Neutral Citation Number: [2026] EWHC 2245 (Ch)

Case No: CR-2025-004806

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

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

Date: 01/09/2026

Before :

MR PHILIP RAINEY KC
sitting as a Deputy Judge of the Chancery Division

- -

Between :

APL HOLDCO LIMITED	**Petitioner**
- and -	
APPLE PROPERTIES LIMITED (incorporated in the Isle of Man)	**Respondent**
- and –	
LAKE LIMITED (incorporated in the Isle of Man)	**Opposing Contributory**

- -

Mr Karl Anderson (instructed by **Charles Russell Speechlys** for the Petitioner
Mr Mark Hubbard (instructed by **Ronald Fletcher Baker**) for Lake Limited

Hearing dates: 3 and 4 June 2026

- -

JUDGMENT

MR PHILIP RAINEY KC:

Introduction

1. Apple Properties Limited ("the **Company**" or "**Apple**" or "**APL**") was incorporated in the Isle of Man (company number 07842C) on 4 August 1995. It acquired over the years a portfolio of some 11 properties in London which are rented out ("the **Properties**"). By a contributory's petition presented to this court on 14 July 2025 (the "**Petition**"), APL Holdco Limited **("Holdco")** seeks an order for the winding up of the Company by this court as an unregistered company on just and equitable grounds under s.221(5)(c) of the Insolvency Act 1986.

2. It is regrettably somewhat emblematic of this matter that the evidence as to the basis on which Holdco holds one of the two issued shares in the Company was unsatisfactory; for the purposes of introduction it suffices to say that in non-technical terms Holdco is controlled by a Mr Habib Bush ("**Habib"**). The other share in the Company is held by an Isle of Man company, Lake Limited ("**Lake"**), as nominee for Mr Shafe Buksh ("**Shafe"**). Despite the difference in the spelling of their surname, they are brothers. Various other members of their families play roles in this saga, most notably in the context of the present Petition, one of Habib's sons, Omar Bush ("**Omar"**). With the agreement of the parties and without discourtesy I shall refer to Habib, Omar, Shafe and other family members by their first names in this judgment.

3. This is the third set of proceedings concerning the Company or its assets. It was previously Habib's position that Shafe had no interest in the Company, whether through Lake or at all. That was a central issue in a claim brought on 10 December 2020 by Shafe against Habib, Omar, Harbour Ltd (previous holder of the share now held by Holdco), Lake Ltd and the Company. This claim was brought in the High Court of the Isle of Man, Civil Division, claim number ORD 21/0010 ("the **IOM Claim**"). Shafe, Habib, Omar, and a number of other members of their families gave evidence at a 5 day trial in February 2024. In a judgment handed down on 29 May 2024 ("the **IOM Judgment")**, His Honour Acting Deemster Gough gave judgment in favour of Shafe and declared that the share in the Company owned by Lake was held on trust for Shafe. The judgment of the Deemster is unstinting in its criticism of Habib and Omar and other

members of Habib's side of the family. In short, Deemster Gough concluded (paragraph [277]) that the defence of Habib and Omar, and their denial that Shafe (through Lake) had any beneficial interest in the Company was:

> "…totally manufactured by Habib and supported by his two sons Adam and Omar with untrue evidence…"

and the Deemster stated that he would be referring the IOM Judgment to HM Attorney General.

4. I shall return to the IOM Judgment in more detail later but in broad terms the result of the IOM Judgment and the order made by Deemster Gough on the same date ("**the IOM Order**") was a that there are two duly appointed directors of the Company, namely Shafe and Omar, and two shareholders holding one share each: Lake Ltd holding on trust for Shafe and Harbour Ltd (who's share has since been transferred to Holdco) holding on trust for Habib. Injunctive relief was also granted in the IOM Order against Habib and Omar. A subsequent order dated 3 July 2024 ("**the IOM Costs Order**") included an order that Habib and Omar pay £250,000 on account of Shafe's costs on the indemnity basis, a judgment which remains entirely unsatisfied.

5. It is against that background that Holdco brings this Petition in the jurisdiction of England & Wales and seeks to rely on the just and equitable ground for winding up. It relies upon a breakdown of a relationship of mutual trust and confidence between Habib and Shafe and also functional deadlock.

6. At the trial, Mr Karl Anderson appeared for Holdco and Mr Mark Hubbard for Lake. In substance, Mr Anderson was representing Habib and Mr Hubbard was representing Shafe, and at points in this judgment I may refer to them as doing so; in expressing passages in this judgment in this way I do not lose sight of who the actual parties are. I am grateful to them both for their written and oral submissions.

Grounds for the Petition, grounds of opposition and procedural history

7. Holdco contends that it is just and equitable for the Company to be wound up by the High Court in this jurisdiction for the following reasons set out in the Petition:

"7. Since the handing down of the IOM Judgment (at the latest) Shafe has refused to discuss the affairs of the Company with Omar and/or Habib who have reached out repeatedly with a view to discussing the future conduct of the affairs of the Company and its voluntary liquidation in circumstances where no decisions can be taken in the absence of a voting majority;

7.1 No board or shareholder meetings have been held since (at least) 29 May 2024;

7.2 The Company's only bank account was frozen in August 2024 and remains frozen, with the result that the Company is unable to access or spend any funds and cannot conduct the business of collecting rental proceeds from the Properties;

8. By reason of the matters above it is impossible for the Company to conduct business or take any decisions at all because the relationship between Lake and Shafe on the one hand and [Holdco], Habib and Omar on the other has irretrievably broken down as a result of which there is a functional deadlock in the management of the Company;

9. The Company currently holds a substantial property portfolio of 11 properties each located in London, whose combined value is over £4 million. The liquidation of the Company would therefore result in a substantial surplus being distributed to [Holdco] and to Lake, and as such [Holdco] has a tangible interest in the winding-up of the Company"

8. The Petition addresses the issue of winding up an Isle of Man company separately, contending that in the circumstances (including the domicile of Shafe and Omar and the exclusively English portfolio of Properties):

"10.1. There is a sufficiently close connection between the Company and England and Wales;

10.2. There is (at a minimum) a reasonable possibility of benefit accruing to the Company's creditors from the making of a winding up order; and

10.3. The Court is able to exercise jurisdiction over (at least) one person interested in the distribution of the Company's assets (including [Holdco] and the Company's ultimate beneficial owners, Habib and Shafe, who are both domiciled in England)."

9. As I have said, the Petition was presented on 14 July 2025. It was supported by a short formal witness statement of Mr Rory Partridge, an associate at Charles Russell Speechlys, who act for Holdco. The Petition was endorsed with a first hearing date of 18 August 2025.

10. Lake served notice on 13 August 2025 that it intended to oppose the Petition. Lake's case, as set out in a letter in response to service of the Petition from Ronald Fletcher Baker, Solicitors for Lake and Shafe, also dated 13 August 2025 and in Shafe's witness statement dated 8 April 2026, can be summarised under a number of headings:

(1) Deadlock or breakdown in trust and confidence was the fault of Habib, to be attributed to Holdco;

(2) Shafe had been put in a position where he could not discharge his duties as director by the actions of Habib and Omar in withholding information and their breach of injunctions granted in the IOM Order;

(3) Relief should be denied for lack of clean hands;

(4) The Petition was brought for improper collateral purposes:

(a) To put further financial pressure on Shafe while Habib and Omar starve him of funds by not discharging the IOM Costs Order

(b) Liquidation to realise Company assets to be used to discharge costs orders made against Habib and Omar personally instead of discharging them through other means;

(c) Liquidation to put assets beyond reach and/or stifle attempts to recover assets (rental income and moneys dissipated from the Company's bank account) extinguish or materially prejudice claims which Shafe intends, such as derivative actions or an unfair prejudice petition in the Isle of Man.

11. To that list may be added a contention that Holdco had unreasonably failed to pursue alternative remedies.

12. At the first hearing date Chief ICC Judge Briggs gave a simple and swift set of directions permitting service out of the jurisdiction, for witness statements on behalf of Lake in response by 22 September 2025 and witness statements in reply by 13 October 2025, and for skeleton arguments etc. with a trial date on the first open date after 13 October 2025, time estimate 2 days with half a day's pre-reading. Witnesses were required to attend for cross examination.

13. In the event, a listing order made on 26 August 2025 listed the trial for 2-3 June 2026 (later moved by a day to 3-4 June 2026). There was then a series of orders staying the Petition for settlement and extending time for witness statements, ultimately to 9 April

2026 for evidence in response and 30 April 2026 for evidence in reply. Neither party however sought any substantive variation to the directions, with consequences which have made my task of adjudicating upon the Petition more difficult than it might otherwise have been:

(1) There are no points of claim or defence, so that Holdco's case remains the matters set out in the Petition itself as set out above; Lake's case must be extracted from other material such as a letter in response to service of the Petition from Ronald Fletcher Baker, Solicitors for Lake and Shafe, dated 13 August 2025, Shafe's witness statements and Mr Hubbard's skeleton argument; and Holdco's case in response extracted from Habib's witness statement and Mr Anderson's skeleton argument (as to which see paragraph 14 below);

(2) No order of any sort for disclosure was made. Therefore, criticisms made on behalf of Lake of failures by Holdco, Habib and Omar to produce documents do not amount to any potential breach of a disclosure order in this Petition, and can only be advanced as either alleged breaches of provisions of the IOM Order or on the basis that Holdco needed to put those documents before this Court to support its own case;

(3) The time estimate of 2 days was never altered. In the event it proved possible to complete cross examination of the witnesses in the allotted time but only by the parties agreeing a timetable which limited their openings to 15 minutes each and closing oral submissions to just over an hour each. That was sensible and the best that could be done in the circumstances, but less than ideal given the lengthy history, a 678-page trial bundle, a live transcript, and a joint authority bundle exceeding 1000 pages in length.

Holdco's case in summary

14. Holdco's case as presented to me included the following:

(1) A logically prior contention that Habib's conduct could not be attributed to Holdco;

(2) Holdco did not accept that Habib was the cause, or at any rate not the sole cause, of the breakdown in the relationship between Shafe and Habib / Omar;

(3) It was Shafe, not Habib, who was the cause of functional deadlock by refusing to engage with Habib and Omar following his success in the IOM Claim;

(4) That although Habib "did not shy away from" the findings against him in the IOM Judgment, his behaviour was not sufficiently bad to disentitle him to relief;

(5) There was no collateral purpose;

(6) That there was no unreasonable failure to pursue an alternative remedy;

(7) That the Company was irretrievably functionally deadlocked, the relationship had broken down, and that there was no realistic option but to wind up the Company so that the assets could be sold and the proceeds distributed.

Issues for decision

15. Shortly before the hearing began, the parties agreed a list of issues found in Mr Hubbard's skeleton argument, as follows:

1. What is the relevance of the conduct of Shafe Buksh, Habib Bush and Omar Bush in the period June 2020 to 29 May 2024, as established by the IOM Judgment and by further evidence now before the Court ?

2. What happened after 29 May 2024 with respect to:
    a. compliance by Habib Bush and Omar Bush with the Order of the Isle of Man Court made on 29 May 2024
    b. the Company's bank account
    c. the Company's rents
    d. Shafe Buksh's attempts to enforce IOM costs order and the costs order made on 14 February 2025 in claim FJ 118/24
    e. the management of the Company.

3. To what extent is the conduct of Shafe Buksh, Habib Bush and Omar Bush with respect to the matters referred to under Issue 2 relevant?

4. Has the Petition been presented for an improper and collateral purpose?

5. Has the Petitioner unreasonably failed to pursue other remedies, including remedies available in the Isle of Man?

6. Is it just and equitable in all the circumstances for the Company to be wound up pursuant to section 221(5)(c) IA 1986?

16. It was common ground between the parties (as indeed is implicit from the matters which are not raised in the letter from Ronald Fletcher Baker dated 13 August 2025 and from the matters which the agreed list of issues does not identify as an issue for decision) that:

(1) The findings of fact made in the IOM Judgment were binding and were not to be revisited;

(2) The Company was a quasi-partnership company;

(3) There has been a complete breakdown in trust and confidence between Shafe and Habib.

17. It was nevertheless clear from Mr Hubbard's skeleton for Lake (from which, as I say, the agreed list of issues was taken) that it was not common ground that the Company was functionally deadlocked. Thus Agreed Issues 1 and 3 encompass the question of whether there is a functional deadlock as well as the issues raised on Lake's case as set out in paragraphs 10(1)-10(3) above, i.e. the cause of the present situation and the clean hands issue. They also include a sub-issue relied on by Holdco, as to whether any relevant conduct of Habib can be attributed to Holdco.

18. The parties having agreed this list of issues, I shall broadly follow it in the structure of this judgment, having first assessed the witnesses, addressed the applicable legal principles, and set out relevant material from the IOM Judgment which is taken as read by Issue 1 as framed by the parties. I consider it logical to address Issues 1 and 3 together, having made findings of fact as to subsequent events / under Issue 2.

The evidence; assessment of witnesses

19. It was common ground between the parties that given the identity of the parties and subject matter, the IOM Judgment gives rise to issue estoppels, that the parties are bound by Deemster Gough's findings of fact, and his findings that Habib and Omar had given false evidence. I therefore adopt those findings.

20. It followed that the contested evidence on this Petition, and the live evidence at the trial before me, focussed on matters which have emerged since the IOM Judgment hence were not explored before Deemster Gough and on events which have taken place since the IOM Judgment was given.

21. Shafe gave a first witness statement dated 8 April 2026 in opposition to the Petition. Habib and Omar each gave a witness statement in response, in support of the Petition, dated 30 April 2026. Shafe gave a short second witness statement, dated 22 May 2026, which was late but no objection was taken to its admission and I admitted it. Habib, Omar and Shafe were cross-examined on those statements. No other witnesses were called (there was no point in calling Mr Partridge).

Habib and Omar

22. Deemster Gough was highly critical of the evidence of Habib, Omar, and other Bush family members including another of Habib's sons, Adam, all of whom gave evidence and were cross-examined before Deemster Gough; and also of Habib's wife Farzana, who gave a witness statement but was unable to attend the trial in the Isle of Man. A representative but far-from-complete selection of Deemster Gough's adverse findings about Habib and Omar is as follows:

(1) [122] In 2005 Habib made a will…It is a homemade document…[123] …It displays a total misunderstanding of company law and ownership. When Habib came to give evidence before me he could not resist giving a lecture to the court on what are, or what he considers to be, "*paper directors*" and "*sleeping directors*". He was wrong";

(2) "[190] I am of the certain view that Habib is an unreliable, indeed dishonest witness…I do not accept any of the evidence of Habib, except where it is corroborated by unchallenged documentary evidence or is agreed between the parties;

(3) "[209] I find Omar's evidence to be unreliable. Whatever happened, … I am sure that Shafe did not agree to Habib's appointment to APL's board and did not resign. The remainder of Omar's evidence, insofar as it attempts limply to support Habib…is unreliable and I find most of it to be false. Omar is not a witness of truth;

(4) [217] Habib denied the authenticity of certain e-mails in which he made admissions against interest, but had no explanation as to why during what I refer to later as "the First Claim" his sending/receipt of those e-mails was admitted by Counsel on instructions;

(5) "[249]…I make serious findings of bad faith in the giving of evidence by Habib, … and Omar.…

(6) "[250] I start with the fourth witness statement of Habib and the evidence he gave at trial…[253]… As the evidence unfolded it became apparent and I find that much of it is demonstrably untrue…"

(7) "[258].… I can only conclude that Habib and Adam have colluded to create this false narrative regarding BDSL 2005 [another company the ownership of which

was an issue in the IOM Claim]…."

(8) "[267]…the 18 June 2020 e-mail from Habib to Shafe where he, Habib, seems to accept Shafe as a 50% beneficial owners in APL. Habib's denial that he sent this e-mail is untrue. I find that he did send it…"

23. I have condensed the adverse findings in the above summary and there are many other similarly adverse findings of dishonesty against Habib and Omar in the IOM Judgment which I have not set out, including at paragraphs [244], [257], [260], [263], [264], [265], [275]. Deemster Gough summarised his assessment of the evidence of Habib and Omar (and Adam), and of their approach to disclosure in the IOM Claim, as follows:

> [272]… I do not accept that his [Habib's] evidence is truthful unless it is corroborated by other solid evidence …
>
> [277] Furthermore, I am drawn to the unavoidable conclusion that the defence of Shafe's claim has been totally manufactured by Habib and supported by him and his two sons, Adam and Omar with untrue evidence. In light of Shafe's claim it was necessary for Habib, with the support of his two sons, to remove from the court's vision all of the documents that would be damaging to his defence. This resulted in a total failure to provide proper disclosure, even after the issuing of two court orders to that effect…. Where documents were damaging to his defence Habib simply denied sending them – the Mariam and Ameer WhatsApp messages, the June 2020 emails, the Christmas greetings message and so on. In the English proceedings his lawyer on instructions effectively acknowledged the 50:50 relationship contained in the 18 June 2020 email. Habib has backtracked on that in his evidence before this court.
>
> [278] I have to say that I have never come across a case where defendants supported by family members have colluded to invent a narrative designed solely to defeat a claim and which narrative I find, almost in its entirety, to be false. In the remarkable circumstances of this case I have no alternative other than to refer this judgment to HM Attorney General so that he may consider whether the evidence of the Bush Defendants and Adam needs to be investigated further

24. Independently of Deemster Gough's findings, I formed a similarly negative view of the credibility and truthfulness of Habib and Omar. I will consider the factual issues that arise in more detail later in this Judgment; the following summarises a number of reasons why I do not find either Habib or Omar to be an honest witness.

25. Habib:

(1) Habib was evasive. Whilst I accept that his hearing may be imperfect, there was a pattern of apparently not hearing or understanding a question whenever Mr Hubbard moved to a new issue which gave the strong impression of buying time to work out where the questioning was going;

(2) I did not believe the change of story by Habib as to whether or not Holdco's share was held on trust for him, as the Petition clearly states that it is (paragraphs 107 to 109 of this judgment);

(3) I did not believe Habib's evidence that he did not speak to his accountant Mr Iqbal about Shafe's request for documents in July 2024 (paragraphs 118 to 119 of this judgment);

(4) Habib's oral evidence when cross-examined about payment figures summarised in a schedule prepared on behalf of Lake taken from HSBC bank statements included first a query as to the accuracy of the figures in the schedule, when no objection or dispute to the schedule had been taken by Mr Anderson, which appeared to me to be a search for wriggle-room. At another point Habib denied that he really understood the figures in the schedule, which were actually quite simple, and yet he was able to venture an explanation based on changing creditor balances in company accounts to justify payments to another company controlled by him, Century 22 Property Management Limited ("**Century 22";** as to which see paragraphs 147ff in this judgment);

(5) I did not believe the explanations given by Habib and Omar based on changing creditor balances in company accounts as to why payments totalling c.£128,000 had been made to Century 22 out of the Company's HSBC bank account (paragraphs 142 to 146 of this judgment);

(6) I did not believe the change of story by both Habib and Omar as to why rents had been diverted from the Company to Century 22 (paragraphs 150 to 153 of this judgment). Habib also twice said that the Company's money was held separately as well as tracked separately, by Century 22, but in answer to a request for clarification from me said that it was not in fact in a separate bank account;

(7) In another passage of cross-examination in respect of the bank statements for the Company, Habib denied speaking to Omar about this. Mr Hubbard asked Habib four times whether Habib had read Omar's witness statement, and after three deflections, Habib said he had not, then when it was suggested this answer was surprising and untrue, Habib retorted that he was "busy reading your [Mr

Hubbard's] skeleton". Any chance I might have believed him, despite the implausibility of it, evaporated with that absurd final answer. In this short passage of evidence Habib was in turn evasive, in my view untruthful, and argumentative. In a nutshell that aptly describes his evidence as a whole.

