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IN THE COUNTY COURT  
(Sitting at Birmingham)

No. A3QZ402A

Birmingham Civil and Family Justice Centre  
33 Bull St., Birmingham, B4 6DS

Thursday 18 September 2018

Before:

HER HONOUR JUDGE WATSON

B E T W E E N:

SHAREEF & CO

Claimant

- and -

FAST TRACK INVESTMENTS LIMITED

Defendant

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MR P MITCHELL QC (instructed by HMA Law Solicitors) appeared on behalf of the Applicant.

MR A CUTLER (instructed by Newhall Solicitors) appeared on behalf of the Respondent.

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**J U D G M E N T**

JUDGE WATSON:

- 1 This is my reserved oral judgment in the case of *Shareef & Co v Fast Track & Others*. The background to this claim is that, in 1996, Mr Naeem Shareef set up his own accountancy practice, which traded under the name Shareef & Co. He acted as accountant for his brother, Mr Azher Shareef, and his brother's businesses. In those early days, those business interests were modest, but they grew over the years. In 2002, Mr Naeem Shareef arranged for a company to be incorporated. It was named Shareef & Co Limited. From then on, Mr Naeem Shareef ran his accountancy practice through that company. Shareef & Co Limited traded under the name Shareef & Co, just as Mr Naeem Shareef had done before its incorporation. That company is the claimant in this case.
- 2 The claimant also acted as accountant for other members of the Shareef family and their various businesses. Mr Azher Shareef and Mr Naeem Shareef also had some business interests in common and also with other family members. Both Mr Azher Shareef and Mr Naeem Shareef became involved as joint shareholders in two businesses with a lifelong friend of theirs, Mr Hardial Panesar, and his nephew, Mr Inderjit Panesar. The four of them, through two companies which they owned equally, bought and developed two properties which were to be used for storage businesses. At Mr Naeem Shareef's suggestion, each property was bought and operated through a separate company. Key Investments Limited (which I shall refer to in this judgment as Key 1) was to buy, develop and operate a large storage site in Tyseley, and Key Investments 2 Limited (which I shall refer to as Key 2) was to buy, develop and operate a large storage site in Coventry.
- 3 In this litigation, the claimant sues Mr Azher Shareef and various companies with which he is associated for outstanding invoices for accountancy work done and also for some work that was not invoiced. Originally, seven separate claim forms were issued against the seven original defendants. The claimant was identified in the claim forms as Shareef & Co. Those claims were eventually consolidated. There were six company defendants, but one of them went into liquidation and so the claim was pursued only against the other five companies and against Mr Azher Shareef personally.
- 4 The defendants defended the original claims, among other reasons, because the claims were issued by the wrong entity. They pleaded that any retainer was with the company, Shareef & Co Limited, not with Mr Naeem Shareef personally. Some of the defendants, including Mr Azher Shareef, brought Part 20 claims against the claimant company on the basis that it was in breach of its contractual and professional duty to them. In addition, the seventh defendant brought a Part 20 claim against Mr Naeem Shareef personally, based on his personal involvement in the business concerning the Coventry site.
- 5 The claimant says that it is entitled to be paid its standard fees and that it has billed on that basis and it has claimed on that basis for the work that was not invoiced. There was no express agreement for fixed fees. There was no agreement to charge a fixed price for specific elements of the work. Although cross-examination of Mr Naeem Shareef proceeded as though standard fees meant fixed fees, that has never been the claimant's case. It is common for professionals to charge standard fees based on a time spent. The claimant's case is that the standard fees in this case are largely based on time spent, taking into account previous bills for previous years. The claimant says that it has always billed on that basis in the past.

- 6 The defendants also defended on the basis that there was no retainer for some or all of the work, whether with the company or at all. The claimant brings an alternative claim for a *quantum meruit* or in unjust enrichment on the basis of work done of which the defendants have had the benefit. I only need to consider the unjust enrichment claim if I find there was no agreement or retainer for the work for which the claimant claims.
- 7 An expert report of a single joint expert accountant has valued the work done on the basis of *quantum meruit* or a reasonable fee for work done, examining the work done, the level of fee earner and the time spent. Helpfully in this case, the claimant limits its claim to the amounts assessed by the expert to be reasonable. All parties accept those figures for the purposes of the proceedings, subject to some specific points.
- 8 Although the defendants' solicitors accepted the findings of the expert's reports on behalf of the defendants, the defendants say they do not agree that the work referred to as "the bank work" has been properly valued by the expert, because it included work from December 2009 to May 2010 and it is the claimant's own case is there was no retainer for bank work at that time. In addition, the defendants reserve the right to argue that, even though the work had been done and the fees are reasonable, there was no contractual right to payment as there was no retainer or instruction to do the work, and no contract for the work.
- 9 Most of the counterclaims or Part 20 claims originally brought by the various defendants have been discontinued, following a partially successful summary judgment application. There remains only one Part 20 claim, which is by the seventh defendant against Mr Naeem Shareef personally.
- 10 The seventh defendant is a company which is solely owned and controlled by Mr Azher Shareef and it brings a claim personally against Mr Naeem Shareef for payment of sums which it says are due as a result of an agreement under which Mr Naeem Shareef agreed to pay half the costs to convert the Coventry site so it is suitable for a storage business, and a later agreement to settle that liability.

