for 2,000 shirts at £14.20 per piece and the other for 3,000 shirts at £13.80 per piece. Ray Evans, for EZ Shopnet, was keen to offer these and other Score Draw products in Asia online and on 11 February 2015 contacted Lee Dwerryhouse and Paul Owen at LFC for advice on "*how we make this happen as we are very keen to get the product range onto the Asia online stores soon as possible*". He thought it would take "*something pretty simple between Scoredraw and yourself*". Mr Owen responded saying that Mr Phillips understood that he could supply LFC's international partners. This was consistent with the discussion which had taken place at the meeting on 6 November 2014.

43. However, when Mr Phillips contacted Raymond Wong, PNHI's Managing Director, about manufacture of the Istanbul shirts, Raymond Wong said that he was under an instruction from Mr Wong to get specific approval to any new orders from Score Draw, given the state of its account with PNHI. On 18 February 2015, Raymond Wong told Mr Phillips that, on Mr Wong's instructions, PNHI was unable to take the order from Score Draw for the Istanbul shirts.

44. On 26 February 2015, Score Draw, PNHI and Campo Sports entered into a debt restructuring agreement. Pursuant to the terms of this deed, the debt from Campo Sports to Score Draw (£693,493.23 as at 31 January 2015) was assigned to PNHI in consideration of a corresponding reduction in the debt owed by Score Draw to PNHI (US $3,514,822.61), and Score Draw agreed to make payment to PNHI of a further £592,557.84. This would leave an outstanding balance due from Score Draw to PNHI of US $1,547,164.47.

45. The payments due under the restructuring agreement were duly made. However, Mr Wong's loan of £250,000 was not repaid at Chinese New Year in February 2015. Moreover, on 6 March PNHI wrote formally to Score Draw saying that it was not willing or able to be left in a situation again whereby Score Draw had regularly failed to pay invoices due to PNHI in accordance with the Credit Agreement. As well as reminding Score Draw of the 120-day terms of the Credit Agreement, the letter sought to introduce new terms on which credit would be provided to Score Draw. Score Draw's response was a solicitors' letter explaining the difficulties caused to it by late delivery from PNHI. In the meantime, Mr Wong complained about further invoices not paid strictly in accordance with the 120-day limit in the Credit Agreement.

46. Mr Phillips flew out to Hong Kong for a meeting with Mr Wong, which took place on 25 March 2015. At that meeting, Mr Wong refused to supply Score Draw with shirts any further. Mr Phillips extended his stay and spent two days negotiating a new source of supply from mainland China. Having done so, he telephoned Peter Kenyon, who congratulated him on finding an alternative supplier. In a telephone conversation the following day, Mr Kenyon remarked that the credit terms of US $2 million for 90 days agreed by the new supplier were less advantageous than those offered by PNHI. Mr Phillips made the point that PNHI was no longer offering any credit at all.

47. As a consequence of PNHI's refusal to supply shirts to Score Draw, Score Draw was unable to fulfil the Istanbul shirts order from LFC. Mr Phillips wrote to Ian Christie on 27 March explaining that Score Draw could not achieve the target delivery date (week commencing 11 May 2015) but that he was returning to China to obtain an alternative supply. Mr Christie told Mr Phillips that LFC would look to an alternative supply of those particular shirts and might well place the order elsewhere.

48. The "elsewhere" was Ray Evans, wearing his EZ Shopnet hat. Mr Evans was not called to give evidence, but it is apparent from an email from him to Lee Dwerryhouse of 31 March 2015 that they had spoken the previous evening and that Mr Dwerryhouse had asked Mr Evans to arrange for the production of the Istanbul shirts. Mr Evans copied Raymond Wong of PNHI and Daphney Kwok, Managing Director of PNH Ltd, into his email and said they would "*take care of managing the production*" of the Istanbul shirts. PNH Ltd shipped 1,000 of the Istanbul shirts to LFC on 30 April 2015 at a price of US $12,800 and a further 1,065 pieces on 9 May 2015 at a price of US $13,632. In the production of the Istanbul shirts, PNH Ltd used Score Draw's designs and security features, including holograms attached to each shirt to demonstrate authenticity: it supplied Score Draw's "master" shirt to the manufacturing company, Gouby Clothing Company Limited in China (where it was seen by Mr Phillips in June 2015) and it also used Score Draw's holograms on shirts sold by EZ Shopnet (as evidenced by Mr Phillips' purchase of a shirt bearing such a hologram in July 2016).

49. Manufacture of the Istanbul shirts provided the PNH group with an opportunity to become a direct supplier to LFC which Mr Evans, on its behalf, grasped with both hands. An email exchange between Mr Evans and Ian Christie on 1 May 2015 shows that they were by that stage discussing the prospect of the PNH group becoming the main or sole supplier of retro shirts to LFC. Mr Christie emailed Mr Evans a volume forecast for yearly sales of retro shirts, to indicate the likely volume of business LFC could place with PNH. Mr Evans replied that

"*PNH are very keen to work on this project. As I am sure you are aware PNH has historically manufactured large volumes of retro shirts for various clubs under the Scoredraw brand*."

He suggested the possibility of manufacturing to a programme and holding shirts in a UK warehouse, from which LFC could call off products on a regular basis. On 8 May Mr Christie told Mr Evans

"*There is no immediate requirement for Retro product as we have buys placed out of Turkey and with Scoredraw for the new season that are due to land down July/August however I think the conversation at this early stage would be how we could step on the quality of the product while retaining the identity and credibility of the originals…My view would be that we would launch a new range of product with authority as this would carry greater impact with the fan/customer rather than drip feeding in replacement styles as we go".*

Clearly what was being planned was the comprehensive replacement of Score Draw's (and a Turkish supplier's) products with a range of products to be produced by PNH. In an email to Mr Dwerryhouse of 8 May, Mr Evans floated the idea of PNH

delivering to a ring-fenced area of LFC's distribution centre from which LFC could call off stock. He said that

"*From a PNH point of view it means PNH become a serious supplier to LFC for the Retro Category and also for names and numbers* [i.e.non-retro products, replicas of current shirts] *and all of this helps support and further grow the relationship we have built through our e-commerce partnership in Asia*."

He said that if Mr Dwerryhouse was positive about the concept he would discuss it with Mr Wong in Hong Kong the following week.

50. I am satisfied that Mr Evans would not have been building this relationship with LFC without Mr Wong's knowledge and approval. It would be a major coup for the PNH group to secure a customer of the importance of LFC for a project of the scale being discussed and that would not have taken place without Mr Wong being informed and agreeing to it.

51. Moreover, Mr Evans and LFC had no compunction about using Score Draw's designs in taking their discussions forward: on 10 June, Mr Evans asked Mr Christie (copied to Mr Dwerryhouse) how he was getting on with supplying the computer-aided designs that supported the retro programme document previously shared. He said

"*I understand some of these will be Scoredraw and some will be your Turkey supplier – don't worry they will not go anywhere*".