26. Omar's oral evidence was given differently. He is clever, articulate and well-educated, but his evidence was in my view as unreliable as that of Habib:

(1) I formed the clear view that he had decided to say as little as possible in answer to any question and not to engage with the question unless forced to do so. He was combative; many questions were answered with an instant, staccato "incorrect";

(2) However, on the issue of payments out of the Company bank account to Century 22, where Mr Hubbard for Lake had convincingly undermined Habib's explanations, Omar became expansive, and sought to explain it away by reference to a long explanation about accruals in accounting. For the reasons I explain in more detail, in paragraphs 142 to 146 below, I simply do not believe that evidence;

(3) Omar's excuse for not having paid bills to the Isle of Man Corporate Service Provider (CSP) and not having paid to maintain access to one of the Company's e-mail accounts was not credible (paragraph 122 below);

(4) I have listed in the previous paragraph instances where Habib and Omar gave evidence to the same effect and I did not believe either of them.

27. I did not feel that either Habib or Omar were trying to assist the court. Like Deemster Gough, I conclude that I cannot rely on the evidence of either Habib or Omar unless it is corroborated by contemporaneous documentation.

Shafe

28. Deemster Gough's assessment of Shafe's evidence in the Isle of Man is summarised in paragraphs [126] and [127] of the IOM Judgment:

> [126]…I am satisfied that Shafe is a truthful person. His knowledge of corporate structures, offshore companies, nominee shareholders, the difference between an agreement and understanding, the structuring of companies with paper directors and other similar concepts is limited…"
>
> [127] All in all, Shafe's performance when giving evidence showed him to be

a quiet person not used to being in the spotlight. He seems to be averse to confrontation and I can see well how easily it would have been for his brother to dominate him. I am satisfied that Shafe's evidence, although lacking in legal precision and knowledge, and at times revealing some confusion, is honest and truthful evidence where it matters. The person I pictured from the various filings in this case came through in the witness box – sometimes flawed and unsophisticated in legal and corporate matters and with an occasionally unreliable memory but, nevertheless, someone who is obviously astute in business and has business nouse. I accept that he put his trust in his brother to look after his interests and this has turned out badly but that does not impact the truthfulness of his evidence, which I accept for the most part.

29. In the witness box Shafe appeared to me to be frustrated with the trial, which was something he had said in passing in paragraph 31 of his first witness statement, and which I accept and regard as understandable given the events which are described in the IOM Judgment and what has happened subsequently, as will appear from this judgment. On occasions he insisted on explaining why he had not taken some step without first answering the basic question whether he had done so. But unlike Habib and Omar, Shafe was consistent, he did not try to evade, and was prepared quite readily to accept points put to him in cross-examination which would have appeared to any witness to be against his interest, for example accepting that the Company was in reality deadlocked, that at one stage his position had been that he would not meet with Habib and Omar unless his costs were paid in full, and that he did not know whether his Manx Advocate had followed up to obtain a code to gain access to certain e-mails or documents ostensibly provided by Omar.

30. I am satisfied that the answers Shafe gave were truthful and can be relied upon.

Legal Principles - Winding up an overseas company on the just and equitable ground

Winding up a foreign company in England and Wales

31. The Court's *jurisdiction* to make an order winding up the Company was not in dispute. A foreign Company is an "*unregistered company*" under s.220 of the Insolvency Act 1986 ("the 1986 Act") and therefore is capable of being wound up under s.221(1). One of the circumstances in which an unregistered company may be wound up is that it is just and equitable to do so: s.221(5)(c). It was also not in dispute that Holdco has

standing to present the Petition pursuant to s.124(2)(b) of the 1986 Act because it has held its share in the Company since 3 July 2024 (i.e. it has held that share "*for at least 6 months during the 18 months before the commencement of the winding up*").

32. Mr Anderson submitted, by reference to *Re Real Estate Development Co* [1991] BCLC 210, 217c, *per* Knox J), that there are 3 'core requirements' for the making of a winding up order against APL as a foreign company, and that all are satisfied in this case. Mr Hubbard did not dissent; the real issue between the parties on this aspect of the case was that *Re Real Estate Development Co* concerned a creditor's petition and the parties were not agreed as to the interrelationship between the core requirements for establishing jurisdiction and the circumstances of a contributory's petition and how far the *Re Real Estate Development Co* core requirements apply in that situation (which I address in paragraphs 72 to 77 of this judgment):

(1) <u>Sufficient connection with England</u>: It is not in dispute that the Company owns unencumbered Properties within this jurisdiction worth on Habib's estimate £4.5m - £5m (and on Shafe's estimate, rather more);

(2) <u>Reasonable possibility of benefit accruing to Petitioner</u>: All the Company's Properties are unencumbered and its creditors are not, in that context, substantial. Both Lake and Holdco therefore stand to benefit from a substantial surplus upon the liquidation of the Company;

(3) <u>Person(s) interested in the distribution amenable to the court's jurisdiction</u>: Both ultimate beneficial owners of the Company (Shafe and Habib) are domiciled in England; Holdco is also incorporated and therefore domiciled in England.

The just and equitable ground

33. Section 122(1) of the Insolvency Act 1986 ("the 1986 Act") provides:

> "A company may be wound up by the court if—
> …
>> (g) the court is of the opinion that it is just and equitable that the company should be wound up".

34. Section 125(1) of the 1986 Act provides:

> "On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit…"

35. *McPherson & Keay's Law of Company Liquidation* (5th ed) paragraph 4-063 refers to s.125(1) as conferring an unfettered discretion on the court as to the orders that it may make on the hearing of a contributory's petition.

36. In the case of a contributories' petition presented on the just and equitable ground, s.125(2) provides further:

> "If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion—
>
> (a) that the petitioners are entitled to relief either by winding up the company or by some other means, and
>
> (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up, shall make a winding-up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy."

Principles to be derived from authorities on the application of the just and equitable ground

37. As I have already noted, the agreed authority bundle exceeded 1000 pages in length, but it seems to me that the principles potentially relevant to the present Petition can be set out more shortly. Save where I state otherwise, I did not understand these principles to be in dispute.

Tangible benefit

38. A contributory petitioner is required to show that a tangible benefit will be derived from the winding up, usually that there is a surplus of assets over liabilities, so that there will be a distribution to members (see among many other cases *Re Whitehall Partnership Ltd* [2023] EWHC 596 (Ch) [2023] Bus LR 1046, *per* HHJ Mithani KC, sitting as a judge of the High Court, at paragraphs [36] and [40]-[42]). I need not elaborate further

as it is not in dispute that the Company owns unencumbered Properties worth, on Habib's estimate, £4.5m - £5m (and in Shafe's belief rather more).

Functional Deadlock and Breakdown in trust and confidence

39. The leading case on winding up on the just and equitable ground is now *Lau v Chu* [2020] UKPC 24 [2020] 1 WLR 4656. Lord Briggs JSC, delivering the advice of the Board, considered the very similar provisions as to just and equitable winding up found in the British Virgin Islands Insolvency Act 2003. He described the circumstances in which such a winding up may be ordered as follows:

> "[14] A just and equitable winding-up may be ordered where the company's members have fallen out in two related but distinct situations, which may or may not overlap. First, a winding-up may be ordered to resolve what may conveniently be labelled a functional deadlock. This is where an inability of members to cooperate in the management of the company's affairs leads to an inability of the company to function at board or shareholder level. …..
>
> [15] Secondly, where the company is a corporate quasi-partnership, an irretrievable breakdown in trust and confidence between the participating members may justify a just and equitable winding-up, essentially on the same grounds as would justify the dissolution of a true partnership. This jurisprudence was developed as an aspect of the law of partnership in England in the mid-19th Century, and is exemplified in the following passage from the judgment of Sir John Romilly MR in *Harrison v Tennant* (1856) 21 Beav 482, at 496-497:
>
> > 'I do not base my decision upon any particular reported case, but upon the principle that the circumstances under which the parties entered into the partnership have, by matters over which they have no control, materially altered, that these altered circumstances have, combined with the conduct of the parties themselves, produced a mistrust which the Court cannot say is unreasonable; and that, taking all these things together, it is impossible that the partnership can be conducted upon the footing on which it was originally contemplated, without injury to all these persons concerned, and that taking all these matters together, it makes this a case in which, in my opinion, it is the duty of the Court to pronounce a decree for the dissolution of the partnership.'

40. Having identified the distinction between a breakdown in trust and confidence, which is limited to quasi-partnership companies, and a functional deadlock, and identified that the winding up remedy, although the same outcome, is a response to two different

things, Lord Briggs considered their overlap at the end of paragraph [19] of his judgment:

> "…But of course both may exist together, and a complete breakdown in trust and confidence may well be the cause of functional deadlock, in a two party quasi-partnership like the present."

Quasi-partnership

41. It was agreed by the parties that the Company is and was a quasi-partnership, so I do not need to set out the principles derived from *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 (HL), repeated in *Lau v Chu* at paragraph [18]. Suffice to say that I have those principles in mind and that in the light of the findings in the IOM Judgment, I consider that that agreement between the parties was right.

Functional deadlock

42. In her concurring judgment in *Lau v Chu* at paragraph [88], Lady Arden JSC observed that the Board was not seeking to provide a definition of deadlock. She went on to explain that there are narrower and wider views of this concept, the narrower being exemplified by the case of *Ng Eng Hiam v Ng Kee Wei* (1965) 31 MLJ 238 (PC) which:

> "…would cover the case where the constitution of the company did not provide any means for resolving the deadlock, as where there were only two directors who were also 50:50 shareholders, and there was disagreement between them and neither of them was entitled to a casting vote…"

Factors to be taken into account

43. It is well-settled that the concept of what is just and equitable is a wide one, highly fact-sensitive, and not to be limited to categories defined by previous case-law. In *Lau v Chu*, at paragraph [43], Lord Briggs JSC made clear that:

> "[43]… The court has to ask itself, at the time of the hearing, whether it is just and equitable that a liquidator should be appointed … it naturally follows that the court should consider all relevant matters as at the date of the hearing…this is entirely in accordance with the court's ordinary practice when considering whether to grant discretionary relief of an equitable nature…"

44. I was taken to a summary of the principles in the judgment of HHJ Mark Cawson QC in *Duneau v Klimt Invest SA* [2022] EWHC 596 (Ch), [2022] BCC 747, including paragraphs [190]-[192] and [198]-[199] where the Judge held:

> "[190] As emphasised by Dillon J in *In re St Piran Ltd* [1981] 1 WLR 1300, 1307: '*The words "just and equitable" are wide general words to be construed generally and taken at their face value. Whether in any case a winding up order should be made would depend on a full investigation of the facts of the particular case ... The concept of justice and equity is a very wide concept …*'".
>
> [191] In *Re Westbourne Galleries* [1973] AC 360 , Lord Wilberforce, having rejected the notion that the expression "just and equitable" required to be construed so as only to include matters ejusdem generis the preceding clauses to the then Section 222(f) of the Companies Act 1948 , stated that: *"... there has been a tendency to create categories or headings under which cases must be brought if the* [just and equitable] *clause is to apply. This is wrong. Illustrations may be used, but general words should remain general and not be reduced to the sum of particular instances…*"
>
> [192] Further, subsequently at 379B, Lord Wilberforce said: "*The foundation of it all lies in the words "just and equitable"" and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force"*."
>
> …
>
> [198] It is apparent from the extract from the judgment of Lord Briggs in *Lau v Chu* (supra) referred to in the last paragraph that the court is required to consider all relevant matters pertaining at the date of the hearing that might bear upon the question as to whether it is just and equitable that the company be wound up, a question that is liable to involve an element of discretion with regard to whether the relief sought ought to be granted.
>
> [199] Apart from the question of alternative remedies, those discretionary matters might potentially include considerations such as the wishes of other members of the company, the financial consequences to the company of making a winding up order, and the conduct of the petitioner.

Choice of remedy; burden of proof

45. Winding up has been described as a remedy of last resort and an "exceptional remedy to grant in the context of disputes between shareholders" (*Fulham Football Club (1987) Ltd v Richards* [2012] Ch. 333, per Patten LJ at paragraph [56]). However, Lord Briggs explained at paragraphs [20] – [21] of his judgment in *Lau v Chu:*

> "[20] It is well established that winding up is a shareholders' remedy of last resort. But this does not mean that winding up is unavailable to members if they have any other remedy. The member retains a significant element of choice in the remedy to be sought, even though the court has the last word. As is clearly enshrined in section 167(3) of the 2003 Act, the court carries out a three stage analysis, asking:
>
> > (a) Is the applicant entitled to some relief?
> > (b) If so, would a winding-up be just and equitable if there were no other remedy available?
> > (c) If so, has the applicant unreasonably failed to pursue some other available remedy instead of seeking winding-up?
>
> [21] The legal burden of proof is on the applicant at stages (a) and (b). But it shifts to the respondent at stage (c): …."

46. In *Dosanjh v Balendran* [2025] EWHC 507 (Ch) ICC Judge Mullen held at paragraph [14] that those principles are equally applicable to s.125(5) of the (England and Wales) 1986 Act, which is in the same terms as s.167(3) of the BVI statute.

Conduct of the Petitioner; cause of deadlock or breakdown in trust and confidence

47. Paragraph [15] of *Lau v Chu* goes on to consider the significance of the cause of deadlock or breakdown in trust and confidence, a subject to which Lord Briggs returns at [19]:

> "[15]….It is clear … that a dissolution of a partnership might be ordered even where both parties were to blame for the breakdown in mutual trust and confidence.
>
> …..
>
> [19] The *Ebrahimi* case reinforces the principle that an applicant for a just and equitable winding up is not barred from his remedy merely because the breakdown or deadlock upon which he relies has been caused to some extent by his own fault. As Lord Cross put it, at pp 383—384:
>
> > "People do not become partners unless they have confidence in one another and it is of the essence of the relationship that mutual confidence is maintained. If neither has any longer confidence in the other so that they cannot work together in the way originally contemplated then the

> relationship should be ended - unless, indeed, the party who wishes to end it has been solely responsible for the situation which has arisen."

48. To put that from the opposite perspective, if the Petitioner *is* solely responsible for the situation, then winding up on the just and equitable ground will very likely be refused. In *Re Whitehall Partnership Ltd* [2023] EWHC 596 (Ch) [2023] Bus LR 1046, HHJ Mithani KC went further and held at paragraph [31] that in such a case the Court will, or should, refuse, but in my view that goes a little too far.

49. I was also referred by Mr Hubbard for Lake to paragraph [33] of the judgment in *Re Whitehall Partnership Ltd*, where HHJ Mithani KC said this:

> "[33] I do not read the words "solely responsible for the situation which has arisen", used by Lord Cross, as meaning that the entirety of the conduct leading to the breakdown of the relationship between the parties must have been caused by the respondent member. I would not consider that a petitioner who has been guilty of serious misconduct could expect to have the discretion of the court exercised in his favour if the misconduct for which the respondent is responsible is minor. Both might be said to be the cause of "the situation that has arisen" (to use Lord Cross' words) but to permit the Company to be wound up, in those circumstances, would be manifestly unjust. Nor do I consider that the court should undertake a formulaic analysis of whose conduct is more culpable by reference to a scale of misconduct. The "clean hands" principle requires the court in every case to examine the overall conduct of each party conduct and conclude whether the conduct of the petitioner can be said to be the main or sole cause of the breakdown. If it can be, then the court would be entitled to exercise the discretion against the making of a winding up order, even if there was some minor misconduct on the part of the respondent"

50. Mr Anderson for Holdco submitted that this passage was *obiter* and that given that in *Ebrahimi* and *Lau v Chu* it was held that the petitioner must have been the <u>sole</u> cause of deadlock or breakdown, the suggestion by HHJ Mithani KC that it suffices for the petitioner to be the "*main*" cause must be, he submitted, treated with caution. Although HHJ Mithani KC does say "main or sole" cause at one point, I do not read the *Re Whitehall Partnership* judgment as seeking to water down the authority of *Ebrahimi*. The test I shall apply is the sole cause test.

51. I think HHJ Mithani KC was making a different point. As he says, the question of "sole cause" is a matter for judicial evaluation on the evidence, and the real point that the

Judge was making in paragraph [33] of his judgment in *Re Whitehall Partnership*, as I read it, is that a petitioner may be the sole cause of deadlock or breakdown, within the meaning of *Ebrahimi*, notwithstanding that a respondent has played some part. I would respectfully agree with such an approach.

52. Whilst it is perhaps a crude analogy, an unprovoked assault only becomes a fight if the victim fights back. It would not be right to regard the fighting back as "misconduct" (unless the response goes beyond what is objectively reasonable) and while on some level the choice of the victim to defend themselves can be said to "cause" the fight, in my view that does not mean that the aggressor is anything other than the sole cause of the fight, in the sense that Lord Cross was concerned to identify the sole cause of breakdown or deadlock in *Ebrahimi*. That is so notwithstanding that the fact that the victim did fight back may well make the aggressor feel even more badly disposed toward the victim than before and/or that injury sustained in the fight on the aggressor's side may make the situation between the two parties worse than before. This is to be contrasted with the context of discussions in the authorities about there being cause on both sides, of which *Harding v Edwards* [2014] EWHC 247 (Ch) discussed in paragraph 55 below is an example, which is in the context of relationships which sour over time and where both sides can be said to have contributed to the deadlock or breakdown which ultimately arises.

Conduct of the Petitioner; lack of clean hands

53. As to the conduct of a petitioner, Lord Cross noted in *Ebrahimi* at p.387:

> "A petitioner who relies on the 'just and equitable' clause must come to court with clean hands, and if the breakdown in confidence between him and the other parties to the dispute appears to have been due to his mis-conduct he cannot insist on the company being wound up if they wish it to continue."