### **Evidence**

- 11 There are 12 Lever Arch files of documents in this case, of which I have read the pleadings, the witness statements and the documents to which I have been referred during the trial. In addition, I have read the report of the single joint expert, which is clear, very helpful and largely accepted by the parties, as I have already indicated.
- 12 I have heard witnesses for the claimant. I have heard from Mr Naeem Shareef, both for himself as defendant to the part 20 claim and also for the claimant company. I have heard from Mr Azher Shareef for the defendants and also from Mr Hardial Panesar for the defendants.
- 13 I am going to say a few words about the general impression I have of the witnesses and the way they gave their evidence.
- 14 Mr Naeem Shareef struck me as a coherent and careful witness. He gave evidence that was internally consistent and consistent with his case. He answered questions clearly. He did not seek to avoid answering questions that were put to him. He did not seek to argue his case. He made appropriate concessions, was subjected to a lengthy cross-examination and was not shaken in his evidence. He struck me as a reliable and honest witness.

- 15 Mr Panesar was, in my judgment, an unimpressive witness. Much of what he said in his witness statement was so general as to be of little assistance. However, when he was asked questions about the contents of his statement, his oral evidence was even less help on the issues in the case, as he seemed unable to recall even the level of detail that had been included in his statement. Of particular concern was what he said about the statement itself. When asked whether he had written that part of the statement himself, he said that he had, that he had typed it up and that Mr Inderjit Panesar had had one as well. When he was asked to confirm that he had typed it, he then said that he had got it typed. He was unable to explain satisfactorily how it came about that his statement began with the words, "*I, Mr Inderjit Singh Panesar*", which is the name of his nephew, not his own name. Eventually, it was explained to me by Mr Cutler that the error was the defendants' solicitors', who had confused Mr Inderjit Singh and Mr Hardial Panesar. However, despite that explanation, I can have little confidence that Mr Panesar read his statement carefully if he did not even notice that it bore his nephew's name at the start of it and not his own.
- 16 Overall, I have the impression that Mr Panesar's objective was to assist his friend, Mr Azher Shareef, rather than to answer the questions put to him to the best of his recollection. I therefore place very little weight on his evidence.
- 17 Mr Azher Shareef was also an unimpressive witness. It was hard to get a straight answer from him. He was extremely reluctant to answer any question with a simple yes or no. He was very reluctant to agree anything put to him, even if it was, on its face, uncontentious. As he himself said early in his evidence, when he was failing to answer a question with a simple answer, he was thinking about where the question was going. Throughout his evidence, it was my impression that that was exactly what he was doing. He was thinking about what he wanted to say to assist his case, rather than answering the questions put to him. He clearly had things that he wanted to say that had not been included in his witness statement. My impression was that, whatever he was asked, he was trying to answer by reference to what he wanted to say to assist his case.
- 18 At one point in his evidence, it became clear he was referring to a note. When I asked him what it was, he said it was a note he had jotted down in the witness box while giving his evidence and he had not taken it into the witness box with him. I required him to hand it to his solicitors. Later, Mr Mitchell noticed that he appeared again to be writing, and he said he was doodling as it helped him concentrate.
- 19 I had to remind him repeatedly to listen to the question and answer it and not to argue his case. In addition, his evidence was frequently vague and inconsistent with what he had either previously said or the defendants' pleaded case.

### **The issues**

- 20 I turn now to the issues in the case.
- 21 The first issue: was there a contract or retainer between the claimant and the defendants for the work that is the subject of the claims? That includes:
- a. whether there was a retainer with Mr Naeem Shareef or with his company, the claimant company, and
  - b. whether it covered all the work that is the subject of the invoices and the uninvoiced claims.

- 22 The second issue: what was the agreement for fees? However, given the claimant's concession that it will claim only the amounts that the expert considers reasonable, the question of whether there was an agreed fee for the work falls away, because both parties' position is that any remuneration for work that is properly the subject of any retainer is a reasonable fee.
- 23 The remaining issue: are the amounts claimed reasonable? I had understood that the defendants had conceded this point, but that seemed doubtful during the course of Mr Azher Shareef's oral evidence. However, it became clear in closing that the expert's report is not challenged as to the figures, save as to the issues of whether there was a retainer for the work and save in relation to how the work has been apportioned between the parties.