52. Through the summer of 2015 Mr Evans and others at PNH worked up various designs of retro shirts for LFC's approval and by 6 January 2016 Mr Evans could tell Christina Kilkenny of LFC that they were "*at a stage now where we have actual samples and approved styles to manufacture through our PNH manufacturing business*". He said he was "*really keen that we also manufacture this range for our LFC online stores that we operate in Asia*."

53. LFC began to place orders for retro shirts and other sportswear with PNH Ltd from the end of March 2016 and since that date PNH Ltd has made substantial revenues from the supply of retro shirts to LFC. These are both for the international and UK markets and in the UK both for sale through LFC's retail channels and to retailers.

54. In his evidence, Mr Wong sought to distance Mr Evans' activities from PNH Ltd and PNHI. He said that although he was grateful to Mr Evans for his efforts, he had no right to represent PNH, being only engaged to work for EZ Shopnet. In my judgment, that was disingenuous. It is true that EZ Shopnet would not itself manufacture the shirts for LFC: Mr Evans' role was as the bridge between LFC and PNH Ltd as manufacturer. But EZ Shopnet was the retailing arm, and PNH the manufacturing arm, of Mr Wong's core business; EZ Shopnet is part of the PNH group; on Mr Evans' email footer "*EZ International Ltd*" is followed by "*PNH Group Hong Kong*" and his email address was *"@pnh.com.hk*", just as was Mr Wong's, Raymond Wong's (of PNHI) and Daphney Kwok's (of PNH Ltd). I find that in his dealings with LFC, Mr Evans was representing the interests of the PNH group with the full knowledge of Mr Wong.

55. For his part, Mr Aylwin for Score Draw urged me to see this as a planned operation from the outset to take Score Draw's business: that Mr Wong deliberately prevented Campo Sports paying its bills to Score Draw in order to drive Score Draw into debt; then used this as a pretext to cut off its supply, enabling the PNH group to take Score Draw's customer. In my judgment this is to see a grand conspiracy which did not exist. In paragraph 50 of his first witness statement, Mr Wong said that he did not stop Campo Sports paying Score Draw. In oral evidence he appeared to say that he had instructed Campo Sports to stop paying Score Draw, and then said that he had not done so. I consider that to be an example of something "lost in translation" and find that Mr Wong did not instruct Campo Sports to stop paying Score Draw: it simply did not have the money to do so. Mr Wong fell out with Mr Phillips because PNHI was not paid; Mr Wong did not perceive Score Draw's failure to pay PNHI as being attributable to Campo Sports' failure to pay Score Draw and in any event did not perceive any failures on the part of Campo Sports to be his problem. After he had stopped the supply of products to Score Draw, he had no qualms about Mr Evans taking advantage of the opportunity which presented itself for PNH companies to supply LFC direct, but this was opportunistic rather than pre-planned.

56. Whilst Mr Evans was busy preparing the new LFC product ranges, Mr Wong was waging a hostile campaign against Mr Phillips. On 10 July 2015, Mr Wong informed Mr Kenyon that he had decided not to carry on as a co-shareholder alongside Mr Phillips at Score Draw and that he proposed to recall his loan of £250,000. In November 2015 Hill Dickinson were instructed to write, first, on behalf of PNHE to Mr Phillips, alleging various failures of management of Score Draw and second, on behalf of PNHI to Score Draw in respect of unpaid invoices.

57. Mr Kenyon resigned as director of Score Draw and PNHE appointed John Sharp in his place. On 16 March 2016, Mr Wong and Mr Kenyon sold their shares in PNHE to Mr Sharp for £2; on the same day, Mr Sharp was also appointed a director of Campo Sports in place of Mr Wong and Mr Kenyon. Mr Sharp thereafter pursued the allegations of mismanagement against Mr Phillips, including by causing PNHE to make an application for pre-action disclosure against Mr Phillips. This was calculated to wrest control of Score Draw from Mr Phillips. Whilst Mr Wong may not have specifically directed, or even known of, the detail of the activities of Mr Sharp against Mr Phillips, in my judgment the role of Mr Sharp in Score Draw was undoubtedly to represent Mr Wong's interests. As Mr Wong explained in an affidavit dated 12 November 2020, he was personally owed US $2 million by PNHE as a consequence of funding the debt-for-equity swap which resulted in PNHE becoming a shareholder of Score Draw. I find that Mr Sharp was sold the shares in PNHE for a nominal amount and put in as the B Director of Score Draw, with a view to PNHE being paid dividends by Score Draw which would enable it to repay Mr Wong. In November 2019, after the campaign to take control of Score Draw had failed, Mr Wong acquired the shares in PNHE back from Mr Sharp and subsequently Mr Sharp was replaced as B Director of Score Draw by Guy Walker, who worked for PNH Transfer Print Ltd.

58. The Licence was due to expire on 31 May 2016. Almost a year earlier, in June 2015, Mr Phillips had raised the issue of its renewal with LFC but had been told by Mr Christie that he was "*reviewing our future Retro strategy from top to bottom*" and so was not in a position to discuss the subject. That review was of course with Mr Evans, though Mr Phillips was not to know that. On 21 December 2015, Mr Phillips pitched

to LFC formally for renewal of the Licence. He proposed that Score Draw be given sole licensee status across the UK, Republic of Ireland, EU and Worldwide territories, and offered minimum guaranteed royalty payments rising from £82,000 in Year 1 to £100,000 in Year 4, based on a royalty rate of 12.5%.

59. However, at a meeting on 2 June 2016 with Howard Clare, a senior member of LFC's marketing department, Mr Phillips was told that the Licence would not be renewed. He was told that a decision had been taken to bring LFC's retro shirts "in house" and that the club would be sourcing its retro goods independently. The following day Mr Phillips emailed Mr Clare acknowledging LFC's decision and asking for an extension of the run-off period from 90 days to 180 days. LFC's response is not in evidence but Score Draw continued to supply and deliver retro shirts to LFC until mid-September 2016, slightly longer than the 3-month run-off period referred to in the Licence.

60. Although Mr Phillips' email of 3 June held out the prospect of future business between Score Draw and LFC, in practice LFC placed no more business with Score Draw after mid-September 2016. In mid-2017 or 2018 (Mr Phillips did not recall exactly when), LFC approached Score Draw to distribute PHN-manufactured products on their behalf, which it declined, on the grounds that the terms offered were not sufficiently protective of Score Draw's relationships with its retailer customers.