54. Lord Briggs JSC elaborated on this at paragraph [64] of his judgment in *Lau v Chu*:

> "[64] Just and equitable winding up is a statutory remedy, albeit of an essentially equitable nature. The clean hands doctrine finds appropriate expression in this context by the requirement, expressed in the *Ebrahimi* case [1973] AC 360, that the applicant should not have been the sole cause of the breakdown in trust and confidence or of the deadlock…The Board sees no reason to disturb that well-known, long standing analysis from the highest authority…"

55. That passage from the speech of Lord Cross in *Ebrahimi* was considered in *Harding v Edwards* [2014] EWHC 247 (Ch), where Rose J observed:

> "[21]. Lord Cross made that statement when considering an earlier case where the petitioner had been found by the court to have been stealing the company's money. I do not consider that the obligation to come with clean hands means that a petitioner must be able to show that he or she is entirely blameless for the problems that have overtaken the company. Petitions for winding up on just and equitable grounds usually represent the culmination of a long period of argument and disruption from which it is rare for any one party to emerge as having behaved with exemplary politeness and reasonableness throughout. To set such a high standard would, in my judgment, ignore the very realities of human relationships which Lord Wilberforce regarded as the foundation of the jurisdiction."

56. That passage from *Harding v Edwards* was in turn cited in *Dosanjh* at paragraph [15] where ICC Judge Mullen observed:

> "[15] Thus the conduct of a petitioner that may justifiably attract criticism when examined some years later in court is not necessarily a bar to obtaining relief under the just and equitable ground."

57. As to what is meant by a lack of clean hands, I was referred to *Snell's Equity* (35th Ed.) paragraph 5-011:

> "…It is accepted therefore that "the scope of the application of the 'unclean hands' doctrine is limited" and the maxim is applicable only in relation to conduct of B which has "an immediate and necessary relation to the equity sued for", so that B is "seeking to derive advantage from his dishonest conduct in so direct a manner that it is considered unjust to grant him relief..."

58. That test is one of "sufficiently closely connected" as opposed to a causal connection: *Koza Altin Isletmeleri AS v Koza Ltd* [2025] BCC 1103 at paragraph [213] citing the judgment of Hildyard J in *CF Partners (UK) LLP v Barclays Bank Plc* [2014] EWHC 3049 (Ch) at paragraph [122].

59. That paragraph in *Koza Altin* also refers to another excerpt from the judgment in *CF Partners (UK) LLP* at pararagraph [1113] that the clean hands doctrine:

> "is reserved for exceptional cases where those seeking to invoke it have put themselves beyond the pale by reason of serious immoral and deliberate

> misconduct such that the overall result of equitable intervention would not be an exercise but a denial of equity."

Alternative remedies

60. Possible alternative remedies are addressed in *Lau v Chu* at paragraph [13] of the judgment of Lord Briggs JSC:

> "[13] Remedies in the alternative to a just and equitable winding up include relief for the company itself, available by means of a derivative action and relief available on proof of unfairly prejudicial conduct, under Part XA of the BVI Business Companies Act 2004. Relief for unfair prejudice includes a court order for a buy-out, the appointment of a receiver or the appointment of a liquidator under section 159 of the 2003 Act, on the just and equitable ground in section 162(1)(b)."

The statutory references are to the BVI legislation but the same would apply to their equivalents in England and Wales, or the Isle of Man.

61. Lord Briggs JSC also explained in paragraph [21] of his judgment in *Lau v Chu:*

> "[21] …In *In re a Company (No 002567 of 1982)* [1983] 1 WLR 927, at p 933, Vinelott J held that 'other remedy' in section 225(2) was not limited to a statutory remedy provided only by the court. For example, an unreasonable refusal to accept a fair offer for the applicant's shares might bar relief by way of winding-up. The Board agrees with this analysis."

62. Mr Anderson submitted that arguments for unreasonable failure to pursue an alternative remedy are not often successful. In my judgment, whether there is an alternative remedy is an issue of fact and whether it is unreasonable not to have pursued it is for evaluation on those facts.

Collateral purpose or objective

63. The relevant proposition is summarised in paragraph [37] of the judgment in *Re Whitehall Partnership Ltd*:

> "[37] Finally, the court will not grant the remedy of winding up to a contributory if his motive for seeking it is to further some collateral purpose or objective, not related or connected with his shareholding: see, by way of examples, *In re Bellador Silk Ltd* [1965] 1 All ER 667 and *In re JE Cade & Son Ltd* [1992] BCLC 213."

64. The collateral purpose identified in *In re Bellador Silk Ltd* was to apply pressure to force an agreement on the petitioner's co-directors to cause repayment of a loan owed by the subject company to companies owned by the petitioner (pp.671H-672B). As an authority the assistance to be derived from *In re Bellador Silk Ltd* is in my view limited because the conclusion of Plowman J that this was an abuse of process was in part based on an admission by the petitioner that they did not really want the company wound up.

65. That is not however a necessary feature of a collateral purpose; it was plainly not the position in *In re JE Cade & Son Ltd* – see the judgment of Warner J at p.231d. The facts are complicated, but in essence the company was a family farming company which held a tenancy protected by the Agricultural Holdings Act 1986, of land the freehold of which was owned by the petitioner. The petitioner's admitted purpose in seeking a winding up on the just and equitable ground was because, if the company were wound up, he as freeholder would be able to serve a short notice to quit which the company could not resist (pp.230h to 231b). Thus the desire to wind up was entirely genuine (indeed, essential) but the purpose was ulterior. Warner J struck out that petition on the basis that the purpose of seeking winding up was not to protect the petitioner's interests as a member of the company, rather his interests as freeholder (p.232h-j).

66. Mr Anderson for Holdco took me to the more recent judgment of Thompsell J in *Koza Altin*, where the concept of collateral purpose is discussed at paragraphs [186]ff. That was factually an unusual case, in that the petitioner shareholder was ultimately controlled by the Turkish government and it was alleged by the opposing contributory, a Mr Ipek, that the petition was brought for improper collateral purposes, namely to persecute Mr Ipek for his perceived political affiliation and/or to unlawfully expropriate his assets and/or remove the Company's assets from his control.

67. Mr Anderson submitted, correctly in my judgment, that paragraphs [195]-[199] of *Koza Altin* are authority for the propositions that motive is irrelevant; that a purpose will not be regarded as illegitimate if it is no more than the natural consequence of the action succeeding; and that where there is more than one purpose, then provided that one purpose is legitimate there is no abuse of process.

68. The difference between mere motive on the one hand, and a true collateral purpose on the other, is well explained by the judgment of Rose J in *Maud v Aabar Block Sarl* [2015] EWHC 1626 (Ch); [2015] B.P.I.R. 845 at [29], cited by Thompsell J in *Koza Altin* at paragraphs [192] and [194]:

> " … the pursuit of insolvency proceedings in respect of a debt which is otherwise undisputed will amount to an abuse in two situations. The first is where the petitioner does not really want to obtain the liquidation or bankruptcy of the company or individual at all, but issues or threatens to issue the proceedings to put pressure on the target to take some other action which the target is otherwise unwilling to take. The second is where the petitioner does want to achieve the relief sought but he is not acting in the interests of the class of creditors of which he is one or where the success of his petition will operate to the disadvantage of the body of creditors….
> "It is also clear from those authorities, and as a matter of common sense, that the jurisdiction of the court to dismiss a petition based on an undisputed debt on the grounds of collateral purpose must be exercised sparingly. Bankruptcy proceedings cannot be allowed to become the forum for a detailed investigation into past and present relationships or an exploration of what the petitioner hopes to gain from the insolvency of the company or individual, in financial or personal terms and a consideration of whether those hopes are legitimate or not."

69. It is implicit in paragraph [193] of Thompsell J's judgment in *Koza Altin* that he accepted that those propositions in *Maud* would equally apply, with all necessary modifications, to a contributory's petition in company winding up. I respectfully agree. It seems to me that *In re Bellador Silk* is an example of the first situation identified by Rose J and *In Re JE Cade & Son* is an example of the second. Such cases will not be common (*Maud* at paragraph [29]; *Koza Altin* at paragraph [194]). Thompsell J also cites, at paragraph [199], an extract from the judgment of Lord Wilson on behalf of the Privy Council in *Ebbvale Ltd v Hosking* [2013] 2 B.C.L.C. 204 at paragraph [28]:

> "I am not concerned with his motives or with the past conduct of the company, which was here deplorable or worse and which may have led the petitioner to have justifiable dislike for and a desire to see the downfall of some person such as the main protagonist in the company … the only proper purpose for which a petition can be presented is for the proper administration of the company's assets for the benefit of all in the relevant class."

70. Hence the real question is whether Holdco is acting in the interests of the general class of contributory, or whether its only purpose is to advance a personal interest which operates to the disadvantage of the members in their capacities as such.

71. As is apparent from *In re Bellador Silk Ltd*, *In re JE Cade & Son Ltd*; *Re Whitehall Partnership Ltd,* and *Koza Altin,* collateral purpose, if made out, is an abuse of process, which will (or, given the infinite variety of potential circumstances, it may be more prudent to say "will in all likelihood") lead to the court dismissing the petition on that basis. On the other hand, if the facts as established fall short of such abuse – for instance because there are mixed purposes – then the factual matters said to amount to a collateral purpose do not become irrelevant; in my judgment they may remain factors to which the Court may have regard when considering whether it is just and equitable to wind up.

Interaction between the exercise of jurisdiction over a foreign company and the just and equitable ground for winding up

72. For Holdco, Mr Anderson's approach was to take the two matters (exercise of jurisdiction over a foreign company and the just and equitable ground) separately and consecutively. The general tenor to his submissions was that, having established the "core requirements" for exercising jurisdiction, they can be put to one side and the court then turns to the application of the jurisprudence on the just and equitable ground without further reference to the fact that the subject company is an overseas company. This was reflected in his stance that the potential to seek a winding up in the Isle of Man on the equivalent just and equitable ground in Manx law was merely a question of forum, not alternative remedy, whereas Mr Hubbard for Lake submitted that proceeding in the Isle of Man was an alternative remedy.

73. Mr Hubbard submitted that the policy considerations that lie behind the exercise of the court's jurisdiction to wind up an insolvent unregistered company, with sufficient links to England and Wales, do not on the face of it apply (or at least with much less apparent force) where a company is solvent and equivalent or other remedies are on the face of it available to shareholders in its territory of incorporation.

74. Mr Hubbard's skeleton also recorded that he had not been able to find a reported example of a case where the exercise of the court's jurisdiction to wind up a solvent unregistered company on the just and equitable ground has been the subject of substantial judicial

consideration or a case where that relief has been granted. If there is one, Mr Anderson was not able to find it either.

75. I accept the submission that there is a real difference between a contributory's petition and a creditor's petition. The factors identified in *Re Real Estate Development Co* may well readily lead to the conclusion that it is just and equitable for a third party creditor with an undisputed debt to be allowed to wind up an insolvent foreign company here, but the position of a contributory seeking just and equitable winding up of a solvent foreign company seems to me to be rather different.

76. As to the submission that the possibility of a just and equitable Petition in the Isle of Man – it being accepted on both sides that such a petition can be brought under the Isle of Man Companies Acts – is only a question of forum; I disagree. I do not consider that the potential claim – indeed the more obvious claim by a contributory – to proceed in the jurisdiction of incorporation can be dismissed as merely an issue of "forum". In my judgment it is an example of an alternative remedy. That must be so, given that the concept of "alternative remedy" is not limited to remedies available in the (English) court (*Lau v Chu* at paragraph [21]) and that the powers of the Manx Courts will be wider than the powers of this Court with regard to an unregistered (foreign) company; for example, the Manx Courts could entertain a cross-petition based on minority oppression and/or claims for injunctive relief against the directors.

77. In my judgment, the fact that the courts of England and Wales are being asked to exercise a jurisdiction over a foreign company, instead of the courts of the territory of incorporation, can be a factor relevant to whether or not a winding up order should be made on the just and equitable ground. How important that factor may be will depend on all the circumstances. I return to this issue in paragraphs 194ff below.

The facts – events up to the IOM Judgment

78. I have taken into account all of the relevant material in the IOM Judgment; what follows sets out limited extracts only of particular relevance to the present Petition from what is a long and thorough judgment by Deemster Gough. If more detail is required reference can be made to the full IOM Judgment which is publicly available at Isle of

Man Judgments Online (*https://www.judgments.im*), the judgments database maintained by the Isle of Man Courts; short title *Buksh v Bush*, database judgment reference J3229.

79. In the IOM Claim, and in respect of subsequent requests for documents pursuant to the IOM Order, Shafe was represented by Mr Andrew Bridson of Bridson Halsall, Advocates. At the trial before Deemster Gough, Habib's case was that Shafe had no interest at all in the Company, whether through Lake or otherwise. Shafe's case was that he and Habib owned the Company 50/50. Deemster Gough went on to accept Shafe's case (IOM Judgment paragraphs [273], [276]) so in the extracts which follow where the Deemster sets out the background, what Shafe says was found by the Deemster to be the true position.

Background and the "fundamental understanding"

80. Deemster Gough explains that:

> "[22]. The dispute has its roots in a driving school business set up in London in or around 1993, BDS [Britannia Driving School]. Shafe contends that he and Habib began the business on the basis that it was beneficially owned jointly and equally by them…. Habib says he had nothing to do with any driving school and was never in any sort of business with Shafe.
>
> [23]. BDS was operated through several ownership structures but it is Shafe's case that regardless of the legal ownership and structure of the business, which he left to Habib to organise, BDS was at all times owned on the basis of a mutual understanding between himself and Habib that BDS was owned jointly and equally between them and that it would be operated for their mutual and equal benefit. This arrangement Shafe calls the *fundamental understanding*." (Original emphasis)

Directorships and shareholdings in the Company

81. As to the Company, and giving a flavour of how the Company was run from the outset, Deemster Gough found:

> "[34] APL was incorporated in the Isle of Man on 4 August 1995. Habib and Farzana [Habib's wife] were appointed directors on 31 August 1995. Shafe says that Farzana had no active involvement at all in APL's affairs or, indeed, in the affairs of BDS. In 1996 Farzana resigned and Badrum Begum (mother of Shafe and Habib) and Samsoon Clarke (their sister) were appointed as

directors. They gave addresses in Pakistan but were actually resident in England. Shafe maintains that these changes were made at Habib's suggestion and Shafe agreed with them. Mrs. Begum and Mrs. Clarke had no active involvement in the affairs of APL at any time. APL was run by Shafe and Habib.

[35] In 1999 Mrs. Begum and Mrs. Clarke resigned and Mohammed Kadir and Iqbal Kadir, both actually resident in Pakistan, were appointed directors and company secretary of APL in their place. Shafe says these changes were again at Habib's suggestion with Shafe in agreement. Habib made the necessary arrangements with the CSP [corporate services provider in the Isle of Man]. The Kadirs were known only to Habib and had no active involvement in the affairs of the company at any time. APL continued to be run by Shafe and Habib as before. On 1 September 2000 Habib resigned as a director of APL, the Kadirs became sole directors, although they had no involvement in the running of APL's business"

82. In paragraphs [37]-[38] of the IOM Judgment Deemster Gough records the subsequent history of shifting directorships in the Company until 2020, which I will not set out verbatim. As to the shares in the Company, Deemster Gough found :

"[36] On 2 July 2003 Nafisa [Shafe's daughter] and Shafe were appointed directors and Nafisa apparently became the sole shareholder. The original shareholders in APL were Calypso Trading Limited ("Calypso") and Reward Securities Limited ("Reward") (nominee companies provided for that purpose by the first Isle of Man CSP). At all material times the issued share capital was 2 shares. The appointment of and the transfer of the APL shares to Nafisa would become a contentious issue during the proceedings. In any event the shares ended up back with Calypso and Reward, who transferred them to Harbour and Lake in August 2004 where they presently repose".

(The share held by Harbour has since been transferred to Holdco).

83. Shafe's case, which Deemster Gough accepted almost in its entirety, was as follows:

"[41] According to Shafe it was Habib who suggested the incorporation of APL in the Isle of Man to hold the English properties. Shafe alleges that in accordance with the fundamental understanding the shares were to be owned beneficially by himself and Habib equally, such being a continuation of the arrangement they had with BDS and the purchase of its premises at 291 Kingston Road, London. It was the intention that APL would eventually acquire a portfolio of investment properties, principally in the vicinity of Wimbledon, New Malden and Kingston in South-West London.

> [42] Shafe therefore claims that the BDS companies and APL were at all material times in the common equal beneficial ownership of Habib and Shafe in accordance with the fundamental understanding and that it was Shafe and Habib that ran everything to the exclusion of the appointed directors.
>
> [43] Shafe says that he had no direct dealings with the Isle of Man CSPs and that he trusted Habib to make the appropriate arrangements to reflect the terms of the fundamental understanding. It is Shafe's case that as between himself and Habib the shares were held for their joint and equal benefit as ultimate beneficial owners of the shares, subject to and on the basis of the fundamental understanding. Again, it is Shafe's case that from its incorporation in 1995 and until July 2020 Shafe ran APL's property business, was a signatory on the company bank account and he was the primary source of further properties. He organised purchase, sale and management of APL's properties. Habib carried out the administration in the way he had with BDS and this included dealing with the CSPs in the Isle of Man."

84. Deemster Gough made a number of findings as to how the Company was run. In the introduction section to the IOM Judgment, at paragraph [14], Deemster Gough held that a feature of the case, worthy of mention at an early stage, was:

> "[14]…a fundamental misunderstanding on the part of Habib of Isle of Man company law. He decided to form APL in the Isle of Man, to have nominee shareholders (eventually Lake and Harbour) with no documented or otherwise reliable link to the true beneficial owner or owners of the shares in APL and to appoint what he called "*paper directors*" to the company. The paper directors were appointed ostensibly to fill a legal requirement. It seems not to be disputed that they had no, or very little, knowledge of the business, signed necessary documents when Habib told them to and the running of APL was left to Habib and, on Shafe's case, to Shafe also. The law regarding the governance of a company by its directors was completely ignored over a period of nearly 30 years and APL was managed by its beneficial owner or, as I find, its owners Habib and Shafe…"

85. The Deemster returned to this theme at paragraph [117], where he held:

> "[117] … I can say that in the peculiar circumstances of this case I do not attribute much weight to the shareholdings and directorships of either the BDS companies or APL when it comes to identifying the true beneficial owners and, indeed, who was actually running these businesses. It is clear these were appointments made, or at least recommended by Habib to Shafe and then made, in deference to Habib's fear of adverse consequences if the true owners were disclosed in any official documents. The appointments of remote family members (some permanently resident abroad) to important roles in the BDS companies and APL and the appointment of offshore nominee shareholders for APL (Nafisa's shareholding was an exception) makes it clear to me that none of these officers had any practical role in running the two businesses."

The Property acquisitions

86. Deemster Gough dealt with the acquisition of a portfolio of properties in London through the Company at paragraphs [44] to [51] of the IOM Judgment ("the **Properties**"). Of note, the Deemster found (paragraph [47]) that only one property had ever been disposed of by the Company, and that was some 25 years ago, in 2001.