### **The contract/retainer**

- 24 The defendants in their pleadings put the claimant to strict proof of the existence of any contract or retainer at all. From Mr Cutler's skeleton, it became clear that the defendants accept that there was a retainer for the general accounting work, such as statutory accounts, albeit that they do not admit it was with the claimant company rather than with Mr Naeem Shareef, trading as Shareef & Co. There are four separate types of work that they identified in the skeleton argument filed just before trial as not accepted by the defendants as having been the subject of any retainer.

### **Was the contract with Mr Naeem Shareef as a sole trader or with the company?**

- 25 The defendants' pleaded case puts the claimant to proof that it was it, not Mr Naeem Shareef personally, who was retained by the defendants. That is a very curious pleading because, as I have already mentioned, when the original seven claims were issued in the name Shareef & Co, the defendants pleaded that the correct contracting party was the claimant company. I refer to one in particular which is Mr Azher Shareef's defence:

*"It is denied that any cause of action vests in the claimant. Mr Naeem Shareef is a practising chartered accountant and he is the elder brother of Mr Azher Shareef. He provides accountancy services through the Part 20 defendant trading as Shareef & Co. Any accountancy services provided to the defendant were provided by the Part 20 defendant and not by Mr Naeem Shareef in his personal capacity".*

- 26 The Part 20 defendant was the claimant company. The statement of truth on that defence was signed by Mr Azher Shareef personally. He also joined the claimant company into the proceedings as the Part 20 defendant to a claim for professional negligence arising from accountancy services provided by the claimant company.
- 27 As Mr Azher Shareef's original pleaded case was that Mr Naeem Shareef had no cause of action and the correct claimant was the defendant to the counterclaim, it is hard to understand why the defendants take issue with the claimant company being the correct claimant.
- 28 When Mr Azher Shareef was cross-examined as to that, he blamed his direct access barrister at the time for what was in the original defence. That does not in any way explain how his direct access barrister would have known the facts on which to base the pleadings if they were not provided by Mr Azher Shareef. I have no doubt that, if the barrister pleaded that the retainer was with the company Shareef & Co Limited, that was because he was

instructed that that was the case. Nor does it explain how Mr Azher Shareef came to sign that pleading with a statement of truth, unless he believed that the company was the entity with which the defendants contracted.

- 29 Mr Cutler argues that what the parties actually believed at the time, and at the time the original defence was filed, was not relevant. The fact that Mr Azher Shareef believed at the time the original defences were filed that the claimant should be the company is not decisive. The issue that I must decide is what objectively can be inferred. That is of course correct as a matter of law. However, it is hard to think of clearer evidence as to what should be objectively inferred than the fact that the defendants expressly pleaded that the correct party was the company and not Mr Naeem Shareef.
- 30 Mr Cutler also argues that the fact that the claims were originally brought by Mr Naeem Shareef in his own name is evidence that he was the contracting party. It is far from clear to me that the claim ever was brought in the name of Mr Naeem Shareef personally or that that was the intention. The claim form was issued in the name Shareef & Co. It does not state, as claim forms sometimes do, that the claimant is Mr Naeem Shareef trading as Shareef & Co. In my experience, especially in cases such as this, where a party is not legally represented when they issue proceedings, proceedings are often issued by companies using their trading names rather than their full and correct legal names. It seems to me more likely that the claimant was intended to be the company trading as Shareef & Co, not Mr Naeem Shareef trading as Shareef & Co.
- 31 When I raised that during the closing submissions, it was submitted that the fact that there was an order substituting the claimant company for the claimant is evidence that the claim must originally have been brought by another party. However, I have checked the court file and note that the application was “*that the name of the claimant be substituted under Rule 19.4 of the CPR as Shareef & Co as the trading name of Shareef & Co Limited*”. That application and the wording of it seem to me entirely consistent with Mr Naeem Shareef having made a simple error when he issued the claims on behalf of the company in not putting the word “Limited” at the end of the name, and not evidence that he brought the original claim in his own name.
- 32 Further, Mr Naeem Shareef’s oral evidence, which I accept, was that he had not appreciated that the official name had to be put under the trading name when issuing the claim. I do not consider that the claim having originally been issued in the name of Shareef & Co and not Shareef & Co Limited means that it was ever actually issued by Mr Naeem Shareef in his own name at all.
- 33 Mr Cutler suggested that there was a retainer letter from Mr Naeem Shareef but not from the company and the company had failed to prove that there ever was a retainer with it. The fact that no retainer letter can be identified in the name of the company does not cause me any concern. Both Mr Azher Shareef and Mr Naeem Shareef gave evidence that their dealings were somewhat informal, as they were brothers and, at least until they began to fall out, there was a high level of trust between them. I do not find it surprising that the company cannot lay its hands on a formal engagement letter in those circumstances.
- 34 Another factor on which the defendants rely is the fact that notepaper did not bear the company name. However, file copies or emailed copies of correspondence are not evidence that the original top copy, which would have been posted, did not bear the company’s name. It is common for printed notepaper to be used for the top copy and plain paper to be used for