**Interpretation of cl. 6 of the Shareholders' Agreement**

61. PNHI accepts that the Istanbul shirts were a "Restricted Product" and LFC was a "Restricted Person" in April and May 2015 when the Istanbul shirts were supplied. However, it denies that clause 6 of the Shareholders' Agreement applied to any sales to LFC after the expiry of the Licence on 31 May 2016. On its behalf, Mr Selwyn Sharpe argued that LFC ceased to be a "Restricted Person" for the purposes of this clause on 31 May 2016, when the Licence Period ended, and that LFC-branded retro shirts ceased to be a "Restricted Product" on that date. Score Draw, on the other hand, contends that LFC continued to be a "Restricted Person" for some years following expiry of the Licence, and that it was not necessary for Score Draw to hold a licence from a football club for retro football shirts to be "Restricted Products". This argument is partly based on the contention that the Licence did not govern direct sales by Score Draw to LFC, only Score Draw's sales to third party retailers. It is therefore necessary to consider the scope of the Licence as well as the proper interpretation of clause 6, and I shall turn to that first.

62. It is, in my view, clear from clause 11d and the provision for an LFC Retail Royalty (albeit of 0%) that the Licence was intended to, and did, govern direct sales to LFC as much as sales to third party retailers. Of course it was open to LFC to agree different terms with Score Draw in respect of any particular transaction, but in the absence of any such agreement, the terms of the Licence would prevail. Moreover, LFC and Score Draw both treated the expiry of the Licence (subject to the run-off period) as bringing to an end direct sales to LFC as well as Score Draw's right to sell LFC-branded shirts to retailers.

63. Against that background, I turn to clause 6 of the Shareholders' Agreement.

64. I agree with Score Draw that the important word in the definition of "Restricted Person" is "including". A Restricted Person is a person who is a customer of the

company at the relevant time. Such customers include, but are not limited to, football clubs and associations from whom Score Draw has a valid licence to supply Restricted Products. On the other hand, the natural meaning of the word "customer" connotes a person with whom Score Draw has some ongoing business relationship. A club or retailer would not be a "customer" of Score Draw simply because Score Draw hoped, at some unspecified point in the future, to attract their business. The purpose of clause 6 is to prevent the Covenantors poaching Score Draw's business, but if Score Draw has no business relationship with a particular club or retailer there is nothing for the Covenantors to poach.

65. I also agree with Score Draw that a product could be a Restricted Product even though Score Draw no longer had a licence from the relevant football club: the definition of "Restricted Product" identifies the kinds of goods which Score Draw sells, and a retro football kit would be "*of the type supplied by the Company under license from various football clubs and associations from time to time*" even if there were no longer a formal licence arrangement between Score Draw and the relevant club. Indeed, Score Draw has relationships with a number of football clubs which do not involve it having a formal licence like it had with LFC (although it would need permission in some form if it needed to use the club's intellectual property). Retro shirts in those clubs' colours would be "of the type" supplied by Score Draw under licence to other clubs.

66. In my judgment, on the facts of this case, LFC was a Restricted Person to whom Score Draw was supplying Restricted Products until it ceased to supply LFC in mid-September 2016. During the period between formal expiry of the Licence and that date, including during the 3-month run-off period, LFC continued to place orders with Score Draw and remained in a business relationship with it, so that it could properly be described as a customer in the sense I have described above. After September 2016, LFC could not, in my judgment, be described as a customer of Score Draw. There was no ongoing relationship and the mere hope on the part of Mr Phillips that in the future this position might change is not sufficient to make LFC a Restricted Person after that date.

**Restraint of Trade**

67. PNHI's pleaded case is that clause 6.1.1 of the Shareholders' Agreement was an unreasonable restraint of its trade and accordingly unenforceable. In argument, its case was more nuanced. For PNHI, Mr Selwyn Sharpe accepted that clause 6.1.1. was reasonable and not in restraint of trade, provided "Restricted Person" and "Restricted Product" were construed as he contended they should be. As I have determined otherwise, I need to consider the restraint of trade arguments.

68. All covenants in restraint of trade are *prima facie* unenforceable at common law and are enforceable only if they are reasonable with reference to the interests of the parties concerned and of the public: Chitty on Contracts, 33rd edn, 16-106. I was referred by Mr Selwyn Sharpe to a summary of the principles by Burton J at first instance in *Cavendish Square Holdings BV v Makdessi* [2012] EWHC 3582, the accuracy of which Mr Aylwin did not contest:

> "*i) [The Claimant] must show that the restraints in Clause 11.2 of the Agreement go no further than was reasonable for the protection of its interest: Mason v*

*Provident Clothing and Supply Co Ltd [1913] AC 724 at 733 (per Lord Haldane L.C.) and 737 – 738 (per Lord Shaw).*

ii) *The question of reasonableness is to be assessed as at the date of the Agreement, including a reasonable assessment of the future: Bridge v Deacons (supra) at 718: see also Putsman v Taylor [1927] 1 HB 637 at 643 and Gledhow Autoparts Ltd v Delaney [1965] 1 WLR 13 66 per Lord Diplock at 1377. "Deferred restraint" is permissible as a "means of protecting the plaintiff's interest in the client connection which they had acquired... to compel a severance of the personal connection with the defendant when that should become necessary but not before" (per Millett J in Allied Dunbar (Frank Weisinger) Ltd v Weisinger [1988] IRLR 60 at paragraph 21).*

iii) *For a restraint to be reasonable in the interests of the parties, it must afford no more than adequate protection to the party in whose favour it is imposed: Herbert Morris Ltd v Saxelby [1916] AC 688.*

iv) *A restraint may be enforced when the covenantee has a legitimate interest, of whatever kind, to protect, and when the covenant is no wider than is necessary to protect that interest: Dawnay, Day (supra) (including a stable workforce and customers): and as to goodwill, being "the reputation and connection… which may have been built up by years of honest work or gained by lavish expenditure of money" see Trego v Hunt [1896] AC 7 at 24 per Lord Macnaghten.*

v) *The two questions for the Court are therefore: (i) What are the interests which it is legitimate for the Claimant to protect? and (ii) Is the protection taken through Clause 11.2 no more than is reasonably necessary to protect those interests (Allied Dunbar supra)?*

vi) *The law distinguishes between covenants in employment contracts and covenants in business sale agreements. There is more freedom of contract between buyer and seller than between master and servant, because it is in the public interest that the seller should be able to achieve a high price for what he has to sell: Nordenfelt v The Maxim Nordenfelt Guns and Ammunition Co Ltd [1894] AC 535, Mason v Provident Clothing (supra) and Attwood v Lamont [1920] 3 KB 571: see also Ronbar Enterprises Ltd v Green [1954] 1WLR at 820 and at 821 per Jenkins LJ: "*It is obvious that in many types of business the goodwill would be well-nigh unsaleable if it was unlawful for the vendor to enter into an adequate covenant against competition.*" The quantum of consideration may enter into the question of the reasonableness of the covenant: Alec Lobb Ltd v Total Oil (Great Britain) Ltd [1985] 1WLR 173 (CA) at 179, 191 (citing Nordenfelt (supra) at 565).*

vii) *Even in the business sale context, however, if a covenant goes further than is reasonably necessary to protect a legitimate business interest, it is void and will not be enforced: Nordenfelt (supra).*

viii) *The Court should be slow to strike down clauses freely negotiated between parties of equal bargaining power, recognising that parties are often the best judges of what is reasonable as between themselves: North Western Salt Co Ltd v Electrolytic Alkali*

> *Co Ltd [1914] AC 461 at 471, Esso Petroleum Ltd v Harpers Garage Ltd [1968] AC 269 at 300, Allied Dunbar (supra) at paragraph 32, Dawnay, Day (supra) esp. at 1107 (CA), Emersub XXXVI Inc v Wheatley per Wright J (QB) at p13. However the court's deference to the parties is not absolute. The mere fact that parties of equal bargaining power have reached agreement does not preclude the court from holding the agreement bad where the restraints are clearly unreasonable in the interests of the parties: Kores Manufacturing Co. Ltd v Kolok Manufacturing Co. Ltd [1959] 1 Ch 108 (where the restraint was held to be* "grossly in excess of what was adequate" (at 124))."