87. Before me it was suggested that the Company has never conducted any 'business' in the sense of trading but has only ever operated as a vehicle for holding property investments. In my judgment that is clearly wrong. All the Properties are rented out (indeed paragraph 7.2 of the Petition alleges this) and the management was, until the exclusion of Shafe from the Company in 2020, carried out by the Company itself.

The dispute arises

88. By mid-2020, the directors of the Company were Shafe and Omar. Shafe's evidence as to the genesis of the dispute, which Deemster Gough accepted, was summarised by the Deemster as follows:

> "[80] Shafe describes the rising tensions with Habib during the period June-August 2020 and the beginning of the dispute between them. Mariam and Ameer [Shafe's children] had qualified as solicitors and they became concerned on Shafe's behalf that there was no formal record of the fundamental understanding and particularly no formal record of Shafe's equal ownership with Habib of APL.
>
> ….
> [83] Around June 2020 Shafe says he asked Habib directly to create a formal document to record Shafe's 50% interest in APL. He had done this previously but Habib had always managed to put him off by confusing him, ridiculing him or frightening him as to the consequences. This time Shafe persisted. This resulted in several conversations and exchanges of emails between the two brothers, during which Shafe says Habib freely acknowledged the true position and at times apparently agreed to do what Shafe asked.
>
> [84] At the same time though Habib vigorously tried to talk Shafe out of it, telling him it would be potentially damaging or expensive or impractical to do it. Shafe covertly recorded some of these conversations. He says he was, by this time, becoming concerned that Habib was not being straight with him regarding the ownership of APL.

89. A little earlier in his judgment, under a heading "*APL – THE OUSTING OF SHAFE*", Deemster Gough set out the allegations as to what Habib and Omar then actually did, and which the learned Deemster found proven:

> "[54] From about 12 June 2020 onwards Shafe alleges Habib acted and procured others to act in breach of the fundamental understanding and against Shafe's interests. Shafe says they did this without his knowledge or approval as a director of APL. He complains about the following actions:
>
> (1) On or about 12 June 2020 APL shares in an English company – *206 Coombe Lane, West Wimbledon Limited* (a company 100% owned by APL) were reportedly transferred for no or nominal consideration to Habib's son, Dawood.
>
> (2) On or before 3 July 2020 Shafe's access to APL's email account and email server was terminated.
>
> (3) Around 6 July 2020 a document allegedly falsely recording Shafe's resignation as a director of APL and the appointment of Habib as a director, signed by Omar, was filed at the Companies Registry in the Isle of Man.
>
> (4) On 26 July 2020 Shafe was informed by HSBC Bank that Omar had been made a signatory to the APL bank account and Shafe had been removed. Shafe says the account balance at that time was just over £460,000".

90. As to the third of those bullet points, Deemster Gough explained in more detail at paragraph [52] of the IOM Judgment:

> "[52] On or about 6 July 2020, Omar submitted a Form 9N to the Companies Registry in the Isle of Man in relation to APL. It was signed by Omar and stated that on Monday, 1 July 2020 Shafe had resigned as a director of APL and Habib had been appointed. Shafe says this was done without his knowledge or consent. Shafe says he did not resign or agree Habib should be appointed and disputes the signing of the resignation letter. He would not have consented to the changes had he known about them. He maintains that these changes constituted a breach of the fundamental understanding".

91. To complete the picture, Deemster Gough goes on:

> "[57] On 2 September 2020 a Form 9N was registered at the Companies Registry in the Isle of Man signed by Omar. It purported to report the retirement of Farhan Rasool as company secretary of APL and the appointment

> of Omar in his place.
>
> [58] Shafe accordingly concludes that as a result of these manoeuvres Habib seized sole control of APL to the exclusion of Shafe and on the face of it does not conduct the management of the company for the benefit of Shafe and himself…."

And the Deemster found that all Shafe's allegations as to the falsity of those steps (which to my mind includes forgery of documents) were made out; see paragraphs 22 and 23 above and other passages in the IOM Judgment such as paragraphs [275] and [276].

First claim

92. On 29 July 2020, Shafe brought a claim and interim application in the High Court, Property Trusts and Probate List (Ch.D) against Habib, the Company, and another company, 206 Coombe Lane West Wimbledon Limited (as to which see paragraph [54] of the IOM Judgment referred to at paragraph 89 above) ("the **First Claim**"). Habib's witness statement stated that this claim was "without any warning" but I note that a letter before action is pleaded at paragraph 40 of the Particulars of Claim. The Claim Form claimed

> "Injunctive and Declaratory relief and an Order for Sale, and an order for the execution of the trusts in the Property, in relation to a trust of land (s.14 TLATA 1996) and damages caused by a breach of trust and fiduciary duty".

93. The Particulars of Claim sought a declaration that the Properties were held on trust by Habib and the Company for the benefit of Habib and Shafe i.e. that Habib and Shafe had a direct beneficial interest in the Properties. It sought an order for sale of all of the Properties. The Particulars of Claim sought a notification order against Habib and the Company prohibiting them from dealing with the Properties without 7 days' prior notice to Shafe, and a restraint on dealing with the funds in the Company's bank account, said to be around £460,000.

94. The basis for bringing the First Claim and seeking injunctions is set out in paragraphs 36 to 46 of the Particulars of Claim – Habib's actions in excluding Shafe from the Company, including all the matters relied upon before Deemster Gough and indeed some further allegations. It is abundantly clear, and I so find, that the First Claim was a direct response to Habib's actions as outlined above.

95. On 5 August 2020 Habib filed a witness statement in the First Claim asserting that Shafe had no beneficial interest in the Company (see IOM Judgment at [56] and [98]). As Deemster Gough has concluded in the IOM Judgment, that was simply a lie.

96. Shafe sought interim relief, and the interim injunction application came on before Zacaroli J (as he then was) on 6 August 2020. It was on notice; Habib and the Company were represented and resisted the application. Zacaroli J dismissed the application in an extempore judgment [2020] EWHC 2754. Zacaroli J held that Shafe had no sufficiently good arguable case for a direct beneficial interest in the Properties. Zacaroli J summarised the flaw in the First Claim at [17]:

> "[17] If there is no good arguable proprietary claim, no alternative claim is presently asserted. While the claimant [Shafe] would appear to have an arguable claim to a beneficial interest *in the company* and his exclusion from management of the company might give rise to claims of one sort or another, these have not been pleaded or advanced before me". (Emphasis in the original)

97. Notwithstanding that finding, Zacaroli J also considered whether Shafe had shown on the evidence that there was a real risk of dissipation of assets. On the evidence before him, summarised at paragraphs [20]-[24] of his judgment Zacaroli J concluded that there was not. That evidence seems to have concentrated on the Properties. There is not much reference to other assets, in particular the c.£460,000 in the Company's bank account. Regrettably, but perhaps not surprisingly given the Deemster's subsequent findings that Habib is a liar, as I shall explain later, despite Habib's evidence and submissions on his behalf that there was no risk of dissipation, it has emerged in the present proceedings that in fact £24,000 was paid out to Habib personally some 3 days *before* the hearing before Zacaroli J and the rest of the money in the Company's account was subsequently entirely dissipated by Habib and Omar.

98. Following the failure of the injunction application, the First Claim was discontinued. Deemster Gough described these proceedings as "the ill-fated proceedings in England" (IOM Judgment at paragraph [101]) and in the events which have happened it is hard to disagree with that assessment.

IOM claim, IOM Judgment, IOM Order

99. Shafe issued proceedings in the High Court of the Isle of Man on 10 December 2020 seeking, amongst other things, declaratory relief in relation to his beneficial interest in the Company and the fact that he remained a director notwithstanding his purported removal from the board on 1 July 2020 (see paragraph [240] of the IOM Judgment). Habib and Omar were both named personally as defendants, and both defended the claim on the basis that: (i) Shafe did not have any beneficial interest in the Company; and (ii) his removal from the board had been validly effected.

100. Habib falsely claimed he was the sole beneficial owner of the Company, recorded in a declaration of trust which he no longer had: paragraph [251] of the IOM Judgment It was put to Shafe squarely in cross examination during the trial in the Isle of Man that he made up the story of being a 50% owner of the Company (see paragraph [106] of the IOM Judgment) and that he was "simply a sort of caretaker" who was sent to the Properties to deal with tenants (paragraph [113] of the IOM Judgment). Deemster Gough found that these accusations were misconceived, that in fact it was Habib (and Omar) who was the liar, and that Shafe indirectly held a 50% share (see among others paragraph [243] of the IOM Judgment).

101. Consequent upon the IOM Judgment, Deemster Gough subsequently made the IOM Order. I do not propose to set out the order in full. It declared Shafe to be the ultimate beneficial owner of the one share held by Lake (i.e. 50%) in the Company. It declared that Shafe was one of two duly appointed directors on the board, the other being Omar. It declared that Habib was not a director of the Company and had not been since 1 September 2000. The relevant filings with the companies registry were ordered to be rectified to give effect to the IOM Judgment. In the result, the current position with regard to the members and directorships of the Company is that:

(1) The board of directors comprises Omar and Shafe;

(2) Lake holds 1 share in the Company (i.e. 50% of the issued share capital) on trust for Shafe absolutely;

(3) Harbour Ltd, was declared to hold the other share on trust for Habib absolutely.

102. The IOM Order awarded Shafe, Lake, Harbour and the Company their costs against Habib and Omar to be assessed on a detailed assessment; and adjourned the question of whether that assessment should be on the indemnity basis, and the amount of any interim payment, for further argument. In the IOM Order, Deemster Gough also granted injunctive relief against Habib, Omar and the Company. As well as injunctions to rectify registers, make appropriate filings etc., these injunctions included:

> "8. [Habib, Omar and the Company] shall not hold [Habib] out as a director of APL or as having been a director of APL since 1 September 2000.
> 9. [Habib, Omar and the Company] shall forthwith take all such steps as may be necessary to procure or assist [Shafe] to procure that:
> a. [Habib] is removed as a signatory to all bank accounts operated by APL and that any online access of or by [Habib] to those accounts is terminated;
> b. [Shafe] is made signatory to and provided with full online access to all bank accounts operated by APL;
> c. [Shafe] is provided with full access to APL's server, e-mail accounts and full access to all other online services or online facilities which APL maintains or to which APL has access;….
> 10. [Habib, Omar and the Company] shall within 14 days of request provide all such information and documents to [Shafe] regarding the affairs of APL in the period from 1 June 2020 to date as are within their control as [Shafe] may reasonably require to enable him to discharge his duties as director of APL.
> 11. Permission to the parties to apply on 48hrs notice to each of the other parties with respect to paragraphs 8 to 10 of this Order."

Events subsequent to 29 May 2024

Costs order

103. On 3 July 2024, Deemster Gough made a further order ("the **IOM Costs Order"**) dealing with the costs of the IOM Claim. Shafe's unassessed costs totalled £459,205.74 according to an email from his Manx Advocate Mr Andrew Bridson dated 15 January 2025. Deemster Gough awarded indemnity costs against Habib and Omar and ordered a payment on account of £250,000 to be paid to Shafe by 12 July 2024. Neither Habib nor Omar have paid a penny of those costs.

104. Mr Anderson put it to Shafe that he (Shafe) was in breach of the IOM Costs Order as he had not progressed an application for detailed assessment with expedition, as

paragraph 4 of that order required. That is right, but I regard it as a hollow charge which, for present purposes, goes nowhere. I find it hardly surprising that Shafe may not wish to incur the costs of detailed assessment when Habib and Omar were themselves in breach of the order to pay £250,000 on account of indemnity costs and they claim that they cannot pay anything at all. I also note that on at least one occasion (an e-mail dated 17 February 2025) Omar asked that Shafe refrain from commencing detailed assessment for the time being.

Refusal of Permission to Appeal

105. Habib and Omar sought permission to appeal the IOM Judgment; permission to appeal was refused on 10 September 2024. I was not shown a judgment disposing of this application.

Transfer of Habib's share to Holdco and the effect of this

106. Title to Habib's share was transferred from Harbour Ltd to Holdco on around 3 July 2024. The transfer to Holdco was the basis of a submission by Mr Anderson that Habib's conduct could not be attributed to Holdco.

107. The evidence about the basis or terms of this transfer was characteristically unsatisfactory. It is clear that the entirety of the issued share capital in Holdco is held by Habib as matter of legal title. The Petition itself clearly pleads at paragraph 6.1 that Holdco holds the share on trust for Habib (as had Harbour previously). Mr Hubbard, for Lake, asked Habib in cross-examination to confirm whether Holdco holds the share on bare trust for Habib, to which Habib responded "not entirely". When asked to explain, he said it was because his wife was involved, but he then denied meaning that there had been a transfer of a beneficial interest to his wife. Mr Hubbard tried again, asking whether what the Petition said was right about the share being held on trust, and Habib clearly confirmed that that was correct:

> Q. So the petition says your share -- the one held by the petitioner, is held on trust for you; is that right?
> A. Yes.

108. However, Mr Hubbard went on to ask further questions about whether it was held on trust for anyone else, such as Habib's wife, and Habib resorted to evasiveness. On the back of that, Mr Anderson asked Habib in re-examination whether there was a trust, and this time Habib gave a different answer, saying Holdco did not hold the share on trust and that Holdco "was just a simple limited company". That would mean that the previous nominee or trust position was dissolved, but there is no documentation about the share transfer to back this up, it is not what the Petition pleads, and Habib simply contradicted himself in his evidence.

109. In the circumstances, and in light of my findings as to the unreliability of Habib's evidence unless supported by contemporaneous documentation, I find that Habib's deeply unsatisfactory oral evidence cannot be relied upon and I find that Holdco holds its share as nominee for Habib, as the Petition pleads.

110. Nevertheless, I would also reject the submission that Habib's conduct cannot be attributed to Holdco regardless of whether Holdco holds the share on trust for Habib or holds it absolutely.

111. It is hard to reconcile the submission that Habib's conduct cannot be attributed to Holdco, when paragraph 8 of the Petition pleads that:

> By reason of the matters set out above, it is impossible for the Company to conduct business or take any decisions at all because the relationship between <u>Lake and Shafe on the one hand</u> and the <u>Petitioner, Habib and Omar on the other</u> has irretrievably broken down as a result of which there is a functional deadlock in the management of the Company (emphasis added).

112. Thus no distinction was drawn in the Petition between the two nominee shareholders and their principals. The breakdown in trust and confidence allegation depends on the Company being a quasi-partnership (which it is) but the quasi-partners are Habib and Shafe.

113. (It might also be thought that drawing a distinction between Holdco and Habib would expose Holdco to a submission that seeking winding up to permit Habib to discharge his personal liability for costs to Shafe was a true collateral purpose, but no such point was raised and I say no more about it).

114. I was not referred to any authority on the issue of attribution by either Counsel, either in the context of just and equitable winding up, or at all. In my judgment, it is a truism that equity looks at substance, not form, and the jurisdiction under s.125 of the 1986 Act, although statutory, is essentially equitable (*Lau v Chu* at [64]). Holdco is Habib's company. I am not satisfied that Holdco is anything other than a substituted nominee for Habib, but even if the beneficial interest in the share formerly held by Harbour on trust / as nominee for Habib had been transferred to Holdco absolutely, nevertheless, in substance, Holdco is Habib's company and in substance his control over that 50% shareholding in APL remains unchanged. Another way to put it as the Holdco, as assignee would be a privy of Habib. In my judgment, when considering whether it is just and equitable to wind up the Company, Habib's conduct may, for this purpose, be attributed to Harbour, and since the share transfer, to Holdco. This is not "piercing the corporate veil"; this is attributing to that company the actions, or the consequences of actions, of the *de facto* controller of a company, who plainly enjoyed full autonomy or agency to deal with that company's interest in APL.

115. Alternatively to the analyses set out in the preceding paragraph, Mr Anderson accepted in his closing submissions that even if the applicable rules of attribution – whatever they may be - did not permit Habib's conduct to be attributed to Holdco, his conduct can still be taken into account in considering whether or not it is just and equitable to wind up the Company. On any view, on the facts of this case, I cannot see how Holdco can simultaneously rely on a breakdown in trust and confidence between Habib and Shafe and/or functional deadlock as the basis for just and equitable winding up whilst denying that Habib's conduct (cause of the breakdown/deadlock and/or lack of clean hands) can be taken into account when considering whether it is just and equitable to grant the relief sought. As Mr Hubbard submitted, this approach is consistent with the statement of principle in *Lau v Chu* at [43] (which is to my mind well summarised in the extracts from *Duneau v Klimt Invest SA* to which I have been referred) that the just and equitable jurisdiction is to be exercised following a full investigation of the facts and taking account of all relevant circumstances known at the date of trial.

Issue 2(a) – provision of information in compliance with the IOM Order

116. Lake's case is that Habib and Omar did not comply with paragraphs 9c and 10 of the IOM Order. Those are injunctions, and the IOM Order is endorsed with a penal notice. Mr Anderson did not raise any point arising from that. Nevertheless, I make clear that any findings I make are based on the evidence before me, are to the civil standard only, and directed to what is relevant to this Petition namely whether or not Shafe was furnished with the necessary information to discharge his duties as a director.

117. Habib's position was that he and Omar complied, and provided Shafe with everything to which he was entitled in July 2024, and that not once has he since then approached Habib or Omar for further information. Shafe accepted in his evidence that he had not applied back to the High Court of the Isle of Man to enforce the injunctions, but I do not see how that absolves Habib or Omar from failing to provide information, if I were to find that that is what they did.

Information sought from the Company's accountant Mr Iqbal

118. On the day of the IOM Judgment, Shafe e-mailed the Company's accountant, Mr Iqbal, enclosing a copy of the IOM Judgment, drawing attention to the fact that he had been found to be a director and beneficial owner of the Company, and reciting the terms of the IOM Order (which had yet to be received from the Court). He asked for copies of all correspondence relating to the Company since 2020, all accounts and statements for the past 7 years, confirmation of the Company bank account details and any documents they held. On 3 June 2024, Mr Iqbal replied that he would get the information together and email within a couple of weeks. However, on 17 June 2024, Mr Iqbal e-mailed again, providing nothing at all. He stated that he could not provide any correspondence "as it would breach client confidentiality" and "please obtain this information directly from the directors", said the accounts were submitted to Habib and Omar and that Shafe must contact them, asserted that he had no information about bank accounts, and asserted that he held no other documents at all. Shafe replied by further e-mail on the same day, repeating his demands, pointing out his rights as a director, and he provided a copy of the sealed IOM Order. The body of the e-mail emphasised the Penal Notice. Mr Iqbal did not comply.