file copies. Most professionals' own files contain copies of correspondence that are not on headed notepaper.

35 In response to cross-examination putting to him that he had done nothing to change the basis of the relationship from himself to the company, Mr Naeem Shareef said he had, and that he had complied with his professional body's requirements, which required him to make disclosures.

36 The following factors are, to my mind, also relevant.

- a. All of the invoices that are subject of the claim were on notepaper that bears the claimant company's full name, registered number and VAT number.
- b. Mr Azher Shareef is a successful businessman who had interests in several companies and properties worth millions of pounds. He is a director of several companies, some of which trade with each other and lend to each other. It is, to my mind, not credible that he did not understand that his and his companies' accountants were a limited company.
- c. Mr Azher Shareef confirmed that he was responsible for the finances at his various companies. Numerous invoices from the company were paid. Mr Naeem Shareef's evidence was that transfers had been made in payment of fees to the company, to the company's bank account and also cheques had been raised payable to the company.
- d. Mr Azher Shareef signed statutory accounts for some of the defendants, which included the invoiced fees.

37 I find that, when Mr Naeem Shareef incorporated his business in 2002, he made Mr Azher Shareef aware of that fact. I find that the retainer for work that Mr Azher Shareef and his various companies instructed Shareef & Co to do after that time was with the company. I find that that the defendants knew very well that was the case, as they pleaded in their original defences.

### **Retainer issues**

38 Turning now to the issue of the specific areas of dispute with regard to the retainer, I should point out there are two types of claim, invoiced and uninvoiced claims. However, no technical argument is raised in relation to the uninvoiced work on the basis that it has not yet been invoiced. The issues between the parties are whether the work was the subject of a retainer and whether the fees claimed are reasonable. I only raise the invoicing point because it may be necessary, if I find for the claimant on the uninvoiced work, for invoices to be raised so that VAT can be recovered. No doubt that can be dealt with, if necessary, in the order, but I doubt that will be an issue of any contention.

39 The defendants, as I have already mentioned, did not specifically plead the areas of dispute. Their defence put the claimant to proof of any retainer for the work. However, Mr Cutler's skeleton argument made clear that general accounting work was not disputed, but four specific types of work were identified as not being the subject of any retainer, being management accounts, bank work, HMRC work and the hosting of registered offices.

### **Management Accounts and Bank Work**

40 I will deal with these two specific types of disputed work together, because they are linked.

- 41 The background to this is that the defendants' bankers put the defendants and other businesses in which the Shareef family had interests into their Global Restructuring Group in May 2010. As all parties accept, there was an urgent need to respond to this problem and the bank's demands in order to persuade the bank to continue to provide facilities, or seek alternative funding. It affected many of the companies owned by the Shareef family, not only those who are defendants to this litigation. It also affected companies Key 1 and Key 2, in which the Messrs Panesar had an interest.
- 42 Mr Naeem Shareef's evidence was that there had been no need to prepare management accounts in earlier years. When the group went into the Global Restructuring Group, management accounts were requested by Mr Azher Shareef and other directors of the various companies and by the bank. It is also clear from contemporaneous documents that Mr Azher Shareef did expressly ask for them by forwarding to Mr Naeem Shareef requests from the bank that included requests for management accounts.
- 43 Mr Azher Shareef in cross-examination accepted that he had forwarded these emails and expected Mr Naeem Shareef to do the work requested by the banks, but he said it was a "family thing" and not chargeable. His evidence was that all concerned had put their own effort in and had helped with the work that was required; that he is a chartered surveyor and assisted by arranging valuations of the company's properties; and that he expected that Mr Naeem Shareef would do this work without charge. However, he conceded that, as the banks required independent valuations for the properties, he was unable to use his expertise to value the properties, although he says he did do work to get the valuations done by other independent valuers. His evidence was that his contribution was arranging for those valuations.
- 44 I am satisfied that Mr Azher Shareef did request this work on behalf of the defendants. I am also satisfied that all parties expected the work to be charged for on the basis of what was a reasonable charge for the work, just as other work that the claimant did for the defendants was chargeable. There was nothing in the documentation that I have seen that suggests otherwise.
- 45 The defendants also argue that the figure assessed as reasonable by the expert cannot be relied on as it included work from December 2009 to May 2010. In support of that, the defendants rely on a letter from the claimant's solicitors to the expert dated 30 May 2018, which says that this refers to work carried out from December 2009 to February 2013.
- 46 In cross-examination, Mr Naeem Shareef said that was wrong, that the work that is included in the claims for payment began in May 2010, and that the work between December 2009, when Fast Track breached its banking facilities, and May 2010, when the companies entered into the Global Restructuring Group, was not part of the claim. The defendants did not ask the expert to address this point or ask the expert the question as to whether any of the work he had assessed as reasonable had been carried out before May 2010. Nor was this point raised with the claimant before the trial, so the claimant did not have an opportunity to seek clarification from the expert.
- 47 I do not accept the argument that the claimant's solicitors' letter to the expert means that I must conclude that the expert's assessment is likely to include work done between 2009 and 2010. I accept the evidence of Mr Naeem Shareef that the claim for this work does not include work done in that period.