69. Score Draw accepts that the terms agreed in the Shareholders' Agreement were a restraint of PNHI's freedom to trade, but contends that they were no greater restraint than was reasonable as between the parties and in the public interest. In accordance with the above principles, the burden lies on it to show that clause 6.1.1 goes no further than is necessary to protect its legitimate interests. In my judgment, it has discharged that burden.

70. The Shareholders' Agreement was made in the context of the acquisition of shares in Score Draw by PNHE for a price of US $2 million. At the time it was entered into, Score Draw had an established business in the supply of retro shirts and important relationships with football clubs and associations whose intellectual property was used in their production. It had substantial goodwill, both with retailers and with those clubs and associations, to protect. PNHI, on the other hand, had an established business manufacturing retro shirts and, as supplier to Score Draw, knowledge of Score Draw's products and access to its design and security details, which created an obvious risk that it would seek to take Score Draw's business by going direct to its customers and encouraging them to "cut out the middle man". The protection of Score Draw from this risk was a legitimate interest of Score Draw and its shareholders, Mr Phillips and PNHE (who were themselves also bound by the restrictions in clause 6).

71. In my view, clause 6.1.1. goes no further than reasonably necessary to protect Score Draw against that risk. It only protects Score Draw against competition for its "customers", which, as I have found, is limited to those with whom it has a business relationship and does not extend to others to whom it might pitch for business but has no existing relationship. It only protects Score Draw in respect of retro shirts, which are its core business, and not other products.

72. I also take into account that clause 6.1 was freely entered into between parties of equal negotiating strength – indeed, if the playing field was not level, it was tipped in Mr Wong and his companies' favour, given Score Draw's reliance on PNHI to manufacture its products and the substantial debt to it for which the shares were issued to PNHE. Mr Wong, PNHE and PNHI were sophisticated business people and all parties had the benefit of advice from solicitors.

73. In the circumstances, clause 6.1.1 of the Shareholders' Agreement is not unenforceable as an unreasonable restraint of trade.

## Waiver/Estoppel

74. PNHI next contends that clause 6.1.1 was waived by Score Draw or that Score Draw is estopped from relying on it. This allegation was introduced by amendment into the

Defence in May of 2020 and rests on the email dated 24 October 2014 which signalled a willingness on the part of Mr Phillips to countenance the direct supply of retro shirts by PNHI to LFC. Mr Wong's evidence was that he took the email to mean that Score Draw was expressly waiving clause 6.1.1 of the Shareholders' Agreement and that when LFC approached his companies to supply the Istanbul shirts, they considered that they were free to do so.

75. In my judgment, on the evidence, PNHI cannot establish any waiver or estoppel.

76. First, I do not consider that the email of 24 October was, or could reasonably be taken to be, an indication from Mr Phillips that PNHI or other companies in the PNH group were free from that moment on to solicit or accept custom from LFC. What Mr Phillips was confirming in that email – and indeed in the following email of 31 October - was what he was proposing to say at the forthcoming meeting with LFC on 6 November. Any reasonable recipient of the email would have understood, as I find Mr Wong understood, that whether or not PNHI would be allowed to supply LFC directly would depend on the outcome of that meeting. The email was therefore neither a waiver nor a representation which is capable of founding an estoppel.

77. Second, I do not consider Mr Wong's claim to have relied on the email of 24 October when dealing with LFC to be true. If he had thought there might be the opportunity to deal directly with LFC following the meeting on 6 November, he would have enquired of Mr Phillips how the meeting had gone and any dealings between LFC and PNHI would have been conducted openly, to the knowledge of Score Draw. In fact, Mr Wong made no attempt to enquire how the meeting on 6 November had gone although he would have known, from the placing of orders for LFC shirts with PNHI, including the Istanbul shirts, that Mr Phillips' negotiations with LFC on price had been successful. Moreover, the contact between PNHI and LFC was kept secret from Score Draw. There is a marked difference between the approach of Mr Evans to LFC on 11 February 2015, which sought to find a legal mechanism by which the Istanbul shirts could be sold through EZ Shopnet, and his discussions with LFC after 30 March 2015, which were clearly intended to be kept from Mr Phillips and Score Draw, as Mr Wong will have known. The reality is that Mr Wong did not think he and his companies had to abide by clause 6.1.1 if Score Draw did not pay PNHI on time and his encouragement of the relationship which Mr Evans brokered between LFC and the PNH companies had nothing at all to do with the discussions or emails of October 2014.

**Discharge by Score Draw's Breach**

78. PNHI makes various allegations of breaches of the Shareholders' Agreement by Score Draw. These are similar in nature to the allegations of mismanagement made by PNHE against Mr Phillips in the run-up to the application for pre-action disclosure. PNHI claims that these breaches were repudiatory and purported to accept them and terminate the Shareholders' Agreement by service of its Amended Defence on or about 11 May 2020.

79. The reason for raising these allegations is that PNHI relies on *General Billposting v Atkinson* [1909] AC 118 for the proposition that if a party in whose favour a covenant in restraint of trade exists wrongly repudiates the agreement in which the covenant is contained, the covenantor is discharged from his obligation. I deal with this defence at

this stage in my judgment, on the basis that if it is established it will potentially confine the duration of PNHI's liability under the Shareholder Agreement, although only to May 2020, when the Amended Defence was served.

80. PNHI pleaded that Score Draw was in breach of the Shareholders' Agreement in five ways:

i) in regularly failing to make payments for goods supplied by PNHI;

ii) in failing to provide management accounts quarterly;

iii) in failing to provide a Business Plan or conduct the business of Score Draw in accordance with the Business Plan;

iv) in obtaining a less advantageous credit facility; and

v) in paying a staff bonus of £30,000 to Lee Attfield, a member of staff.