119. Habib accepted in cross examination that Mr Iqbal is his personal accountant as well as the accountant for all the businesses in which Habib is involved, including the Company

and Century 22. It was put to Habib that the reason for Mr Iqbal's change of position between 3 June and 17 June and his non-compliance with Shafe's requests was that he (Habib) had told Mr Iqbal not to do so. Habib denied this, and suggested that "probably", from reading Mr Iqbal's e-mail, that it was because Shafe did not pay a small bill for £2,659.74 relating to Britannia Driving School, which is mentioned at the end of the 17 June e-mail. When the question was put a second time, Habib's answer hardened into the non-payment of the bill being the reason. I do not believe Habib. It was plain from his first answer that he was simply fastening onto the mention of this unpaid invoice in Mr Iqbal's e-mail as an excuse to explain away Mr Iqbal's behaviour. The e-mail does not say that that is unpaid bill is the reason for not co-operating; it is tacked on at the end as "just to advise you". I asked Habib whether Mr Iqbal had asked for permission to give Shafe what he had asked for. Habib said no, and that Mr Iqbal had not spoken to him about it at all. I regard it as fanciful to suggest that Mr Iqbal would not have spoken to Habib about Shafe's e-mail *at all* and I also regard it as fanciful to suggest that Mr Iqbal would ignore a court judgment and order simply of his own motion and because of a small unpaid bill unrelated to the Company. In all the circumstances I infer that Mr Iqbal's non-compliance with Shafe's requests is attributable to Habib and was a breach of the IOM Order. In the result Shafe received no useful information from Mr Iqbal.

Financial position of the Company

120. When it was put to Habib that he not provided any of the documents Shafe needed to discover what had been going on with the Company since July 2020 or what the Company's financial position was in May 2024, his first response was his usual evasion, saying that accounts had to be submitted to the Isle of Man and HMRC. He then insisted that financial information had been provided. It was put to him that it was not. If it was, then it is not in the trial bundle, and Mr Anderson did not take up Mr Hubbard's challenge to re-examine if the information had been provided.

121. This point really goes hand in hand with Mr Iqbal's stone-walling; I find that Habib did not provide financial information about the Company to which Shafe would be entitled as a director, beyond bare company accounts as would be filed (I understand that the

accounts do not in fact have to be filed as this is a Manx company). No internal accounts, no working papers, no trial balances, nothing of use.

APL's server, e-mail accounts or other online services

122. Omar's evidence in his witness statement was that one of the Company's email addresses is unavailable, because, he says, payments could not be made to maintain the domain name as a result of Shafe taking steps to freeze the Company's account. I unhesitatingly reject this explanation. By the time Shafe was able to cause HSBC to freeze payments out of the Company's account, there was only c.£1,000 left in it (paragraph 137 below). That is in part because the accrued balance was dissipated and in part because since 2022 the Company's rental income has all been diverted to Century 22 (paragraphs 138 and 147ff below). It is accepted by Holdco that Century 22 is, as agent, running the business of letting and management of the Company's portfolio of Properties. That includes not just receipt of rents, it includes payment of the expenses which come with renting out property (a point Habib made when stating that the gross rental income could not simply be paid into the Company's HSBC account as it would not be possible to pay anything out for such expenses). That being so, then the evidence (largely in Omar's evidence) that deadlock was preventing payments being made to the Isle of Man CSP or to maintain Company e-mail accounts is a manufactured point. All the Company's available cash is and was in fact in Century 22's bank account, unfrozen, and available to pay those bills too. I therefore find that access to that Company email address was in effect deliberately withheld by Habib and Omar failing to pay what I expect was a very small amount of money to keep the domain alive.

123. There is, or was, a second e-mail which was working. Omar provided Mr Bridson with a password, but it was apparently inoperable. My interpretation of the subsequent to-and-fro between Omar and Mr Bridson, and a screenshot of a sign-in page which was in the bundle, is that if he or Shafe attempted to log in, then as it was a new login the security feature would require a second factor authentication. This would probably be by text to Omar. Omar offered to Mr Bridson to arrange a time when Mr Shafe could attempt to log in and Omar would be primed to send him the code; or he would meet with Shafe to do so. Shafe suggested Omar was playing games, but he also accepted that he could not remember if he (or Mr Bridson) followed this up. In those

circumstances, I do not find that there was a breach in respect of the second e-mail address.

124. As to a server, the evidence as to whether APL actually had a server is lacking, as is any follow up on a request for access to it, and again I find no breach in that respect

Account of rents diverted to Century 22

125. Although Habib accepted that Century 22 must account for all rents received on behalf of the Company, and account for outgoings, no actual letting/management accounts have been produced openly despite an explicit request from Mr Bridson in his e-mail dated 31 May 2024. No satisfactory explanation was given; Omar's starting position in evidence was that they were not relevant but "in hindsight" accepted they should have been produced to this court.

126. In my view, such accounts are within the control of Habib and Omar and compliance with the IOM Order would require that they be produced on an open basis for Shafe's consideration. Openness is important in a case like this as it prevents the accounts being changed (without explanation at any rate) to meet any complaints raised. It should not be for Lake's representatives to have to estimate rental receipts (see paragraphs 154 and 155 below) by extrapolating from their analysis of the Company's historic rental receipts shown in the bank statements. The unsatisfactory position was illustrated by Habib's response when Mr Hubbard asked him why Century 22 had not accounted for over £1 million in rental income – not only was the total capable of question, Habib pointed out that that was gross and there will have been expenses. Indeed so – but Lake does not know what the expenses were or what the net income/profit was.

127. Since the Company's entire business is the letting of the Properties, the accounts concerning this are arguably the most important piece of financial information which Shafe should have. For the avoidance of doubt, Shafe is also entitled to see the underlying material, including Century 22's bank statements (since it has used its account for this purpose) and any invoices which Century 22 states are expenses to be deducted from gross rental income.

128. The management agreement which apparently exists between the Company and Century 22 has not been openly disclosed either. However it may have been a document allegedly enclosed with an e-mail to Mr Bridson but which has not been able to be opened.

Tenancy agreements

129. The assertions of Habib and Omar that they did provide the tenancy agreements are supported by contemporaneous documents, such as an e-mail dated 1 July 2024 from Omar to Mr Bridson. In his oral evidence Shafe said he does not know if Mr Bridson ever followed up with Omar if he could not access the tenancy agreements which are shown as attachments. On this evidence I am not satisfied that there was any breach of the IOM Order by Habib or Omar in respect of provision of tenancy agreements.

Bank statements

130. Habib admitted in cross examination that he did not provide bank statements, but asserted that Omar did provide them. That answer is very difficult to reconcile with the fact that Shafe's evidence was that he was able to obtain bank statements from HSBC, not Habib or Omar, and that this is something that Habib complained about in his witness statement, where he said in paragraph 24:

> "…I note that Shafe does not explain how he obtained those statements in circumstances where he was not on the mandate of the Company's bank account, and I do not know how he obtained those statements…"

131. When that was put to him, and it was put that Omar did not provide them, Habib said he could not speak for Omar. Omar's position was that he had online access but, as that he stated in an e-mail to Shafe's Manx Advocate Mr Bridson on 3 June 2024, his online access would not permit him to download or save statements; he could only show then to Shafe on screen at a meeting (which Shafe was not prepared to attend). I do not believe for one moment that online banking with HSBC did not have a function to download bank statements; Shafe was able to produce an online banking printout of recent transactions in May 2026 to show that money could be paid in to HSBC; if online banking with HSBC did not have a function to download bank statements then they

could be screen-shot; and in default of online access Omar would in any event have been obliged to get hard copies from HSBC to comply with the IOM Order.

132. There is not a hint of recognition in paragraph 24 of Habib's witness statement that as a director Shafe was entitled to see those accounts, or that the IOM Order required Habib to procure that Shafe was a signatory with full online access to the Company's bank account.

133. I prefer the evidence of Shafe. In my judgment, it is clear that Habib (and Omar) breached the IOM Order in this respect and that Shafe had to obtain the HSBC statements himself; the fact that he was able to do so thus exposing the dissipation of the Company's money and the diversion of rental income to Century 22 (which I address under issue 2(b) and 2(c) below) was much to the annoyance of Habib and Omar.

Summary

134. In a Note provided after the hearing, I was referred, largely by Lake, to more recent correspondence between the parties' Solicitors in the period July to November 2025 concerning disclosure. This seems to have become wrapped up in a potential mediation, no disclosure order was made in this petition, and I have not found this correspondence helpful.

135. In summary, although I do not accept all the allegations of breach of the IOM Order advanced by Lake, and although Shafe has managed to get round the failure to disclose the Company's bank statements by obtaining them for himself, I find that Shafe has not been provided with key financial information, in particular open provision of a full and complete accounting by Century 22 for / of the letting of the Company's Properties and the Company's own internal accounts which Mr Iqbal refused to provide and/or the financial information to which Shafe as a director was and is entitled.

Issue 2(b) – what happened with respect to the Company's bank account

136. What happened with respect to the Company's bank account after 29 May 2024 was in large part that Shafe found out what had been happening since he was removed from

the mandate in 2020. It was common ground that after the IOM Judgment and with the benefit of the IOM Order, Shafe was able to procure that HSBC "freeze" the Company's account in about August 2024. Shafe was able to obtain Company bank statements from HSBC and the statements from 12 May 2020 to 11 July 2024 were in evidence before me. By the time it was frozen, the account was all but empty.

137. Mr Hubbard for Shafe produced an analysis of the figures as part of his submissions and which he used as a basis for cross-examination; Mr Anderson for Habib did not dispute the figures summarised in Mr Hubbard's analysis. The statements disclose that on 11 June 2020, the Company's bank account was £456,892.39 in credit. It was a similar figure at the date that the First Claim was issued on 29 July 2020 (although it was only £440,101.13 by the date of the hearing before Zacaroli J on 6 August 2020 for the reason given in paragraph 141 below). The month-end credit balance peaked at £502,769.02 at the end of March 2021. However, the balance at the date of the IOM Judgment was only £1,311.71. How did that come to pass?

138. First, income into the account, which had totalled something like £190,000 to £205,000 per annum for 2020-2021, dried up. This is because the rental income from the Company's properties has since been collected by Century 22 and paid into its account; addressed under Issue 2(c) below.

139. As to the accrued credit balance, the HCBC statements disclose that £436,462.86 was spent on legal fees. In paragraph 25 of his witness statement, Habib stated that he did not dispute the payments out of the Company's account to Isle of Man lawyers, which he freely admitted were to fund <u>his</u> costs (not the Company's costs) of defending the IOM Claim, on the basis that he was maintaining he was the indirect 100% owner of the Company. I do not understand how anyone could think that it was a legitimate use of the Company's money to fund the defence of a shareholder to a claim which was primarily a dispute as to beneficial ownership of the other share.

140. Habib said that because the result of the IOM Judgment was that Shafe was indirectly a 50% owner, he did not dispute that *half of those funds must now be accounted for.* That too is wrong in my judgment: 100% of those funds must be accounted for to the Company as it is all Company money. This is not a distinction without a difference: if

Habib's case is that a liquidator can investigate his (Habib's) wrongdoing, then the liquidator would be assisted by liquid funds and Habib's actions in emptying the Company's account in this way deprives a liquidator of a ready source of liquid funds. This may be significant if, as I infer elsewhere, Habib can be expected to fight a liquidator every step of the way. By "account for", Habib means "pay out of his share of company property", since Habib says he can't pay the company back. Furthermore, Shafe has had to fund 100% of his own costs of bringing the IOM claim and the suggestion of accounting for only half of the money wrongly disbursed strikes me as being another attempt to gain an advantage.

141. There was also a payment of £24,000 to Habib personally on 3 August 2020. Given the strong coincidence in date between that payment and the date of the hearing before Zacaroli J on 6 August 2020, and the admitted fact of later using the Company's money to pay the Manx legal fees, it is tempting to infer that this £24,000 was also for payment of legal fees, but this was not put to Habib so I make no such finding. Suffice to say that it cannot be denied that this sum was paid by the Company to Habib, and if Habib disclosed this payment to Shafe or to Zacaroli J when denying that there was any risk of dissipation of assets, it does not feature in the judgment of 6 August 2020.

142. Habib in paragraph 26 of his witness statement also admits payment out of the Company's account of a total of £128,385.55 to Century 22. I explain more about this company's role in managing the Company's Properties in paragraphs 147ff below, but these payments were different: Habib's evidence was that this money represents repayment by the Company of a loan made to it by him (Habib); and he explains the payment to Century 22 as being because he then lent the same money to Century 22. Omar in his witness statement said that his understanding that there was a loan came from discussions with Habib. The only evidence for a loan to the Company, a repayment by the Company or a loan to Century 22 is the respective company accounts, prepared of course under the control of Habib in respect of Century 22 and, in the case of the Company, Omar. No historic documents evidencing the original loan to the Company were produced. No explanation was given as to when or why Habib lent money to the Company, which was, latterly at any rate, making a net profit on rental of unencumbered Properties.

143. The Company's accounts for the year ended 5 April 2023 were produced showing a reduction in creditors from £306,300 to £166,325, a difference of £139,975. Century 22's accounts for the year ended 31 July 2023 were produced, recording an increase in creditors due within 1 year from £5,287 to £128,593.

144. Neither of the above movements in creditor balance quite matches the sum in question. Moreover, the £128,385.55 figure was an aggregate of a number of payments. Mr Hubbard showed that the actual amount paid out of the Company's HSBC account to Century 22 in the Company's accounting year to 5 April 2023 was only £63,000, comprised of a pair of payments in May and June 2022. There was no further payment to Century 22 until December 2023, so the HSBC statements disclose no payment at all to Century 22 during its accounting year 1 August 2022 - 31 July 2023; and the payment of £63,000, which would on Habib's evidence have been advanced in the previous accounting year, is not reflected in the opening creditor balance of £5,287.

145. Habib could not explain any of this, and resorted to various evasions, saying that he was "hopeless with accounts", that he could not remember the basis for what he said in his witness statement (despite it being dated 30 April 2026, only 5 weeks before trial), and, at one point "just surmising" that what happened was that the payment was perhaps some invoice. When this matter was explored with Omar, he uncharacteristically became expansive and contended that the explanation was the accruals basis of accounting, on the basis of which a cost can be accrued or accounted for even if not paid in the relevant period. Whilst he is plainly right that the accounts were on the face of it prepared on that basis, the explanation still does not make sense. Unless Century 22 was somehow obliged to accept a loan from Habib, there would be no liability until the money was received, and once money was lent – the £63,000 payments in May and June 2022 - it should be reflected in the relevant accounting year, but it was not. I fail to see how reference to the accrual basis explains the complete lack of correlation between the Century 22 accounts and the actual payments out of the Company's HSBC account. And unless and until any loan made by Habib to the Company was actually repaid (whether by payment to him or to Century 22 at his direction) the debt would remain a liability to a creditor in the relevant accounting year for the Company, but only

£63,000 was paid out, yet the 5 April 2023 accounts supposedly record the whole alleged debt being discharged.

146. I do not believe the explanations of Habib and Omar. There is no documentary evidence to back up the assertion of a loan in the first place (and on this even Omar declined to go further than saying that he was relying on what Habib told him); on their face the aggregate figures in the accounts do not quite add up even on their case, I do not regard "being close" as good enough; and the actual dates of payments cannot be reconciled with the accounts. The reference to the accruals basis was simply an attempt by Omar to rescue Habib from the corner into which Mr Hubbard had driven him in cross-examination. Such explanations were only forced upon them by dint of Shafe having managed to get hold of the bank statements from HSBC. On Habib's own evidence concerning payment of legal costs, he considered he was entitled to spend Company funds that way because he was the 100% owner, and it seems to me that the same mindset must equally apply to the payments to Century 22. I find that the payments to Century 22 were simply a further dissipation of Company money to the use of Habib.

Issue 2(c): the Company's rents

147. In paragraph 22 of his witness statement Habib admits that the rental income generated by all the Properties owned by the Company is now being paid to Century 22, that is to say Century 22 Property Management Limited.

148. Century 22 was incorporated on 20 July 2020, which is to say very shortly after Shafe was purported to have resigned from his directorship of the Company and a few days before Shafe issued the First Claim. Habib's evidence was that he is the sole director.

149. In his evidence, Habib referred to Century 22 having a service agreement dated September 2020, but I was not shown such an agreement. I accept Shafe's evidence that he did not know about or consent to the collection of the Company's rent by Century 22.

150. The explanation given by Habib in paragraph 22 of his witness statement for the diversion of rent to Century 22 is that the Company's rental income is being paid to Century 22 because Shafe caused the Company's bank account to be frozen (by the

bank) around the time of the IOM judgment, as a result of which the Company is unable to receive or pay out any sums. Because of that and Shafe's non-involvement in management or rent collection, Habib says that he and Omar had to step in and rely on Century 22 to manage the Properties and collect rent. Omar said the same thing in his statement.

151. I find that story to be an obvious tissue of lies. The date of incorporation of Century 22 shortly after Shafe was unlawfully removed as a director is no coincidence in my judgment, particularly bearing in mind that at no prior stage since the Company's incorporation in 1995 had it been thought necessary to manage through a separate company. Century 22 began managing the properties from July 2020, about the time Shafe commenced proceedings claiming a half interest in the Company. The amount of money being paid into the Company's account at HSBC began to reduce in 2022, not 2024: Mr Hubbard's analysis of the bank statements is that £109,935.80 was received by HSBC in the last 7 months of 2020 and £206,450.14 in 2021, but only £99,920 in 2022, only £755 in 2023 (of which £533 was in January), and nothing in 2024. In short, no significant sum was paid in after December 2022, well before Shafe caused the bank to freeze the account in about August 2024.

152. In his oral evidence, Habib gave a different explanation, absent from his witness statement. He said that actually he expected that the bank might freeze the Company's account, because there had been "lots of goings ons" with HSBC when the dispute arose in June 2022, that the Company being offshore "raised a lot of suspicion", and that he and Omar "had to make contingency plans" in case a freeze happened. Omar went further and gave a long explanation, totally absent from his witness statement also, that this all derived from HSBC having had a "safeguarding review" in 2020, that when the dispute arose in 2020 control of the Company's account switched over several times, and that Shafe, even though removed as a director, had contacted HSBC which "spooked them".

153. I do not believe this explanation. There is no supporting evidence for it at all; Shafe had, on the papers, been removed as a director in 2020 so far as the bank is concerned and he had undoubtedly been removed from the bank mandate back in 2020 yet the account remained unfrozen; it is not what Habib or Omar said in their witness

statements; and I reject Habib's evidence that its omission was simply "an oversight" as implausible. Furthermore, if a potential freeze was the concern as far back as 2020 one would have thought that they would have been rather quicker to divert the rental income to Century 22, but the figures indicate that this only started happening in 2022. Thus the date that diversion begins is too late to be explained by "goings on" in July 2020 and too early to be explained by the freeze in 2024. I find that this was simply a change of story by Habib and Omar in an attempt to explain away the obvious falsehoods in their witness statements. I infer that the real reason was to make sure that the Company's business was under their control regardless of the outcome of the IOM Claim or any other claim Shafe might bring, giving them the advantage of possession of the money and control of the accounting.