- 48 I find the claimant is entitled to the full amount of the bank work and the management accounts work as assessed as reasonable by the expert.
- 49 However, that still leaves one issue that the defendants have raised by way of objection, which relates to the apportionment of the bank work between the various clients who benefited from it.
- 50 The documentary evidence shows that, by agreement of all concerned, the costs of obtaining valuations of the properties in the various companies was pro-rated according to the value of the properties held by each company. In addition, BDO's accounting work for the banks was pro-rated according to the value of the debts. The parties appear to have agreed that at the time. Despite Mr Hardial Panesar's evidence that they had been compelled to, rather than agreed to, pay on that basis, it is clear that Messrs Panesar also paid their pro-rated share of these fees.
- 51 Mr Naeem Shareef sent an email on 17 October 2013 in the following terms:
- "To all concerned. It makes sense that we all agree a formula and stick to this. I have taken the balances as at the end of December 2012 for the sake of simplicity and applied this to calculate each party's allocation. Please confirm you agree to this method adopted for expenses apportionment"*.
- 52 That was sent to all parties. Mr Azher Shareef sent an email to the same parties on 18 October. That is the following day.
- "Please see the attached breakdown of share percentage shown for each party. Keep this for future payments and add VAT where applicable"*.
- 53 The attached breakdown had various percentages ascribed to it for the various companies and individuals.
- 54 I am satisfied that the parties did agree an expense allocation, not only for the BDO work, but also for future accounting expenses. Both Mr Azher Shareef and Mr Naeem Shareef had suggested that these percentages should apply for future payments. The figures produced by Mr Azher Shareef were not identical to the figures produced by Mr Naeem Shareef, although they are not very different at all. Fast Track's share was 16.29 per cent, Mr Azher Shareef's 3.26 per cent and the seventh defendant's 6.63 per cent in the case of Mr Naeem Shareef's breakdown; whereas, for Mr Azher Shareef's breakdown, the figures were 18.9 per cent, 2.84 per cent and 5.08 per cent respectively. Therefore, there is very little difference between the breakdowns.
- 55 I have no information as to how Mr Azher Shareef arrived at his figures. I assume that, given how close they are to Mr Naeem Shareef's figures, he also used a breakdown of the debt and pro-rated according to debt, possibly at a slightly different date, because the figures are so close to Mr Naeem Shareef's figures. In any event, the difference is *de minimis*. I note that others, including the businesses in which the Messrs Panesar had an interest, paid on the basis of Mr Naeem Shareef's allocation. I find that Mr Naeem Shareef's allocation is more likely to be accurate *pro rata* to the debt. He was the accountant and his evidence was that he allocated *pro rata* to the debt at the time. I find that his allocation is a fair apportionment of the fees and the company is entitled to the apportionment as claimed by the claimant against the various defendants for this work.