81. The difficulty for PNHI is that these allegations of breach were pleaded without any proper focus on the question of who the relevant obligation in the Shareholders' Agreement was owed by, and to whom it was owed. Unsurprisingly, most of the agreement is concerned with Score Draw's obligations towards its shareholders or with the shareholders' agreements with each other, but PNHI is not a shareholder in Score Draw. It is a party – and falls within the definition of "Party" – but its joinder as a party was primarily to secure its covenant not to compete in cl. 6. Thus in my view its pleaded reliance on clauses 5.2.1 and 5.2.2, 5.3 and 9 was misplaced, as the obligations imposed by these provisions were not owed by Score Draw to PNHI. Equally, clause 5.1.4 (which brings in Schedule 4) governs the relationship between the shareholders and the directors and does not give rise to any obligation owed by Score Draw to PNHI.

82. Mr Selwyn Sharpe recognised this issue and in his closing submissions concentrated on clause 5.1.1, by which "*the Parties*" acknowledge and agree that day to day management will be the sole responsibility of Mr Phillips "*who shall run the business in accordance with the Business Plan*". On behalf of PNHI, Mr Selwyn Sharpe argued both that there was no adequate Business Plan and also that the failures to pay PNHI were not in accordance with the Business Plan produced.

83. I cannot see that clause 5.1.1 assists PNHI. In so far as the clause contains any obligation on anyone at all, it can only be on Mr Phillips, as the A Director named in it and who is to run the business in accordance with the Business Plan. But Mr Phillips is not Score Draw and is not a party to these proceedings.

84. It seems to me that the only pleaded clause of the Shareholders' Agreement which might arguably give rise to a relevant obligation on Score Draw to PNHI is clause 5.2.3, by which Score Draw agreed to conduct the Business on sound commercial principles; on arms' length terms; in accordance with the Business Plan and in the best interests of the Company. Whilst I am doubtful that the obligations in this clause are properly owed to PNHI, they are not expressly stated to be owed only to the Shareholders, and it could be said that PNHI, as a person offering credit to the Company through the Credit Agreement and agreeing to bind itself not to compete

with Score Draw in clause 6, had a legitimate interest in Score Draw being well-run in accordance with these general principles. However, it must be recognised that clause 5.2.3 is concerned with the running of Score Draw's business, in Score Draw's interests and that of its shareholders: it is not concerned with PNHI's interests.

85. PNHI cannot in my judgment establish any breach of clause 5.2.3 committed by Score Draw, let alone a repudiatory breach which would entitle it to terminate the Shareholders' Agreement. Dealing briefly with each claimed breach of contract:

i) Failing to pay PNHI for goods supplied: When cashflow difficulties are encountered, as they were by Score Draw, in part as a consequence of the Campo Sports issue, it may be in the best interests of a company not to pay suppliers on time and none of the evidence I have heard persuades me that the late payment of PNHI was not the application of sound commercial profit-making principles or in the best interests of Score Draw. It put at risk the supplier relationship with PNHI, but when that risk materialised, Score Draw was able to source its shirts from another.

ii) Failing to provide management accounts quarterly: under clause 9 the Company is obliged to provide certain information, including quarterly management accounts, to the Shareholders and directors, but a company can be well-run in accordance with the principles in clause 5.2.3 without provision of such accounts on that timescale. The Shareholders and directors were kept sufficiently informed about the position of the company for the requirements of clause 5.2.3 to be satisfied.

iii) Failing to provide a Business Plan or conduct the business in accordance with the Business Plan: The evidence was that Mr Kenyon had drawn up a rough manuscript note, which Mr Phillips had later converted into a spreadsheet, headed "Score Draw sales plan 2013-2016" and emailed to Mr Kenyon and Mr Wong on 5 July 2013; this had been routinely updated thereafter. Whilst this document probably did not have the formality anticipated by the definition of "Business Plan" in the Shareholders' Agreement, Mr Kenyon and Mr Phillips as the two directors were content that it was sufficient for Score Draw's purposes. In any event, I cannot see that clause 5.2.3 gives PNHI the right to contend that Score Draw should have adopted a different or more comprehensive Business Plan. Mr Selwyn Sharpe contended that Score Draw's failure to pay PNHI was itself a failure to conduct the Business in accordance with the Business Plan, but in my judgment there is no substance in this argument. The plans which were produced did not require suppliers to be paid at any particular time.

iv) Obtaining a less advantageous credit facility: the allegation is that Score Draw's obtaining of a 90-day credit line from its new supplier was without shareholder approval and was not on sound profit-making principles or in accordance with the Business Plan or in the best interests of Score Draw.

a) As to the allegation that the credit line was agreed without shareholder approval, clause 5.2.3 is not concerned with the internal relationships between the directors and shareholders and in my

judgment PNHI cannot establish a breach of this provision in this respect.

b) Furthermore, in circumstances where PNHI had cut off all credit, 90 days was better than no credit at all and Mr Phillips' decision to go to another supplier was clearly in the best interests of Score Draw and the only sensible commercial decision to make.

v) Paying a staff bonus to Mr Attfield: again, the allegation is that this payment was made without approval of the Score Draw board but that is not a matter of which PNHI can complain and not a breach of clause 5.2.3. In my judgment, PNHI has not established that the decision to pay a bonus to a senior staff member was inconsistent with sound commercial principles or otherwise not in the best interests of Score Draw.

86. For the above reasons, I find the allegations of breach against Score Draw fail; the purported termination of the Shareholders' Agreement in May 2020 was unsuccessful and the Shareholders' Agreement continues.

**Breach by PNHI**

87. Having found that clause 6.1.1 is not an unlawful restraint of trade, that Score Draw has not waived it and is not estopped from relying on it and that the Shareholders' Agreement has not been terminated by Score Draw's breach, I turn to consider whether PNHI is in breach of covenant. For the reasons I have set out above, LFC was a "Restricted Person" and retro shirts "Restricted Products" within the meaning of clause 6.1.1 until mid-September 2016.

88. There can be no doubt, in my view, that the actions of Ray Evans and PNH Ltd in accepting and processing the orders from LFC in respect of the Istanbul shirts in April and May 2015 were acts constituting the acceptance of custom or business from a Restricted Person in respect of Restricted Products, within the meaning of clause 6.1.1

89. Equally, there can be no doubt that the actions of Mr Evans thereafter, from May 2015 to mid-September 2016, in seeking to persuade LFC that the PNH group should be its main or sole supplier of retro shirts and of PNH Ltd in accepting LFC's orders, were acts constituting the solicitation and acceptance of custom or business from a Restricted Person in respect of Restricted Products.

90. After September 2016, LFC was no longer a Restricted Person but by then the damage had been done. LFC had refused to renew the Licence and Score Draw had lost LFC's business.

91. The issue is whether these acts of solicitation and acceptance of custom can be characterised as being by PNHI "*either solely or jointly with or through any other person, on its own account or as agent, manager, advisor or consultant for any other person or otherwise howsoever*" within the meaning of clause 6.1.

92. PNHI's Amended Defence admits that PNHI supplied the two consignments of Istanbul shirts; that PNHI received further orders of sportswear, including retro kit, from LFC in November 2016 and that it supplied further orders to LFC during 2017.