154. Habib in his witness statement goes on to maintain that there is "a full record of all rental proceeds collected" by Century 22 and that such proceeds are being held for the benefit of the Company. They certainly should be; Century 22 is simply a managing agent, owing fiduciary duties to the Company. The sums involved are significant: as Mr Hubbard put to Habib in cross-examination, if one assumes that the rental income is approximately the same £200,000 pa received in 2020-2021 (and why would it not be as no Properties have been sold), the gross rental income to date which has not been paid into the Company's account would be very approximately £1 million.

155. But I am afraid I have no faith at all that all the rent will be accounted for properly, or at any rate not willingly. Habib said in his oral evidence that the Company's money is not being held by Century 22 in a separate bank account. Payments can in fact be made into the Company account at HSBC, as Shafe's evidence of the making of a token payment-in demonstrated. I accept that the entire gross rental income from time to time could not be paid in now, as there will be expenses to defray and I accept that it must be assumed that money would not be permitted to be paid out so the HSBC account could not presently be used as a day-to-day banking facility, but in my judgment no valid explanation was given for why the accrued profit on letting from 2022 onwards could not be paid into the Company's account now. In my view, Habib has no intention of causing Century 22 to account to the Company for any money at all at this juncture. His witness statement refers to accounting "in due course", by which he means he would propose to deal only with a liquidator.

Issue 2(d) – Shafe's attempts to enforce the IOM Costs order and a further costs order made on 14 February 2025

156. On 10 June 2024 legal title to Habib's home at 40 Westcoombe Avenue, London SW20 was transferred from the joint names of Habib and his wife Farzana into the sole name of Farzana. This was later justified on the basis that that Habib had declared a trust for Farzana as long ago as January 2017. Shafe disputes the validity of that deed, and in the bundle is a letter of claim from Shafe's Solicitors dated 1 July 2025 asserting a claim to reverse that disposition under s.423 of the Insolvency Act 1986, with a response from Habib dated 22 July 2025, but those are not issues which I can decide. Nevertheless, it does seem obvious that even on the basis that a trustee might legitimately want to make sure that trust assets could not be mistaken for his own assets if and when a judgment was sought to be enforced, the timing of this transfer of legal title is entirely consistent with Habib taking the position at the earliest possible stage that any costs orders would not be paid.

157. The IOM Costs Order was made on 3 July 2024. The £250,000 ordered to be paid on account went unpaid, and remains unpaid to date. On 19 November 2024 Shafe obtained an order from Master Eastman registering the IOM Costs Order as a judgment in the High Court in this jurisdiction. On 17 January 2025 Habib and Omar applied to set that aside under CPR 74.7 on the grounds that service had allegedly not been properly effected. That application was dismissed by Deputy Master Fine on 14 February 2025 and Habib and Omar were ordered to pay costs summarily assessed in the sum of £10,000 inc. VAT. That has not been paid either.

158. On 29 April 2025 Shafe applied for a charging order over a property at Flat 2, 206 Coombe Lane, London SW20, legal title to which is in Omar's name, and an interim charging order was made. In a witness statement dated 3 June 2025 Omar produced another trust deed, dating from 4 October 2010, which shows that this property too is held on trust for Farzana. It is witnessed by Mr Iqbal. The application was withdrawn and the interim charging order set aside, by a consent order dated 10 June 2025.

159. I am told that there is a pending application, dated 21 March 2025, seeking a charging order over Habib's and Omar's shares in Century 22 and over Century 22's bank account, and that an interim charging order was made on 27 May 2025. I am told that these are also being resisted, on among other grounds that according to a witness statement dated 8 July 2025 Habib's shares in Century 22 are held on trust for his wife Farzana and another one of his sons, Dawood.

160. On behalf of Lake I was invited to find that the trust deeds are "highly suspicious" and in effect to infer that they are devices to evade enforcement, although Mr Hubbard rowed back from that submission in closing. I decline to do so; I am not in a position on the evidence before me to make any finding or draw any inference about the validity or otherwise of the various trust deeds.

161. In his witness statement, Habib calls Shafe's attempts to enforce "vindictive". Given Habib's conduct generally and the fact that we now know he paid his own costs out of Company money and has control over the entire Company rental income through Century 22, I consider that to be an outrageous thing to say. And while I cannot delve into the validity of the trust deeds which have been produced, in my judgment *Shafe* cannot be criticised for being suspicious of them given Habib and Omar's proven track record of wholesale dishonesty and in my view Shafe cannot be criticised for attempting enforcement against assets which appear on their face to belong to Habib or Omar.

162. Lake's case is also that the refusal to pay the costs orders is deliberate and tactical. It is pointed out that:

(1) Habib and Omar have provided no evidence of means. Their assertion that they cannot afford to pay is only their say-so;

(2) They could however pay their own costs of resisting the application to register the IOM Costs order as a judgment in this jurisdiction;

(3) Habib has managed to put Holdco in funds to bring this Petition, represented by a city firm of Solicitors and by Counsel.

163. When that last point was put to Habib in cross-examination, he responded:

> "That's a separate thing altogether. Paying your solicitors and barristers and the other bit because you find the funds borrowing, getting family and friends to

help. It's a completely separate thing".

164. That is half an admission, but I am not prepared to accept mere unsupported say-so from Habib as to lack of means. I conclude that Habib could pay at least some of the unpaid costs if he chose to do so, but he chooses not to. I regard it as a fair inference that his refusal to pay one penny in costs, in breach of two costs orders, is designed to pressure Shafe, both to stress him financially and to pressure him into agreeing to a winding up.

Facts of Issue 2(e) management of the Company

165. Two points should be disposed of first:

(1) The Petition complains of Shafe's alleged refusal to discuss the affairs of the Company with Habib/Omar since "at the latest" 29 May 2024 (the date of the IOM judgment). In my judgment, there can be no sensible argument in support of the allegation "at the latest" because (a) until the dispute arose in 2020, the IOM judgment finds that Habib and Shafe managed the Company's affairs regardless of directorships and not through the *de jure* constitutional structures and (b) between 2020 and the date of IOM judgment Shafe was being excluded by Habib and Omar, having been unlawfully removed as a director and it being flatly denied that he had any interest in the Company. The date of the IOM Judgment is actually the *earliest* conceivable date Holdco could complain about;

(2) The cross-examination and submissions on behalf of Lake included the proposition that a continued role in management by Habib (which he admitted) was a breach of the injunction in paragraph 8 of the IOM Order. I do not accept this: Habib could manage without being held out as a director, nothing was being done by him as a director of the Company, and he is the director of Century 22 in which capacity he can be said to be managing the letting of the Properties.

166. There has been no board meeting. There were e-mails where Omar does, on the face of it, suggest a meeting, and Shafe did not take him up on that suggestion. They were identified in Mr Anderson's skeleton, and they are not many:

(1) An e-mail from Omar to Mr Bridson (using the Company's email domain at that stage) on 29 May 2024 suggesting a meeting "to discuss how the company can be effectively managed moving forward, as well as the future of APL." This does not appear to have been intended as a board meeting as he proposed that Shafe's

children and possibly legal representatives attend. It also continued "…we would like to bring this matter to a close…" which is suggestive of discussing liquidation. Shafe admitted that this invitation was not responded to; he said it was because it was not sincere and that he wanted disclosure before any meeting;

(2) An e-mail from Omar to Mr Bridson on 3 June 2024 includes the line "Happy to arrange a meeting of directors to discuss this [access to the Company e-mail] and decide on commercial decisions together". No further detail is given;

(3) An email from Omar to Mr Bridson on 1 July 2024 was sent, which largely concerns disclosure, with Omar marking up in red his responses to an e-mail on that topic from Mr Bridson on 28 June 2024. In among those mark ups, the following line was buried:

> "Once again, happy to arrange a meeting of directors to discuss and vote on how the business is run moving forward. However, your client seems reluctant to take up this offer, even after several attempts to try arrange a meeting"

(4) The correspondence then peters out;

(5) Rather later, there were e-mails about possible settlement. For example, in an e-mail from Omar to Mr Bridson on 22 January 2025, in response to an offer to agree the unassessed costs of the IOM Claim, there is a suggestion of a without prejudice meeting (again not a board meeting) to discuss "…other outstanding matters, such as what is to happen with regards to the management, or potentially splitting the assets and/or liquidation, of the company going forward, to be 'on the agenda'." But that too goes on to say "We consider that it is in all parties' interests to draw a line under the matters which remain outstanding following this litigation." Shafe declined unless his costs were paid in full, and he candidly accepted that that was his position at the time, as well as requiring disclosure prior to a meeting;

(6) There was also an e-mail from Mr Iqbal on 8 January 2025 suggesting a meeting with Habib. This e-mail however also suggested, somewhat extraordinarily given the IOM Judgment and IOM Order, that Shafe's "..claim to ownership lacks the necessary substantiation and remains vulnerable to challenge".

167. Habib in his witness statement states that he has tried to contact Shafe through Omar or other intermediaries "…to discuss the future conduct of the Company, and in particular

the prospect of liquidating the Company…" In my view, it is telling that Habib does not suggest any other conduct to be discussed, only liquidation.

168. It was put to Habib that the only thing to be discussed was the winding up of the Company. He denied that, but no example was given of any other business decision to which it was proposed that Shafe should agree:

> Q: "…the only thing you are interested in when you say you reached out to him is to have the company wound up. That's right, isn't it?
> A. That's because the company is in deadlock."

169. The same point emerged in Omar's cross-examination. No example was given of any other business decision to which it was proposed Shafe should be agreeing. Additionally, Omar referred to this dispute as also being a family matter and that he wanted to bring it to an end.

170. Shafe's evidence in respect of these e-mails was that he regarded any e-mails received from Habib or Omar which referred to discussing the future of the Company's business as window dressing and the only thing that Habib and Omar wished to discuss was winding up the Company or dividing its assets. I accept that that was his view. Habib and Omar denied that this was the case, but I do not believe them and in my judgment Shafe was justified in taking the view that he did:

(1) The case was put before me on the basis that Habib and Omar "do not shy away from" the IOM judgment and accept it. However, they were actively seeking permission to appeal on the merits. The decision refusing permission to appeal was not given until 10 September 2024. The early e-mails, particularly those in May-July 2024, are sent at a time when Habib and Omar were clearly not accepting the result of the IOM Judgment, or at least hoping to overturn it;

(2) Although either director could unilaterally call a board meeting, at no stage did Omar actually call such a meeting. Such a meeting would not have been quorate if Shafe had declined to attend, but I might have expected that at least one meeting would be called, if it were intended to rely on functional deadlock and to attribute blame for the deadlock to Shafe;

(3) None of the e-mails suggest any specific proposal to be discussed. Nor was Shafe ever asked to agree to any particular proposal or resolution;

(4) Meanwhile, Habib was running the actual business of the Company through Century 22. It must be borne in mind that by dint of the Management Agreement which Habib and Omar say they caused the Company to enter into with Century 22, no day to day management decisions were required to be taken by the Company itself. Habib admitted in cross-examination that he carried on as before notwithstanding the IOM Order;

(5) Later e-mails, such as an e-mail from Mr Iqbal in January 2025, clearly seek to invite Shafe to discuss winding up.

171. Shafe was also candid and repeated a number of times during cross-examination that he wanted the documents for which the IOM Order provided, before he would sit down with Omar or Habib. I accept that evidence, from which it follows that in the circumstances which obtained, Shafe would not have attended a board meeting called by Omar.

172. Omar in his witness statement at paragraph 28 sought to list matters which the alleged deadlock had impacted, apart from management of the Properties:

(1) The first was an alleged inability to pay invoices to the Company's IOM CSP (Sanctuary Trust), because the Company's HSBC account is frozen. This is answered by the same point as in respect of the failure to pay to main the Company's e-mail address (paragraph 142 above) – the Company's account had been all but emptied by the time Shafe was able to freeze it after the IOM Judgment and IOM Order, and all the Company's cash was available, unfrozen, in the account of Century 22 – a point Shafe made in an e-mail to the CSP on 10 October 2024 and into which Omar was copied;

(2) The second was an alleged inability to file a RORA form required by Sanctuary Trust because Shafe refused to sign it. Although in an initial reply e-mail from Shafe to Sanctuary Trust on 4 August 2025, Shafe took the position that he was not in a position to provide or sign off on anything because of his lack of access to the Company which "continues until today", by which I understand him to mean lack of access to Company records, that evidently changed and in a further e-mail on 8 August 2024 Shafe provided the information that he felt he could. There was no evidence that the material provided by Shafe was insufficient for Sanctuary Trust;

(3) The third was an inability to file an Annual Return. Shafe accepted in his evidence that he would not sign off on Companies Registry documents without the information with which he had not been provided by Habib and Omar. This was not denied on behalf of Lake; it was pointed out that Omar had felt able unilaterally to file an annual return on 26 August 2024 which recorded the share transfer to Holdco but that does not answer the point that there are at least some things which cannot properly be done by and on behalf of the Company because Shafe does not agree.

Issues 1 and 3

Relevance of the conduct of Shafe, Habib and Omar in the period June 2020 to 29 May 2024, as established by the IOM Judgment and by further evidence now before the Court and relevance of their conduct with respect to the matters arising under Issue 2

173. I have set out my factual findings earlier. The findings I have made as to conduct under issues 2(a), (b), (c) and (e) are relevant to my assessment of the cause of the breakdown in trust and confidence, the question of functional deadlock, and the cause of any functional deadlock. I deal with those issues below. They are also relevant to the issue of clean hands. As the clean hands requirement finds its expression in the question as to whether or not it is just and equitable to order winding up, I address the significance of my findings as to conduct in that respect under Issue 6 below.

174. The issues concerning the dissipation of funds from the Company's bank account may also be relevant to the issue of alleged collateral purpose, which I address under Issue 4.

175. As to the relevance or otherwise of conduct in respect of issue 2(d) – attempts to enforce costs orders - on the one hand I have made no finding that the trust positions which have stymied Shafe's attempts to enforce are illegitimate; on the other I do not consider that Shafe is to be criticised for the attempt. Shafe's unsuccessful attempts to enforce lack any real significance to the decision I have to make as to whether or not to wind up the Company. The underlying failure to pay costs is however a factor which I take into account in considering whether or not it is just and equitable to make an order on this Petition.

Cause of breakdown in trust and confidence

176. There could be no dispute that trust and confidence between Shafe and Habib is non-existent.

177. The issue of the cause of the breakdown, and whether or not Habib is the sole cause within the meaning of the speech of Lord Cross in *Ebrahimi*, is a matter for the Court on an evaluation of the evidence. I state this because in closing Mr Anderson relied on the fact that he had persuaded Shafe to accept in cross-examination that the failed First Claim before Zacaroli J in July 2020 was a cause, as a basis for submitting that Habib could not be the sole cause of the breakdown in trust and confidence.

178. In my judgment, Habib's conduct was the sole cause of the breakdown in trust and confidence within the meaning of *Ebrahimi*:

(1) Habib, assisted by Omar, dishonestly and unlawfully excluded Shafe from the Company, by the steps identified by Deemster Gough in the IOM Judgment summarised in paragraphs 89-91 above. The reason for doing so appears to have been simply because Shafe wanted to record his 50% beneficial ownership (through Lake) (paragraph 88 above);

(2) Habib maintained in his oral evidence that it was the First Claim which was the cause of the breakdown in relations, but the First Claim was simply a response – and an entirely predictable one - to those steps which had already been taken by Habib (see paragraphs 36ff of the Particulars of Claim in the First Claim; paragraph 94 above). Shafe's response in bringing the First Claim was not misconduct at all; it was legitimate for him to seek to protect his interests by taking legal action to vindicate his half share, even though the way the First Claim was framed (TOLATA claim that the Company held the Properties on trust) was misconceived;

(3) Habib's evidence in the First Claim in July 2020 was dishonest: he baldly and falsely asserted that Shafe had no interest in the Company (paragraph 95 above);

(4) Through Harbour, Habib also asserted in the First Claim that there was no risk of dissipation of assets, but that was exactly what did happen, as Shafe discovered when he was able to obtain HSBC bank statements consequent upon his success in the IOM Claim (paragraphs 136-146 above);

(5) Shafe's claim in the Isle of Man was simply a further response to this stance. Habib (and Omar) maintained their dishonest evidence and utterly dishonest case that Shafe had no interest in the Company until the handing down of the IOM Judgment (and indeed until permission to appeal was refused) – paragraphs 99-100 above;

(6) The scale of dishonesty by Habib and Omar, and other on their side of the family during the IOM claim was extreme, as found by Deemster Gough: paragraphs 22 to 23 above. Shafe, and those members of his side of the family who gave evidence, were by contrast found to be honest (as to Shafe, see paragraph 24 above);

(7) In effect, Habib, assisted by Omar, attempted to steal Shafe's (indirect) half share in the Company;

(8) Habib may on the face of it accept a liability in Century 22 to account, but he has de facto taken control of the Company's business and income by placing management with Century 22 and diverting rent into Century 22's bank account, which Shafe has also discovered consequent upon the IOM Judgment (paragraphs 147-155 above);

(9) The misconduct of Habib and Omar in the IOM Claim included failures to provide disclosure: IOM Judgment paragraphs [13], [17], [88]; [90]; [211]; [228]; [233]; [237]; [277]. Failure to provide disclosure is a classic reason for the other side, in this case Lake/Shafe, not to have trust or confidence in them.

179. As I discussed in paragraphs 51 to 52 above, it is always open to a wrongdoer, against whom the victim has sought vindication or redress, to assert that the victim's responsive claim is a contributory cause of a breakdown in relations. Shafe, being the straightforward witness that I have found him to be, accepted that the First Claim was probably a cause of breakdown. In a sense it may be, as wrongdoers like Habib can become most aggrieved that they have been caught out or that their victim has had the temerity to fight back but in my judgment that does not mean that the wrongdoer (in this case Habib) is not the sole cause within Lord Cross's meaning in *Ebrahimi*. Discussions in the judgments to which I was referred (*Harding v Edwards, Dosanjh*) about there being cause on both sides is in the context of relationships which sour over time and where both sides can be said to have contributed. That is not this case, where all the acts asserted against Shafe are properly to be characterised as a legitimate and proportionate response to Habib trying to exclude him from the Company. Shafe did not do wrong. In my judgment, in the sense that "sole cause" is used in the *Ebrahimi*

judgment, Habib remains the sole cause of the breakdown in trust and confidence by reason of the steps he took (assisted by Omar) unlawfully to exclude Shafe from the Company in June/July 2020 and his subsequent maintenance of a thoroughly dishonest defence to Shafe's legitimate claims until the bitter end (the IOM Judgment) on 29 May 2024.

Functional Deadlock and its cause

Is there a functional deadlock?