## HMRC work

- 56 I turn now to the HMRC work. Mr Azher Shareef was the subject of a “Code 9” process, which I understand is a process that is used where HMRC suspects that a taxpayer may be guilty of fraud and gives the taxpayer an opportunity to explain any discrepancies or irregularities before they launch a formal investigation. It is an opportunity for the taxpayer and the Revenue to have a discussion and clear up any concerns. As I understand it, Mr Azher Shareef’s position is that he expected the claimant or Mr Naeem Shareef to do the work required without charge because there was no retainer for this work. However, his evidence on this point was, to say the least, contradictory and confused. My note of the evidence, which will not be complete because I was not able to take an exact note of every word that was said, is as follows.
- 57 It was put to him: “*Your case against HMRC is that there was no agreement that Shareef & Co should help you with the HMRC fraud enquiry*”. The answer was: “*I did ask him to help of course*”. The next question was: “*But you do not want to pay for it because ...*”. The answer was: “*No one is talking about non-payment but reasonableness, that is what we are talking about here*”. He was then asked: “*Is it your position that you would be prepared to pay what the expert says?*” The answer was: “*I say it is a question of reasonableness*”. Question was put to him again: “*Are you saying that you would pay what the expert says is reasonable or not?*” He answered: “*Yes, but ...*”. Again, the question was put: “*Are you saying that you will pay what the expert says is reasonable?*” The answer was: “*We have to look at the retainer*”. The next question was: “*So the answer is in the retainer?*” The answer was: “*The expert cannot comment on the retainer as he had not got it*”. The next question was: “*But you want to pay what is reasonable but you say ...*” and the answer was: “*I am a layman. I attended a meeting because Mr Naeem failed to provide the information. No one is quarrelling about the quantum of the work but you need to look at it in more depth*”.
- 58 I then intervened in an attempt to get an answer to this question. I asked: “*Did you expect to pay?*” Answer: “*No, because we just sat in a meeting*”.
- 59 Therefore, at various times, even within that short space of time, Mr Azher Shareef was arguing that:
- a. the work should have been done without charge because there was no retainer;
  - b. no one is talking about non-payment;
  - c. it is a question of reasonableness; and
  - d. the expert’s quantification was accepted as reasonable (that was accepted by Mr Azher Shareef’s solicitors in correspondence) but that he did not have to pay because “we were just in a meeting”.
- His evidence made no logical sense. He appeared to me to be floundering for reasons why he should not pay.
- 60 There is no contemporaneous or other documentary evidence that this work was to be treated any differently from other work that the claimant carried out for Mr Azher Shareef. I find that, by requesting help and by the Claimant providing it, there was a contract between Mr Azher Shareef and the claimant under which Mr Azher Shareef agreed to pay the claimant a reasonable fee for the work. It was clear that he knew the work was being done at his request and urgently to avoid a fraud investigation into his tax affairs.

61 I also find that the sums assessed by the expert as reasonable are a reasonable fee for the work done and that Mr Azher Shareef is liable to pay the claimant for the sums assessed by the expert for this work.

### **Registered Office Hosting**

62 The final area of contention with regard to the retainer is the registered office hosting. The various companies that are defendants to this claim had their registered office at the claimant's company's office. Mr Azher Shareef's and the defendants' position is that, had they understood that they were being charged for this service, they would have objected and moved the registered office. Given that there had been no advance notice that this specific area of work would be the subject of a dispute, I do not consider that Mr Naeem Shareef can be criticised for not giving more details on this issue in his witness statement. His evidence was that it had been agreed that the registered office would be charged for, that it had been paid for without query or objection for many years and there was no real issue here.

63 Mr Azher Shareef's evidence was that these payments had slipped through the net and that he had not noticed that his companies were being charged for this service. Had he done so, he would have done something about it.

64 I prefer the evidence of Mr Naeem Shareef on this point. I consider it highly unlikely that Mr Azher Shareef, who dealt with the finances of the companies, would pay for registered office services if he had not agreed to do so. I find that it was part of the work that the parties had agreed the claimant would provide and for which a reasonable fee would be paid and that the claimant is entitled to the sums found to be reasonable by the expert.

65 In relation to all of the areas of contention on the uninvoiced work and in relation to all of those categories, I wish to add that my findings are supported by the fact that there is a complete lack of any contemporaneous objection to these invoices. Indeed, it was not until Mr Cutler's skeleton argument was received that these objections were understood. There was no contemporaneous document raising any query about this work. However, it goes further than that, because Mr Azher Shareef had expressly agreed some of the fees that he disputed at trial. There was an email trail between the parties. On 15 March, Shaz, who is the PA to Mr Azher Shareef, asked the claimant for an up to date breakdown of fees because they had received sanction from the bank to pay them up to date if possible from the proceeds of Montgomery Street. Mr Naeem Shareef sent the schedule. *"Here is a schedule of fees in PDF and Excel if you want to play with the numbers"*.

66 On 17 March 2011, Shaz emailed Mr Naeem Shareef:

*"Thanks, Mr Naeem. I will get the figures across to Saira and hopefully get the £52,000 reserved and get you paid up to date"*.

67 Later that day:

*"Can you please provide me with the invoices again so that we can claim the VAT? In the past I have prepared cheques for the invoices but, due to insufficient funds, they were never sent out and Azher has put them somewhere"*.