The pleading therefore seeks to draw no distinction between PNH Ltd and PNHI and treats the supply of shirts to LFC as having been made by PNHI even though PNH Ltd was formally the company taking the orders. In his initial witness statements, Mr Wong similarly drew no distinction between PNH Ltd and PNHI in this respect, simply referring to "we" when speaking about LFC's orders and in his 4th witness statement, referring to LFC "*approaching PNHI to supply the Istanbul shirts*". In his 5th witness statement, relating to disclosure, there was a shift in position. Although he referred to PNH Ltd as having accepted the Istanbul shirts orders "*on behalf of*" PNHI, he claimed that the position changed in 2016 and that the LFC business was dealt with through PNH Ltd, not PNHI, which ceased to carry on business on 31 December 2016. In oral evidence, Mr Wong was insistent on the distinction between PNHI and PNH Ltd and that PNHI had stopped trading at the end of 2016 and had no assets. There is no independent evidence that PNHI has ceased trading and the assertion that it had no assets plainly cannot have been correct as at 16 December 2019, at which date it continued to hold assets in the form of 50% of PNH Ltd's shares.

93. Mr Selwyn Sharpe acknowledged that he could not seek to resile from PNHI's pleaded admissions, but argued that his client was free to rely on the distinction between PNH Ltd and PNHI after 31 December 2016. I do not see how that is consistent with the pleading, which includes, at paragraph 10(5), the admission that PNHI supplied LFC in April 2017 and during 2017.

94. In any event, having regard to the phraseology of clause 6.1, I consider that it is true to say that the acts constituting solicitation or acceptance of custom were those of PNHI acting jointly with or through PNH Ltd. PNHI was a shareholder of PNH Ltd and Mr Wong controls both companies; they shared the same address. Raymond Wong, Managing Director of PNHI, was described by Mr Evans, in his email to Lee Dwerryhouse of 31 March 2015, as "*taking care of managing the production of the Istanbul shirts*" even though the order was eventually fulfilled by PNH Ltd. In his email of 1 May 2015, Mr Evans described "PNH" as being very keen to work on the project (the orders for which eventually went to PNH Ltd) but also as having "*historically manufactured large volumes of retro shirts for various clubs under the Scoredraw brand*" (Score Draw having been a customer of PNHI). In my judgment it was a matter of chance whether the LFC orders were fulfilled by PNH or PNHI; the attempt to capture LFC's business was a joint endeavour by both entities who were closely connected and both ultimately Mr Wong's companies.

95. I therefore find that PNHI breached the covenant in clause 6.1.1 by soliciting and accepting the custom of LFC in relation to retro shirts, jointly with or through PNH Ltd, from April 2015 to mid-September 2016.

**Causation and Quantum of Loss**

96. Score Draw claims damages under three headings.

i) the loss of the contract for the Istanbul shirts;

ii) loss of net profit over four years from 1 July 2016 to 30 June 2020 (those being the four financial years which would have been covered by a renewed

licence from LFC commencing 1 June 2016) in respect of licensed sales to retailers;

iii) loss of net profit over the same period in respect of direct sales to LFC.

Given the relatively small amount claimed under the first heading, the arguments of Counsel in relation to causation and quantum primarily focussed on the second and third and I shall deal with those first.

97. Mr Selwyn Sharpe relied on the principle that a claimant may only recover damages for a loss where the breach of contract is the "effective" or "dominant" cause of the loss: Chitty on Contracts, 33rd edn, 26-066. His primary case was that LFC's decision not to renew Score Draw's licence was a break in the chain of causation, with the consequence that Score Draw could recover nothing in respect of the second and third heads. His alternative argument was that the analysis is one of loss of a chance, the chance being the opportunity to renew the Licence with LFC. Mr Aylwin, on the other hand, argued that there was no question of a loss of a chance analysis being required. This was because the loss of the Licence and of the ability to supply LFC direct (which, he contended, but I do not accept, was not covered by the Licence) were the natural consequence of PNHI's breaches of covenant.

98. In *Allied Maples Group Ltd v Simmons & Simmons* [1995] 1 WLR 1602, the Court of Appeal analysed some of the different questions which arise when considering whether a defendant's action or inaction have caused the loss which the claimant claims. In some cases, the issue is one of historical fact: in those cases, the court has to determine that issue on the balance of probability. In other cases, causation depends, not on historical fact but on the answer to the hypothetical question: what would the claimant have done if the breach of duty had not occurred? Such questions also fall to be answered on the balance of probabilities. But in a third category of case, the claimant's loss depends on the hypothetical actions of a third party, either in addition to action by the claimant or independently of it. Where that is the position, the claimant does not have to prove, on the balance of probabilities, that the third party would have acted in a particular way but only that there was a real or substantial chance, as opposed to a speculative one, that the third party would so have acted. If they do so, then the quantification of that chance is part of the assessment of the quantum of damage.

99. In *Vasiliou v Hajigeorgiou* [2010] EWCA Civ 1475, the Court of Appeal considered the relationship between the loss of a chance analysis and a claim for loss of profits. In that case the defendant had caused the claimant, a restaurateur, to cease trading. The judge found that, but for the difficulties created by the defendant, the claimant would have succeeded in running a successful restaurant. Patten LJ (with whom Ward and Black LJJ agreed) said:

"*20. The general rule is that the claimant must prove that the defendant's breach caused the loss which he seeks to recover by way of damages. That must be proved on the balance of probabilities. When that is done the loss is recoverable in full subject only to questions of mitigation or remoteness. In some cases, however, where the claimant's ability to have made the profit which it claims depends on the actions of unrelated third parties, there may be room for arguing*

*that the court should approach the issue of causation by taking into account the chances of those events having occurred.*

21. *In the classic loss of a chance case the most that the claimant can ever say is that what he (or she) has lost is the opportunity to achieve success (e.g.) in a competition (Chaplin v Hicks [1911] 2 KB 786) or in litigation (Kitchen v Royal Air Forces Association [1958] 1 WLR 563). The loss is by definition no more than the loss of a chance and, once it is established that the breach has deprived the claimant of that chance, the damage has to be assessed in percentage terms by reference to the chances of success. But there will be other loss of chance cases where the recoverability of the alleged loss depends upon the actions of a third party whose conduct is a critical link in the chain of causation. The decision of this court in Allied Maples Group Ltd v Simmons & Simmons [1995] 1 WLR 1602 has established that causal issues of that kind can be determined on the basis that there was a real and substantial chance that the relevant event would have come about.*

22. *To that extent the Allied Maples approach may assist a claimant by providing an alternative way of putting his case on damage which avoids the possibility of total failure inherent in the judge being asked to decide whether, on the balance of probabilities, the causal event would have occurred. But caution needs to be exercised in identifying the contingency which is said to represent the lost chance. The loss of a chance doctrine is primarily directed to issues of causation and needs to be distinguished from the evaluation of factors which go only to quantum."*

The judge at first instance had found as a fact that the restaurant would have been successful and assessed its lost profits on that basis. The Court of Appeal held that this assessment had nothing do to with a loss of a chance. It was simply the judge making a realistic assessment of a variety of circumstances in order to determine what the level of loss has been.