180. This sub-issue differs from the "breakdown in trust and confidence" issue in that there was no functional deadlock prior to the IOM Judgment: until June 2020, Shafe and Habib ran the Company together with little or no regard for the *de jure* corporate structure. Shafe's evidence in the IOM Claim, recorded at paragraph [94] of the IOM Judgment, and which Deemster Gough accepted, was that Shafe had never had any meetings with Omar in his capacity as a director of the Company. From June 2020 until 29 May 2024 Shafe was excluded and Habib and Omar ran the Company for themselves.

181. However, constitutionally, the Company is one which has always been vulnerable to deadlock, even in the narrower sense identified by Lady Arden in *Lau v Chu* at paragraph [88], and the result of the IOM Judgment gives rise to the position that:

(1) It is a company with 2 shareholders; a 50:50 situation;

(2) The ultimate beneficiary and controller of one share, Shafe, is also a director. The other director, Omar, is not the ultimate beneficiary or controller of the other share but, as is plain and obvious from the IOM Judgment and the evidence before me, it is fanciful to expect that he would break ranks from Habib. Habib's oral evidence was that he (Habib) continued to make decisions despite the IOM Order;

(3) The Company's Memorandum and Articles do not relevantly vary the applicable provisions of the Isle of Man Companies and Memorandum of Articles of Association Regulations 1988 and the Table A therein;

(4) A general meeting would require both shareholders to be quorate as well as to transact business;

(5) The power to appoint directors resides in the general meeting, at which Lake and Holdco each have 1 vote;

(6) Whilst one director, either Shafe or Omar, could unilaterally call a Board meeting, it would not be quorate unless the other attended. If the directors do not agree, neither has a casting vote; in principle there could be a chair with a casting vote, but it would have first to be agreed who would be the chair;

(7) However one approaches it, in the factual position which has been reached, there is no mechanism to resolve a disagreement between the members or the directors.

182. I accept Mr Hubbard's submission for Lake that, nevertheless, there must be something to take matters beyond a paper deadlock into the territory of functional deadlock. But in a company constituted in the way that APL has become constituted as a result of the IOM Judgment, not a great deal is required in my view. As to that:

(1) First, there is an overlap with the complete breakdown in trust and confidence between Shafe on the one hand and Habib and Omar on the other. In a two-person quasi-partnership, it is likely that a breakdown in trust and confidence would also give rise to a functional deadlock;

(2) Secondly, whilst it can be said that Omar never went so far as to put Shafe to the test by actually circulating a notice calling a Board meeting, and the references to potential board meetings in e-mails (as set out in paragraphs 166ff above) are decidedly thin, Shafe has never sought to call one either (nor circulated a written resolution or for that matter caused Lake to call an EGM). I conclude that (because of the breaches of the IOM Order, see below) Shafe would not have attended any board meeting which Omar called or if he did would not have agreed to take a decision;

(3) Thirdly, I accept Mr Anderson's submission that the right way to approach the fact that the Company's business of property letting can be and presently is conducted by Century 22 as agent, using Century 22's bank account, is that this simply disguises the underlying deadlock in the Company. I accept that continued trading by alternative means does not mean that there is no deadlock (cf. *Yenidje Tobacco Co* [1916] Ch 426 where the directors communicated only via the company secretary as intermediary, but this allowed the company to trade and the company made profits – nevertheless it was held deadlocked);

(4) Fourthly, it seems clear that the freeze on the Company's bank account, procured by Shafe (for good reason), would prevent the Company using that account to operate the letting business and no agreement would likely be reached to open a new one in the absence of compliance with the IOM Order and provision of key financial information to Shafe and payment over of the money held on the Company's behalf by Century 22;

(5) Fifthly, I accept that there are small but concrete examples of business which cannot be transacted, such as the Annual Return. Shafe accepted in his oral evidence that (in the present circumstances of lack of information) he would not sign off any Companies Registry documents for the Company. It might also be said that although Century 22 can let and manage the Properties, no decision to sell a Property could be made.

183. I therefore find that there is a functional deadlock; the real question is as to its cause.

Cause of functional deadlock

184. I consider this present case to be a good example of the overlap between breakdown in trust and confidence and functional deadlock as identified by Lord Briggs JSC in *Lau v Chu* at the end of paragraph [19]. On the facts of this case, Habib's conduct up to the date of the IOM judgment, which is in my judgment the sole cause of the breakdown in trust and confidence, is the first and most important element of the cause of functional deadlock. Shafe does not trust Habib or Omar and given their wholesale mendacity during the IOM Claim, how could he? I accept Shafe's evidence that he would not feel able to discharge his duties as director, such as to attend a board meeting without the material to ascertain for himself what had been going on with the Company since his exclusion in 2020 and that he would not be prepared to proceed simply on what he was told by Habib or Omar. I also accept his evidence that that is the only reason why he will not meet; that otherwise he would meet. I refer to a passage in his cross-examination:

> Q. But just to be clear on your evidence. It seems that you've given inconsistent answers there. So on the one hand you're saying you're happy to meet. On the other hand you're saying you won't meet without the provision of information?
> A. No, I'm consistent in that. I've never said I wouldn't meet them. I've never said anywhere I wouldn't meet them. I've said I just need disclosure and

documents. I need to see. Otherwise to meet them and just accept what they're going to tell me; that's what you're asking me to do really.

185. As Deemster Gough had in the IOM Judgment on 29 May 2024 found that the evidence of Habib and Omar was entirely untruthful and not to be relied upon save where supported by contemporaneous documents (a view which I have independently reached), and as I have found that Shafe was not provided with all the information he required, notably key information such as the financial records of the Company and the accounts of rental income apparently held by Century 22 (paragraph 135 above), I consider that Shafe's stance is and was entirely justified.

186. Thus the secondary element of cause of the functional deadlock is the conduct of Habib assisted by Omar since the IOM Judgment in failing or refusing to provide the key information sought by Shafe:

(1) It is plain to me that Deemster Gough was aware that the result of the IOM Judgment would be to create a potential deadlock and the intention of the injunctions granted by Deemster Gough in the IOM Order was to avoid it so far as possible: the intent of the IOM Order was that Shafe be able to equip himself with the information and knowledge which he legitimately expected to have as a director but had not been privy by reason of his exclusion from the Company between July 2020 and 29 May 2024;

(2) The information sought has largely not been provided and the missing information is key information – in particular an open and complete provision of a full account of rents received and letting/management expenses allegedly paid, from June 2020 to date, and documents establishing the financial position of the Company. The brief corporate accounts which have been produced are nowhere near what is required;

(3) The failure to provide all the information sought by Shafe, and ordered by Deemster Gough, means that Shafe cannot establish for himself the true position in respect of (in particular) the rents, outgoings and profit on letting the Properties which has taken place through the agency of Century 22;

(4) The failure to provide Company bank statements, and the aggrieved reaction to Shafe's procurement of those statements from HSBC, gives a clear flavour of

concealment of the fact, which is now admitted, that Habib and Omar's costs of defending the IOM Claim were paid out of Company money;

(5) Shafe's refusal to engage without that information is both justified and entirely caused by Habib (and Omar)'s conduct;

(6) In the circumstances of this case, if Holdco wanted to establish that Shafe was at least in part to blame for functional deadlock, I consider that it was incumbent upon it to demonstrate that Shafe would not actually attend a Board meeting or would not agree to some resolution *having had provided to him by Habib and/or Omar all material which he would reasonably have required as a director to make an informed decision*. (cf. paragraph 10 of the IOM Order). But that material was not provided, as I have already found, no specific business for discussion was ever identified (save for winding up / dissolution) and Holdco cannot demonstrate this.

187. I accept Shafe's evidence that if he could be satisfied that Habib and Omar had remedied their defaults and provided him with the full picture of the Company's affairs to which any director is entitled, and which was the point of the injunctions in the IOM order, then he would be prepared to attend a board meeting, engage in management, sign off on forms required by the Companies Registry and so forth.

188. Taking these matters together, I find that Habib is the sole cause of functional deadlock, by reason of the combination of his actions in causing the breakdown in trust and confidence, excluding Shafe from the Company for 4 years, his dissipation of Company money and diversion of rents to Century 22 which Shafe discovered through HSBC and then failing to "open the books" so that Shafe can be satisfied that any decision he agrees to take as a director is fully informed (which I am sure was the intention of the injunctions granted by Deemster Gough in the IOM Order).

Issue 4 – improper and collateral purpose

189. It was said in a letter from Charles Russell Speechlys on behalf of Holdco dated 13 August 2025 that the (only) purpose of the Petition is to gain access to his share of the Company assets for the purpose of discharging costs orders. Holdco's case at trial was that this simply a mistake. At one stage in his cross-examination Habib did state in passing that this was the purpose because he did not really want the Company wound

up. That went apparently unnoticed; in answer to a subsequent question from me for clarification Habib then corrected himself, saying that that was a slip of the tongue. Mr Hubbard did not pursue the point in closing. Having reviewed the transcript, Habib was otherwise consistent that he (and *ergo* Holdco) did want the Company wound up, not just because of his desire to realise his share to defray costs, but because it was deadlocked. I conclude that this case is not of the *Bellador Silk* category of collateral purpose.

190. It is abundantly clear, and I find, that Habib's position is that the IOM Costs Order (and his liability for the balance of Shafe's as-yet unassessed costs in the IOM Claim, and the £10,000 ordered by Deputy Master Fine) should be satisfied out of his share in the Company's assets, and not otherwise. Is that a collateral purpose as Mr Hubbard submits? I am persuaded that unlocking assets out of which Habib could discharge the costs orders falls on the side of being a consequence of liquidation, rather than being an abusive collateral purpose in seeking a winding up.

191. As to the contention that the purpose of the Petition was to put pressure on Shafe while he was starved of funds by failure to pay the IOM Costs Order and the rest of the outstanding costs, it appears to me that it is really the other way around: the Petition sought to take advantage of pressure already exerted by non-payment. That seems to me to be motive not purpose. Shafe has, in the event, been able to fund Lake's response. And while I do find that Habib may well hope in practice to be able to achieve a better result in any disputed accounting against a liquidator than against (say) a derivative claim brought by Shafe or (possibly) further relief in the IOM Claim, the winding up would not alter or affect the liability itself – which is admitted by Habib. This seems to me to be more a matter of motive than purpose. It differs from the situation in *Re Whitehall Partnership* at paragraphs [193]-[196] where liquidation was sought for a purpose which would enable the petitioner to take over the company's business for nothing or in *JE Cade* where putting the company into liquidation would rob it of security of tenure against the petitioner "wearing a different hat" as freeholder.

192. In my judgment, this is a "mixed motive" case. I have no doubt that Habib wants to use his (indirect) share of Company assets to defray the IOM Costs Order (and other liabilities) but equally the Petition is based on the breakdown in trust and confidence /

functional deadlock and I accept that Habib wants the Company wound up. The motives are murky, but I bear firmly in mind what Lord Wilson said in *Ebbvale Ltd v Hosking* (paragraph 69 above) as to the general inappropriateness of the court investigating motive. I do not consider that this case falls into that rare category of cases as discussed in *Koza Altin* where the purposes are entirely collateral such that the Petition is an abuse of process.

193. I do however accept that there is relevance in what Habib might hope is the effect of a liquidation in the present circumstances; where he is in breach of the IOM Order, has not accounted for money dissipated from the Company bank account and where Century 22 under his control has not accounted for rent received as agent for the Company, and I take these matters into account when considering the issues of clean hands and the exercise of my discretion as to whether or not to make an order for winding up.

Issue 5 - Has Holdco unreasonably failed to pursue other remedies, including remedies available in the Isle of Man?

194. This issue is the third stage of the 3-stage analysis in *Lau v Chu*, but I will address it here because in the circumstances of winding up a foreign company there is in my judgment an overlap between the question of unreasonable failure to pursue other remedies and the question of whether it is just and equitable to exercise this Court's extra-territorial jurisdiction to wind up a foreign company – particularly on a contributory's petition – because the "other remedies" available in respect of a foreign company include bringing proceedings in the territory of incorporation. On a contributory's Petition, the territory of jurisdiction is prima facie where one would expect the relief to be sought.

195. Lake's submission is that it is unreasonable for Holdco not to have pursued a remedy in the Isle of Man. That submission had two strands: first, that the *Re Real Estate Development* core requirements were inapplicable, or had far less force, in respect of a contributory's Petition where the equivalent remedy, or other remedies, were available

there, and second, that the remedies sought in the Isle of Man ought to have been the Manx equivalent of an unfair prejudice petition.

196. No expert evidence of Manx law was adduced. Although Counsel submitted written Notes after the conclusion of the hearing addressing how precisely Manx law may differ from English law, and the possible approach of the Manx courts, I do not consider that I can adjudicate on that without expert evidence. (I was referred to *Brownlie v FS Cairo (Nile Plaza) LLC* [2022] AC 995). It was common ground that Manx company law includes a minority oppression remedy, a just and equitable winding up remedy and a common law derivative claim and given this similarity I consider it appropriate to apply the presumption that Manx law on the relevant remedies is the same as English law: *Brownlie* at paragraph [126]).

197. I do not accept that Lake can establish that it was unreasonable for Holdco not to have pursued, for example, minority shareholder relief, when there appear to have been no offers to buy out (on either side). I place little weight on Shafe's suggestion in his oral evidence, not presaged by any offer in writing, that he would and could buy out Habib – that it not to say that I disbelieve him, but there is insufficient evidence for this being a prospect which has been unreasonably ignored by Holdco where the burden of proof lies on Shafe, as it does on this aspect of the case.

198. However, the other strand to Lake's submission, that *any* claim, including for the equivalent just and equitable winding up, should have been brought in the Isle of Man, seems to me to have a great deal more force.

199. I discussed in paragraphs 32 and 75 above the core requirements for the exercise of jurisdiction over a foreign company as identified in *Re Real Estate Development Co.* It must not be overlooked that the reason why the first of those core requirements exists is because the connection with England and Wales has to be:

> "…sufficient to justify the court setting in motion its winding-up procedures over a body which prima facie is beyond the limits of territoriality", per Knox J at p.217d-e.

200. So far as I am aware, none of the cases to which my attention has been drawn involve winding up a foreign company on a contributory's petition. Whilst I do not accept that the core requirements for the exercise of jurisdiction over a foreign company set out in *Re Real Estate Development Co* are inapplicable to a contributory's petition as opposed to a third party creditor's petition, nevertheless it is my view that the caution expressed by Knox J as to the exercise of this extra-territorial jurisdiction must be greatly heightened where the petition is a contributory's petition.

201. For the reasons given in paragraphs 76 and 77 above, I consider that a claim in the Isle of Man is an alternative remedy. The present case has the distinguishing factual feature that it is not merely a case where there is a potential alternative remedy in the court of the territory of incorporation; this is a case where there has already been litigation between the contributories in that jurisdiction (I do not regard the transfer of the share from Harbour to Holdco to be significant in this context). The conduct which is key to the issue of the cause of breakdown in trust and confidence is already the subject of extensive findings of fact in the High Court in the Isle of Man. The result of the IOM Claim was not just to declare or vindicate Shafe's interest (through Lake) in the Company, it resulted in declarations as to who was and was not a validly appointed director. It resulted in injunctions in the IOM Order (which I set out at paragraph 102 above) which were plainly intended to restore to Shafe the knowledge he should have had as a director during his unlawful exclusion from the Company's affairs between June 2020 and May 2024. Those injunctions, and the issue as to whether or not Habib and Omar supplied Shafe with the materials ordered, go directly to the issue raised before me as to functional deadlock and who was responsible for it. Indeed, at one stage, Mr Anderson suggested that Shafe should have gone back to the Isle of Man High Court to enforce, if his case were that Habib and Omar were in breach, which rather illustrates the point. If Habib were in breach, then that would, if proven to the requisite standard, amount to a contempt of court, which is not a matter which I can or should determine, but which would be a further significant factor against which a Judge in the Isle of Man would consider the appropriateness of granting relief and if so what relief.

202. I regard the present claim as a fairly obvious piece of "forum shopping" and not reasonable conduct. I note that in an email from Omar to Mr Bridson on 17 February 2025, Omar said that if Shafe refused to come to the table then steps would be taken to

liquidate the Company *in the Isle of Man courts*. As to the change of heart, in cross-examination Habib said that they had been told they could bring the petition here. In choosing to do so, I infer that Habib is seeking to avoid having to address the non-payment of £250,000 on account of indemnity costs in the IOM Costs Order. He is avoiding having directly to address in the court which made the order compliance with the injunctions made in the IOM Order by Deemster Gough. He is avoiding having to explain to the Isle of Man courts how it is that he and Omar paid for their mendacious defence of the IOM Claim out of the Company's money and cannot, they say, repay it (notwithstanding that money can be found to pay for Holdco to be represented by Solicitors and Counsel to bring this Petition). Reasonableness is an objective, external standard. It is obvious why Habib would subjectively wish to avoid addressing these matters, but that is not reasonable conduct, in my judgment.

203. All other things being equal, there is a sufficiently close connection between the Company and this jurisdiction to allow this Court to assert jurisdiction to wind up, but that does not mean that it is appropriate to do so. In my judgment these particular facts are good reasons why, if a just and equitable Petition were to be pursued by Holdco as contributory, it should have been pursued in the Isle of Man. For the reasons I have given, Shafe has satisfied me that it is unreasonable for Holdco to have brought this Petition in this jurisdiction instead of seeking relief in the Isle of Man.

204. Alternatively, if I had concluded that the above matters did not satisfy the test for unreasonably failing to pursue an alternative remedy, the above factors seem to me nevertheless to be significant factors to be considered in the exercise of the discretion as to whether or not to make a winding up order, matters addressed in paragraphs 213ff below under Issue 6.

Issue 6 – whether it is just and equitable to order winding up

Lack of Clean Hands

205. There is a close connection and overlap between the question of whether a petitioner is the sole cause of deadlock or breakdown and the issue of clean hands, but they are not the same. Lack of clean hands can involve conduct subsequent to the cause of deadlock or breakdown, provided that it is sufficiently connected to the relief sought, and lack of

clean hands is a factor which finds expression in the decision as to whether it is just and equitable to wind up, given that a finding that the petitioner is the sole cause may not inevitably lead the court to refuse relief.