100. In *Wellesley Partners LLP v Withers LLP* [2015] EWCA Civ 1146, [2016] Ch 529, solicitors were found to have been negligent in drafting an agreement which enabled an investor in the claimant partnership to withdraw half its capital contribution, failing to give effect to the claimant's instructions that the option should only be exercisable after 42 months from the execution of the agreement. The claimant claimed that because of the investor's early withdrawal of capital it was unable to finance expansion by opening an office in New York and claimed loss of profits. The judge found that the claimant had not established that the New York office would have been profitable unless it could secure the business of Nomura Bank and assessed the chances of the claimant having secured that business. Floyd LJ held at [100] that whilst the claimant would need to show on the balance of probabilities that, but for the negligence complained of, they would have opened a US office (a question of causation dependent on what the claimant would have done in the absence of a breach of duty), the actual loss which they claimed to have been caused by the defendant was dependent on the hypothetical actions of a third party, namely the bank. Accordingly, the chances of the bank deciding to award the mandates to the claimant would have to be reflected in the award of damages. The critical distinction between this and the *Vasiliou* case appears to be that in the first case the court had found that the claimant would have set up a successful restaurant business, in which case it was only

necessary to assess the likely profits from that business; in the *Wellesley Partners* case the US business would not have been successful without the mandates from Nomura, so it was right to assess the chance of the claimant obtaining those mandates.

101. In the present case, there is no need to hypothesise how Score Draw would have acted if PNHI had not breached its covenant. It did in fact apply for a renewal of the Licence and vigorously pursued that application. The issue is what LFC would have done in response to that application if PNHI had not already successfully poached its custom from Score Draw. That being a hypothetical question about the actions of a third party, the relevant causation question, in accordance with the principles referred to above, is whether there was a real or substantial, rather than speculative, chance that it would have granted a new licence. LFC's decision is not a break in the chain of causation, as Mr Selwyn Sharpe contends, it is the very opportunity which was lost to Score Draw as a consequence of the breach of covenant on the part of his clients. But nor is it enough to say, as Mr Aylwin does, that the failure to renew the Licence was the natural consequence of PNHI's breach of duty. Even if there had been no breach of covenant, Score Draw's licence may not have been renewed and it is necessary for me to determine whether there was a real chance that it would have been.

102. I bear in mind the warning that caution needs to be exercised in identifying the particular contingency which is said to represent the lost chance. In this context I consider that it is important to recognise that the Licence for 2012-2016 was not exclusive and was confined to the UK and Eire; on the other hand, Score Draw's application in late 2015 was for sole licensee status, with the territories covered "*to include UK, ROI, EU/EEA and Worldwide territories*". The licence applied for was of considerably wider scope and, if granted, would have been much more lucrative to Score Draw as licensee, although the Advances under it could also be expected to have been proportionately higher.

103. Did Score Draw have a real and substantial, as opposed to speculative, chance of obtaining an EU and worldwide exclusive licence from LFC as requested in its application? In my judgment the evidence does not establish that it did. That had not, historically, been the basis of Score Draw's relationship with LFC. Nor was that what was discussed with LFC on 6 November 2014: Mr Phillips had discussed the potential for a supply of Score Draw shirts to be made available to LFC's international approved partners direct; that is quite different from the suggestion that Score Draw should be given exclusive rights to supply any retailer across the World. There was no evidence adduced about the size of the global market in retro shirts which Score Draw might have captured if such a licence had been granted, nor any evidence about the extent of the competition it faced for such a relationship with LFC. Consequently I do not consider that Score Draw gets over the first hurdle in terms of demonstrating that it lost any real opportunity of having a relationship with LFC like that in its licence application. In my view the application was pitched very high by Mr Phillips in the expectation of being negotiated down. Nor do I consider any weight can be placed on the complimentary statements made by Mr Clare to Mr Phillips to the effect that his presentation was the best "*by some distance*". Mr Clare will have known that by going to PNHI it was cutting Score Draw out of the loop and no doubt wanted to let Mr Phillips down gently.

104. On the other hand, in my judgment, if PNHI had not interfered in the relationship between Score Draw and LFC there would have been a real, substantial chance that

Score Draw could have obtained a new licence on a similar basis to the old one, that is to say, a non-exclusive licence for the UK and Republic of Ireland which permitted Score Draw to supply retailers and also governed any direct sales to LFC itself, with an additional element which permitted it to supply LFC approved partners internationally as discussed on 6 November 2014 and as recognised by Paul Owens' email to Ray Evans of 11 February 2015. Before PNHI's involvement Score Draw had a good commercial relationship with LFC and was a supplier of LFC-branded retro shirts to major high street retailers and online. There is nothing in the evidence to suggest that that relationship would not have continued, but for PNHI's breach of covenant. This is the chance which was lost by reason of PNHI's breaches.

105. I now turn to the quantum of loss in respect of heads (ii) and (iii). Score Draw's claim under these heads is for the net profit it contends it could have made in 2016-2020. The net profit is derived from its estimated gross profit on sales to retailers and direct to LFC, less a £20,000 per annum deduction to reflect additional overheads attributable to those sales (management time, client visits and freight costs). Consistently with the principles and findings set out above, I must assess the likely profits Score Draw would have made if it had obtained a renewed non-exclusive licence for UK and the Republic of Ireland, with an additional ability to supply LFC's international partners, then assess the chances of such a licence being obtained.

106. The claimed losses, forecasted by Mr Phillips, are as follows:

Sales to Retailers

| **Year** | **Revenue** | **Royalty (15%)** | **Gross Profit** | **Gross Profit Margin** |
|---|---|---|---|---|
| 1.7.16 – 30.6.17 | £524,800 | £78,720 | £133,309 | 25% |
| 1.7.17 – 30.6.18 | £608,800 | £91,320 | £154,113 | 25% |
| 1.7.18 – 30.6.19 | £692,800 | £116,520 | £174,197 | 25% |
| 1.7.19 – 30.6.20 | £776,800 | £116,520 | £195,721 | 25% |
| Total: | £2,603,200 | £390,480 | £657,340 | 25% |

Direct Sales to LFC

| **Year** | **Revenue** | **Royalty** | **Gross Profit** | **Profit Margin** |
|---|---|---|---|---|
| 1.7.16 – 30.6.17 | £210,400 | NIL | £54,015 | 26% |
| 1.7.17 – 30.6.18 | £263,000 | NIL | £76,517 | 29% |
| 1.7.18 – 30.6.19 | £315,600 | NIL | £81,022 | 26% |
| 1.7.19 – 30.6.20 | £368,200 | NIL | £107,124 | 29% |
| Total: | £1,157,200 | | £318,678 | 28% |

The damages claim under these two heads is therefore £896,018 (£657,340 plus £318,678, less £20,000 a year for four years). These figures assume that royalties would be paid to LFC on sales to retailers at 15%, rather than the 12.5% pitched in the licence application, a tacit acknowledgment of the likelihood that LFC would have negotiated hard on the terms of any new licence, had one been granted.