206. In his skeleton argument, and again in closing, Mr Anderson urged upon me parts of the conclusions of ICC Judge Prentis in *Il v Yesilkaya* [2021] EWHC 1695 (Ch) at paragraphs [613] and [617] as "an example of the level of seriousness required to deprive a petitioner of the relief to which they would otherwise be entitled on the basis of the clean hands doctrine" (but without setting out those paragraphs). I did not find that helpful. First, it is wrong in principle to seek to rely on particular, fact-specific findings in an attempt to establish a tariff of wrongdoing and/or to suggest that conduct of the party presently before the court wasn't as bad as the comparator therefore that it follows the lack of clean hands argument cannot succeed. The application of the maxim is a muti-factorial assessment for the trial judge. Secondly, although the conduct found proven by ICC Judge Prentis did include misappropriation of computers and other equipment from the company and unlawful use of company funds to pay solicitors for legal advice for the contributory's personal benefit (which might superficially appear to have some similarity to the instant case), paragraph [613] of the judgment actually describes these (and some other) infractions as "minor". No doubt they were minor in the context of *Il v Yesilkaya* (the legal fees for example totalled £16,350, see paragraphs [581]-[582]) but the same cannot be said of Habib and Omar's wholesale dissipation of all the money in the Company's bank account (having submitted to Zacaroli J that there was no risk of this) largely to fund their costs of dishonestly resisting Shafe's claim to establish his beneficial interest in the Company; and/or the diversion of all income to Century 22, with no proposal to account for a penny unless or until liquidation. ICC Judge Prentis also found both parties equally to blame, at paragraph [615], but also found at [616] that the petitioner was applying to wind-up a company from which he had deliberately tried to strip the business and had written misleading correspondence to the respondent and that <u>did</u> feed into the decision at [617] that it would be inequitable and unjust to order winding up over the objections of the respondent.

207. In my judgment, Habib does not have clean hands (and his conduct is to be attributed to Holdco). His (mis)conduct, as found in the IOM Judgment and as I have found in this judgment, and which I summarise below, is sufficiently and directly connected to

the relief sought that it would plainly not be just and equitable to wind up the Company on this Petition:

(1) The same facts upon which I have concluded that Habib is by his misconduct the sole cause of the breakdown in trust and confidence also disclose unclean hands. These go directly to the first ground upon which the Petition for essentially equitable relief is based;

(2) As is clear from the IOM Judgment, in so doing, Habib, and others in his family, waged an extraordinary co-ordinated campaign of lies in an attempt to exclude Shafe from the Company, which had it succeeded would in common parlance have amounted to stealing Shafe's half of the Company;

(3) The same facts upon which I have concluded that Habib is by his misconduct the sole cause of the breakdown in trust and confidence are in turn a cause of functional deadlock. This goes directly to the second ground upon which the Petition for essentially equitable relief is based;

(4) The injunctions in the IOM Order were in my view intended to avoid a functional deadlock arising by ensuring that Shafe had sufficient information to be satisfied that he was making an informed decision as a director. The breach of the injunctions and failure to provide key financial information which means that Shafe will not attend a board meeting, or (say) sign off on Company accounts, is directly connected - indeed causative – of the functional deadlock;

(5) Winding up however may provide a basis for Habib and Omar to contend that they can no longer comply with the injunctions in the IOM Order as the Company's records would then be in the custody power and control of a liquidator (see paragraph 215 below).

(6) Once Shafe had been able to obtain the Company's bank statements, it emerged that there had been £456,000-odd in the account at the date that Zacaroli J refused the injunction; but by the date that Shafe was able to assert his rights as a director and ask the bank to put a block on payments out, there was only a little over £1,000 left;

(7) Habib now admits that his and Omar's legal fees in defending the IOM claim were entirely paid out of the Company's account, and that he must account. Thus, Habib, who was held by Deemster Gough not to have been a director since 1 September 2000, used the Company's money to pay his personal legal fees of a fraudulent defence to a claim by Shafe to establish that (as Deemster Gough also found) Shafe

was and had been since 2018 a director and that Lake held its share on trust for him; a claim which cost Shafe almost £470,000 to bring and which he had to fund himself. The lack of clean hands is compounded by the assertion that Habib now says he cannot pay any of it back (except by liquidating the Company);

(8) The £128,000-odd paid to Century 22 was similarly misappropriation of the Company's money by Habib to his own use;

(9) Habib cannot find any money to satisfy the IOM Costs Order yet he can find the money to pay Solicitors and Counsel to bring this Petition. The payment of Habib's (and Omar's) costs out of Company money coupled with failure to pay the costs orders, when I conclude that Habib could pay something should he choose to do so, is putting illegitimate pressure on Shafe - pressure, which he has resisted, to agree to a winding up and also making it unrealistic for him to have launched a claim of his own before Holdco issued this Petition;

(10) Not having to deal directly with the consequences of breach of the IOM Order and IOM Costs Order in the courts of the Isle of Man is directly connected to the question of whether it would be just and equitable for relief to be granted by an English court;

(11) The dissipation of what should have been a healthy cash balance of at least £460,000 and failure to account to the Company for money held by Century 22 is a reason why the Petition is resisted. It complicates a liquidation, makes it more expensive. His conduct in denuding the Company of the accrued c.£460,000 balance in its bank account (as at July 2020) and diverting since 2022 the Company's rental income so that it goes through his company Century 22 and is presently retained there is directly connected to the state of the Company from which a liquidator would have to work (see further paragraphs 227-228 below);

(12) The diversion of rent to Century 22 beginning in 2022 and continuing to date was not consented to by Shafe (or Lake) and was not for a legitimate reason. It was to make sure that the only business of the Company, renting out the properties, was under the control of Habib and that the Company's liquid cash was similarly under his control. Possession of the money and control of the accounts and underlying vouchers provides significant advantage to Habib in dealing with a claim to an account for that money whether that were to be sought by Lake or Shafe or by a liquidator should the Company be wound up on this Petition.

208. Habib, assisted by Omar, attempted to exclude Shafe entirely from the Company for a period of 4 years, sustained forensically by an industrial scale of lying to the courts and sustained financially by plundering the Company's liquid assets, and having lost, seeks immediate winding up on the basis that in vindicating his interest Shafe has obtained a court order creating a deadlock in corporate governance which he (Habib) had regarded as irrelevant for 30 years and which he (Habib) has caused by failure to provide information reasonably required by Shafe in breach of the IOM Order.

209. All in all, I regard Habib's conduct, assisted by Omar (and others as found by Deemster Gough) and which is addressed at length in the IOM judgment and in my findings in this judgment, as "beyond the pale" and sufficiently and directly connected to the relief sought to that it would, on the face of it, be unjust and inequitable to make an order to wind up the Company on this petition.

Taking account of Habib's conduct generally

210. In my judgment the conduct of Habib is to be taken into account notwithstanding that the Petitioner is his company, Holdco. In case I am wrong to find that Habib's conduct can be attributed to Holdco (paragraph 114 above) I equally take into account his conduct (assisted by Omar) which I have addressed under the headings of whether or not the Petitioner (Holdco) is the sole cause of breakdown or deadlock, and whether or not the Petitioner (Holdco) has clean hands, when considering whether it would be just and equitable to make an order on this Petition.

Jurisdictional factors

211. I consider that the circumstance of this being a contributory's Petition is highly relevant to the exercise of discretion. In my judgment, on the facts of this case, the matters which I have addressed earlier under Issue 5, paragraphs 198 to 204 above, are powerful factors pointing against the English court exercising its extra-territorial jurisdiction to order a winding up of the Company on just and equitable grounds.

212. There is also a significant difference in my judgment between proceeding in the High Court of England and Wales as against proceeding in the High Court of the Isle of Man. I have little flexibility in terms of the relief to be granted. I cannot consider relief which

might be granted on another form of petition (cf. *Lau v Chu* at paragraph [56]). It seems to me that the High Court of the Isle of Man would not be so restricted, particularly given that injunctive relief has already been granted by Deemster Gough against Habib and Omar in the IOM Claim and that there is a liberty to apply in the IOM Claim, quite apart from what might or might not be capable of being ordered in a petition in the Isle of Man for just and equitable winding up with the potential for cross-petition. A consequence of Habib's decision to cause Holdco to bring this Petition in England & Wales is that Shafe has been unable to cross-petition for other relief, such as the Manx equivalent of s.994 of the Companies Act 2006, or bring a derivative action. Such claims could only be brought in the Isle of Man.

213. It would potentially have been open to Lake and/or Shafe to bring a claim of his own in the Isle of Man, and it/he has not done so, but I accept the submission that (a) on the facts this was unrealistic while he is starved of funds by having had to pay for the IOM Claim, and to defend the present Petition, while Habib and Omar have hitherto funded themselves out of company money and are in breach of the IOM Costs Order and the costs order made by Deputy Master Fine and Shafe's attempts to enforce have failed; and (b) once this Petition was issued this would have given rise to tricky cross-border issues.

214. Mr Hubbard submitted that the making of an order on this Petition would close out any prospect of any such claim. Mr Anderson submitted that minority shareholder's relief under s.994 of the Companies Act 2006 could still be sought notwithstanding the making of a winding up order, and he produced *Seneschall v Trisant Foods Ltd* [2023] EWHC 1029 as an example. However, the winding up order there was obtained by an unpaid third party creditor during the pendency of the unfair prejudice Petition, and I accept Mr Hubbard's submission that the position may well be different on a contributory's just and equitable Petition. Considerations of issue estoppels, and abuse of process would arise as the Court would *ex hypothesi* already have decided that the right relief was winding up. Mr Hubbard suggested, and he may well be right, that the lack of authority on this point may be because the point would not usually arise given the ability of an opposing contributory to cross-petition under s.994; something which is absent where the company is a foreign company. Assuming again, in the absence of expert evidence on Manx law, that Manx law on minority oppression is substantially

the same as the English s.994 (both Counsel referred me in Notes produced after closing to Manx authority identifying differences between the two jurisdictions but I do not see how I can enter into that arena), the doubtful prospect of being able to obtain minority relief is compounded by the fact that from the perspective of the Manx court, an English court has already exercised jurisdiction and wound up the Company. There is in my judgment at least a real risk that the Isle of Man High Court might consider that it was inappropriate or abusive for parallel proceedings to be brought there.

215. I also accept that if I were to wind up the Company, this would, at the very least, raise a number of additional complexities in respect of disclosure:

(1) Omar (and Habib and Holdco so far as relevant) would be able to assert that they had no continuing control over the Company's documents, as the powers of the directors would cease on the appointment of a liquidator. This would undermine the effect of the IOM Order which has not yet been complied with fully;

(2) Lake's rights, in the alternative to seeking disclosure in the Isle of Man, to obtain information from a liquidator, if any, as a contributory in an English liquidation, would likely be very limited, in comparison with the pre-liquidation position; I was referred to *Burnden Group Holdings Ltd v Hunt* [2018] EWHC 463 (Ch) and *McPherson & Keay's Law of Company Liquidation 5th Ed.* at 10-036.

216. Accordingly, I accept Lake's submission that making a winding up order here and now may prejudice potential claims which he might have and which can only be brought in the Isle of Man and would prejudice the rights to disclosure which he presently has not just as a director but by dint of the injunctions in the IOM Order which Shafe is still entitled to enforce.

217. These reasons, which overlap with the considerations expressed earlier as to whether this Court should exercise jurisdiction over the Company when there have been such closely connected proceedings in the Isle of Man, again point away from making a winding up order on the present Petition.

Other considerations

218. I have concluded that Habib is the sole cause both of the breakdown in trust and confidence and functional deadlock, and that he lacks clean hands. On this basis, one would expect that winding up on a just and equitable ground would be refused – Mr

Anderson accepted that it would be a rare case for it not to be - but I need not go as far as HHJ Mithani KC in *Re Whitehall Partnership Ltd* in suggesting that that is an inevitable consequence. I have considered whether I should wind up the Company despite my findings as summarised above.

219. Mr Anderson submits that the Company only has one line of business, the portfolio of Properties. It is not a trading company. The Properties can be divided or sold. It may be thought unlikely that the Company can function again; as a 2-share company it can be expected to be deadlocked and Shafe and Habib cannot be expected to work together again. Mr Anderson also points to the relief sought in the ill-fated First Claim, which sought an order for sale of the Properties. He submits that although the basis was misconceived, nevertheless this shows that Shafe wanted the Properties sold and thus should be in favour of a winding up. Winding up, he says, is the only option and is in all parties' best interests; that "deadlock is the friend of the miscreant director" who is, on Lake's case, Habib and Lake/Shafe had not given a reason for refusing to consent to winding up, and that to refuse relief would be to leave the Company in indefinite paralysis.

220. I have given these considerations weight in my deliberation, but I do not consider that they can or should cause me to override my findings that Habib is the sole cause of the situation and that he has seriously unclean hands, or that they outweigh the jurisdictional matters.

221. It is true that the Company will remain a quasi-partnership in which relations have broken down, but the ultimate logic of Mr Anderson's submission (which I might characterise as "we are where we are" although those were not his words) could be applied to any quasi-partnership case and would mean that the cause of that breakdown is likely never a basis to refuse relief, contrary to *Ebrahimi*.

222. Lake's wish as innocent contributory not to have the Company wound up is itself a factor to be taken into account. I think the weight to be attributed to the point about the relief sought in the First Claim is limited by the fact that the First Claim was indeed misconceived; that it is a standard TOLATA prayer; and seeking an order for sale of property under TOLATA is very different from asking for a company to be placed in the

hands of liquidator. Time has also moved on; in 2020 there was no issue about funds missing from the Company's account or rents being held by Century 22.

223. It does not follow that the present situation is one of indefinite paralysis. Shafe wants to be provided with information and he wants the Company's money to be restored to it. Habib and Omar could comply with the IOM Order, which it will be recalled includes at paragraph 10 a mandatory injunction in very wide terms to provide within 14 days *all* information and documents regarding the affairs of the Company from 1 June 2020 to the date of the order *as Shafe may reasonably require.* They could tell the Company's accountant Mr Iqbal to give Shafe what he asked for on 29 May 2024. They could supply the key missing financial information and "open the books" to Shafe. If that happens I accept that Shafe would attend a board meeting. Whilst Habib and Omar assert that they cannot afford to discharge the unpaid judgments for costs (or the as yet unassessed balance of costs incurred in the IOM Claim), no such assertion is made in respect of sums which Habib says are held on the Company's behalf (rents net of expenses at any rate) by Century 22 - at a minimum the accrued profit from renting between 2022 and today's date can be paid over to the Company. And if I dismiss the present Petition, claims and cross-claims could be brought in the Isle of Man which would open up the possibility of a range of relief and outcomes which are simply not available in the English courts.

224. Mr Anderson submitted that concerns as to missing money could be addressed. He contended that it would be open to me under s.125(1) to make a conditional or suspended order; for example an order on condition that there be some form of account or evidence in respect of profits on letting held by Century 22 on the Company's behalf. Mr Hubbard disagreed: he submitted that the usual conditional order one encounters is an order for an adjournment on terms of payment of a sum by a date. I share Mr Hubbard's doubts as to whether or not a complicated conditional order is one the courts should make, which does rather smack of pre-administering a winding up. In any case, I do not consider that Mr Anderson's suggestions are workable or would meet the equity of the situation. The dissipations to Habib and Omar are said not to be capable of repayment, so any condition in that respect might not be capable of fulfilment and may be misconceived and it is not clear to me whether Century 22 could account to Habib from its own funds and through him to the Company for the £128,000-odd paid out of

the Company's HSBC account to Century 22. As to accounting for rents or profits on renting, I regret that the chances of the detail of an account proffered by Century 22 being acceptable and accepted by Lake seem low, which seems likely to cause a dispute as to whether or not any condition in that respect was fulfilled. In the meantime, pending fulfilment, or disputed fulfilment of a conditional order, the Company would remain in an awkward limbo. I am therefore not attracted by the notion of a conditional or suspended order.

225. There are further countervailing factors which in my judgment also indicate that it would not be just and equitable to wind up the Company on this Petition.

226. If I make this order now, a liquidator - who should have at least £460,000 in cash available, and likely considerably more than that if Century 22 had accounted for the excess of rent over expenses for the period from 2022 to date - will be faced with conducting the liquidation with no liquid assets. This also means that what might have been a simple and relatively cheap liquidation, where cash in bank is divided and Properties sold or distributed in specie, becomes a much more complex matter because the liquidator first has to establish the amounts for which Habib, Omar and Century 22 are liable to account, and extract money from Century 22, with no liquid funds upon which to draw for the purposes of such claims. This factor only goes so far, because it may fairly be said that because there are clearly very substantial, unencumbered, but illiquid assets (the Properties) out of which costs can eventually be covered, a liquidator would be able to fund any necessary action one way or the other and that liquidators are frequently looking to realisations for payment.

227. Nevertheless, the funding of a liquidator to seek an account of missing Company money is a matter of particular concern. Mr Anderson relied on *McPherson & Keay* paragraph 4-063 for the proposition that investigation of a Company by a liquidator can be a good reason in favour of making an order for winding up. Mr Hubbard for Lake submitted that it should be assumed that, despite apparently inviting the inquiries which should be made by a liquidator, Habib and Omar would obstruct and fight a liquidator tooth and nail. I think that is a fair inference:

(1) Both Deemster Gough and I have found Habib and Omar to be dishonest;

(2) They fought the IOM Claim to the bitter end, sought permission to appeal the IOM Judgment and then tried to challenge the registration of IOM Costs Order in this jurisdiction;

(3) Whilst Habib in his witness statement states that he does not intend to shy away from Deemster Gough's findings, he adds "even if I do not agree with the Deemster's decision". I consider that this is likely to establish a mindset in which retaining as much value for himself as he could get away with out of what should be Company funds would be justified;

(4) They have not, despite their protestations, provided all the information which they were ordered to provide by the IOM Order;

(5) Although it is said by Habib that there is a "full record" of all rental proceeds collected by Century 22, I have not seen it, any such record is presently in the possession of Century 22 from whom a liquidator would have to obtain it (and any underlying vouchers such as invoices for expenses allegedly incurred), and the Company's rent is not in a separate account, which may make a forensic cross-check difficult for a liquidator.

228. In the circumstances of this case, I consider that the position in which Habib has put the Company by his actions, and from which only he can benefit, and from which position a liquidator would have to work, is a factor against making any order in his favour on this Petition.

Conclusion and Disposal

229. Drawing these strands together within the three-stage analysis in *Lau v Chu*:

(1) There being no dispute that there is a complete breakdown in trust and confidence in what is a quasi-partnership company, and as I accept that there is functional deadlock, Holdco would prima facie be entitled to some relief but for the fact that Habib (whose conduct is to be attributed to Holdco) is the sole cause of the breakdown in trust and confidence and functional deadlock;

(2) It would clearly be unjust and inequitable to grant relief on this Petition because Habib (whose conduct is to be attributed to Holdco) is the sole cause of the breakdown in trust and confidence and functional deadlock, because he lacks clean hands, because the Isle of Man Courts have already made extensive findings as to

conduct and made orders concerning the constitution of the Company and affecting Habib, Omar and Shafe, and for the other reasons identified above;

(3) It also unreasonable for Holdco not have pursued the alternative remedy of proceeding in the Isle of Man.

230. In all the circumstances, I do not consider that it would be just and equitable to make a winding up order in respect of the Company on this Petition, and I dismiss it. I shall make an order to that effect and hear Counsel on consequential matters.