107. Mr Selwyn Sharpe submitted that I should treat Mr Phillips' forecasts with caution and criticised the absence of forensic accountancy evidence. He compared the profit margins claimed with the much smaller profit margins shown for Score Draw's business as a whole, both in its business or sales plans and in its filed company accounts. I do not, however, consider that anything useful can be gleaned from an analysis of Score Draw's margins across the business, as the profits from the LFC-related business are different, and can and should be derived from the evidence on the LFC-related business itself. Nor do I place any weight on the fact that in 2016 Score Draw overall made a loss, as Mr Selwyn Sharpe argued I should: the loss would simply have been smaller if Score Draw had not had to compete with PNHI and PNH Ltd for business with LFC.

108. Mr Aylwin contended that his client's forecasts were not out of line with the sums received by Score Draw in the period of the Licence nor the extent of the orders placed with PNH Ltd, during the period April 2016-October 2016. I regard the latter as of very little guide to the extent of the business which Score Draw could have carried out under a UK/Republic of Ireland non-exclusive licence, as PNH Ltd were supplying across the international as well as UK markets and at different prices from Score Draw. As regards the profits actually made by Score Draw in the four years covered by the Licence, these were:

Sales to Retailers

| **Year** | **Revenue** | **Royalty (12.5%)** | **Gross Profit** | **Profit Margin** |
|---|---|---|---|---|
| 1.7.12 – 30.6.13 | £258,818 | £32,580.39 | £83,751.11 | 32% |
| 1.7.13 – 30.6.14 | £390,065 | £48,758.13 | £130,766.88 | 34% |
| 1.7.14 – 30.6.15 | £468,841.99 | £58,605.25 | £158,161.74 | 34% |
| 1.7.19 – 30.6.20 | £618,153.89 | £77,269.24 | £171,746.65 | 28% |
| Total: | £1,735,878.88 | £217,213.01 | £544,426.38 | 31% |

Direct Sales to LFC

| **Year** | **Revenue** | **Royalty** | **Gross Profit** | **Profit Margin** |
|---|---|---|---|---|
| 30.5.12 - 16.9.16 | £345,614 | NIL | £113,933 | 33% |

I do not agree with Mr Aylwin that the claimed forecasted losses are in line with these figures. The claimed turnover in respect of direct sales to LFC is more than three times higher than what had actually been achieved during the Licence period, and the claimed turnover in respect of sales to retailers is one and half times higher. Both appear to reflect the contention that LFC would have granted an exclusive EU/worldwide licence, which I have rejected.

109. I consider that Score Draw was likely to have increased its sales, both to retailers and direct to LFC, under a new licence. It would have been building from an established base and the ability to supply LFC's international partners was likely to provide a significant boost. But I consider the forecasts on which the claim is based to be unduly optimistic and to fail to take account of the risks inherent in any business. I find that if Score Draw had succeeded in obtaining a new licence from LFC in 2016, its turnover from sales to retailers was likely to be in the region of £2,500,000 and its gross profit from those sales in the region of £625,000 (25%). As regards direct sales to LFC, I find that turnover would have been £700,000 and gross profit £196,000

(28%). Net profit, after deducting additional overheads of £80,000 (£20,000 per annum) would have been £741,000.

110. I now need to assess the chance that Score Draw would have obtained a licence arrangement like that I have described in paragraph 104 above. I assess that prospect at 80%. It could not be considered certain, as LFC might have been persuaded to take its retro shirt sales in-house by someone other than the PNH group; it might alternatively have entered into exclusive arrangements with another of its suppliers. But the evidence does not suggest either of those options as particularly likely: the decision by LFC to change the way it dealt with retro kit, to source shirts directly from a manufacturer and to sell to retailers itself, was in my judgment substantially driven by the persuasive sales pitch of Mr Evans and PNHI/PNH Ltd. Were it not for that feature, there was a good prospect of things remaining as they had been in the four previous years, with LFC granting a number of non-exclusive licences and sourcing from a number of suppliers.

111. Mr Selwyn Sharpe argued that by turning LFC away as described in paragraph 60 above, Score Draw failed to mitigate its losses. That defence was not pleaded but in any event I find it is without substance. The arrangements proposed put Score Draw's relationships with its retailer customers at risk and it was reasonable for it to refuse to enter into them.

112. I therefore assess the damages under heads (ii) and (iii) above at £592,800, being 80% of £741,000.

113. As regards the Istanbul shirts, there can be no real doubt that if PNHI had not accepted LFC's invitation to supply the shirts, there was a real chance that LFC would have waited for Score Draw to fulfil the order through its alternative supplier, albeit late. Indeed, I consider this chance to have been 100%. No other supplier would have been in as good a position to meet LFC's requirements, given that Score Draw already had the designs and would have been able to manufacture the shirts on time, were it not for PNHI's refusal to do so. The damages claimed under this head are £17,450 (profit, net of air freight) and I award 100% of that amount.

114. I will therefore order that PNHI pay damages of £610,250, being £592,800 and £17,450. I will hear from Counsel as regards interest on that sum.

**Claim to Injunctive Relief**

115. I am asked to make an injunction restraining PNHI from further breaches of clause 6.1. I consider that it is right to grant such an injunction. Not only has PNHI, through Ray Evans and PNH Ltd, shown a cavalier disregard for its obligations under the Shareholders' Agreement and for Score Draw's rights in its designs and security features, there is evidence to suggest that there have been other attempts by those associated with Mr Wong to take business from Score Draw. In September 2015 Richard Marshall, an employee of Campo Sports and later an employee of Mr Sharp, approached Kitbag Sports Limited and attempted to find out details of Score Draw's licences with Everton FC and Manchester City FC. Moreover, at a meeting with Arsenal FC on 2 March 2017, Mr Phillips was told that Mr Evans had recently solicited business from Arsenal, a customer of Score Draw. Whilst these instances are

now relatively historic they are indicative of a pattern of behaviour which is at risk of being repeated unless an injunction is granted.

116. I will grant an injunction to restrain further breaches of clause 6.1 and hear from Counsel on the precise terms of that order.

## Conclusion

117. I find PNHI has breached its covenant in clause 6.1.1 of the Shareholders' Agreement and that those breaches have caused loss to Score Draw. I order that PNHI pay Score Draw damages of £610,250 and I will grant an injunction to restrain further breaches of clause 6.1. I invite Counsel to agree a form of order but in the event that they cannot agree, I will hear from them on the form of order, including the question of interest on damages and the precise terms of the injunction.