68 I pause there, because it is clear from that evidence that at least some of the invoices that are the subject of this claim had been previously approved for payment, that Mr Azher Shareef

had personally seen the invoices and that a cheque or cheques to pay them had previously been prepared.

69 There are than various emails in which Mr Naeem Shareef was chasing for payment because he needed to make a payment to HMRC. It is clear that the claimant company was in urgent need of payment. There was some fairly protracted correspondence which resulted in an impasse, where the claimant was chasing for payment and Mr Azher Shareef was putting Mr Naeem Shareef under pressure to get the claimant to prepare what are described as “bank packs” to assist with funding.

70 On 30 March 2011, Mr Azher Shareef emailed Mr Naeem Shareef in the following terms:

*“Saira is exchanging contracts on Thursday and everything has been sanctioned. Therefore, your payment is safe and ready to be paid once I have received the most important documents of all which are the bank packs”.*

71 Then:

*“I am not disputing your payment, but you cannot even give me a date when the bank packs will be ready”.*

72 By that email, Mr Azher Shareef expressly agreed the fees. At least some of the invoices had been approved for payment previously and Mr Azher Shareef had expressly confirmed that there was no issue about them. There was no query about these invoices until the parties fell out.

73 The expert found that there had probably been an overcharge with the invoiced fees of around £1,003.96, based on his sampling. The expert considered that to be *de minimis* in the context of total invoices and the sum of £55,284.81, and did not consider that sum should be deducted from the sums due. He considered the fees overall were reasonable. Of course, he did not do a complete, comprehensive exercise. He did a sampling exercise and his conclusion was that, overall, the fees were reasonable. I see no reason to depart from the expert’s view.

74 My decision is that each of the defendants is liable to pay the claimant the sums which the claimant currently claims, after the concessions made by the claimant as to the reasonable level of fees, based on the expert’s views. We have not dealt with interest and I will hear submissions, if necessary, on the question of interest on those sums at the end of the judgment.

### **Seventh Defendant’s Part 20 Claim**

75 I turn now to the Part 20 claim by the seventh defendant. The seventh defendant claims £75,000 plus VAT from Mr Naeem Shareef personally for work carried out by the seventh defendant to convert a site at Coventry.

76 The background to this claim is an agreement between Mr Naeem Shareef, Mr Azher Shareef, Mr Hardial Panesar and Mr Inderjit Panesar that, among other things, Mr Naeem Shareef and Mr Azher Shareef would jointly fund the conversion of a property in Foleshill Road, Coventry that would be owned by the company, Key 2. The Messrs Panesar were to fund the conversion of Tyseley, which was owned by Key Investments Limited (Key 1).

The issues between the parties are whether Mr Naeem Shareef has any personal liability at all directly to the seventh defendant and, if so, whether he is liable for the sum claimed, which is £90,000, being £75,000 plus VAT.

- 77 There is some factual complexity to the seventh defendant's case on this issue and it is probably easier for me to start with Mr Naeem Shareef's position in relation to this claim. His position is that he accepts that he agreed to fund Key 2, which was jointly owned by each of the four directors, to enable Key 2 to pay the costs of the works to the site at Coventry. He accepts that the agreement was that he would fund the works equally with his brother, Mr Azher Shareef, so that they would each personally fund Key 2 to the extent of half the costs that Key 2 incurred in doing work. He does not dispute that he would be liable to put Key 2 in funds to enable it to discharge half the costs it had actually incurred by getting the work done to convert the Coventry site to self-storage, provided that Key 2 has actually incurred those costs, and provided Mr Azher Shareef does the same. He does dispute that he is directly liable to the seventh defendant, on the basis that he had no agreement directly with the seventh defendant.
- 78 He also disputes the amount claimed, as he has not had sight of evidence supporting the quantum of the claim. He says he has not seen evidence of expenditure on the work amounting to £150,000 plus VAT, which would need the level of expenditure if his liability is £75,000 plus VAT. He also says that Mr Azher Shareef has not personally paid an equivalent amount to D7, and therefore he would not be liable in any event. Further, his case is that the seventh defendant has in fact been paid more than it spent on the Coventry site by taking money from Key 1 and Key 2 in the total sum of £80,000 so that, even if he had had any liability to the seventh defendant, that liability has effectively been discharged by Key 1 and Key 2.
- 79 I turn now to the seventh defendant's case here. Its case is that there was an agreement between partners or joint-venture partners, Mr Naeem Shareef, Mr Azher Shareef and Messrs Panesar. There was some cross-examination on the terminology here, as to whether, technically, this was a joint-venture or a partnership. It clearly was not a partnership in the legal sense. It may not be a joint-venture technically, but the parties, not surprisingly, used the words "partner", "joint-venture partner", to describe their relationship. There is no real factual dispute here as to the nature of the relationship. The four individuals would be equal shareholders in the two companies, Key 1 and Key 2. They reached agreement between them as to how the conversion works would be carried out. It seems to me that there was an oral shareholders' agreement with regard to the funding the projects.
- 80 The claimant's pleaded case is as follows:

*"In or around 2010, Mr Azher Shareef, in equal partnership with the first defendant to the counterclaim and two other individuals, purchased, through the medium of Key Investments 2 Limited a commercial property in Foleshill Road, Coventry. It was orally agreed between the partners in this project that Mr Azher Shareef and the first defendant to the counterclaim would be equally responsible for the costs of converting the property at Foleshill Road into a self-storage facility. It was further agreed between Mr Azher Shareef and the first defendant to counterclaim that they would instruct Property Link Surveys Limited to carry out the said conversion work on their behalf and they would pay for the work carried out by PLSL in equal shares. PLSL duly carried out the said works on the instructions of Mr Azher Shareef and the first defendant to counterclaim. On completing phase one of the said works,*

*PLSL claimed the sum of £90,000 plus VAT from the first defendant to counterclaim as its equal contribution towards the costs of the said work.*

*The first defendant to counterclaim did not pay the sum requested and there were further negotiations and discussions following between Mr Azher Shareef and the first defendant to counterclaim to resolve any disputes about the claim made by PLSL. On or around 29 March 2011, a binding compromise was reached between Mr Azher Shareef on his own behalf and on behalf of PLSL, by whom he was duly authorised, and the first defendant to counterclaim that a total reduced sum of £75,000 plus VAT in total would be paid by the first defendant to counterclaim by monthly instalments of £1,000 plus VAT”.*

- 81 I have read that in full because it seems to me important to see what was originally pleaded. It was that there was an agreement between the various parties that the instruction giving the work to the seventh defendant was by Mr Azher Shareef and Mr Naeem Shareef and that, on completing the work, the seventh defendant demanded payment and, having demanded payment, Mr Naeem Shareef did not pay. Then there were discussions which led to a binding compromise agreement under which Mr Naeem Shareef agreed to pay £75,000 plus VAT.
- 82 Although the allegation is that the original shareholders’ agreement was in 2010, that is clearly an error. It was earlier than that. The pleading is in other respects confusing. A Part 18 request for further information was raised to clarify particularly what was meant by the words “*PLSL duly carried out work on the instruction of Mr Azher Shareef and the first defendant to counterclaim*”. The answer made clear that, contrary to the original pleading that Mr Azher Shareef and Mr Naeem Shareef had instructed the seventh defendant to do the work, it was not actually alleged that Mr Naeem Shareef ever instructed the seventh defendant to do any work. Instead, it was alleged that the instructions were given orally by Mr Azher Shareef instructing the persons who undertook the work. It thereby became clear that it was not part of the seventh defendant’s case that Mr Naeem Shareef had initially contracted directly with the seventh defendant, or that he instructed the works. One wonders, in that case, why it was originally pleaded that the seventh defendant had demanded payment from Mr Naeem Shareef when the first phase of the work had been completed and before the settlement agreement had been reached. Why would the seventh defendant demand payment from someone who had not contracted with it?
- 83 In response to a further Part 18 request on the allegation that, on completion of phase one of the work, the seventh defendant had claimed £90,000 plus VAT as his equal contribution towards the cost of the works, the seventh defendant referred to an invoice for £75,000 plus VAT, being £90,000 in total, dated 29 March, and a breakdown. It also said that it should be noted that reliance was not placed on the cost paid through any third parties for the works undertaken, but upon the binding compromise agreement to which reference is made in paragraph 69 of the defence and counterclaim.
- 84 It became clear that the £90,000 originally said to have been demanded by the seventh defendant before the compromise was reached was an error and was in fact the £75,000 plus VAT that was demanded after the compromise was reached.
- 85 In response to questions about how that compromise agreement was made, the seventh defendant’s answer was that the agreement was in writing in an exchange of emails between Mr Azher Shareef and Mr Naeem Shareef, particularly emails of 7 June, the texts of which

were set out in the Part 18 reply. From this I understand that the seventh defendant's case is that the agreement under which Mr Naeem Shareef is said to be liable to pay the seventh defendant was made on or about 2 June 2011, and not on or about 29 March 2011, as originally pleaded. I assume that that confusion arose because 29 March appears to be the date on the invoice from the seventh defendant to Mr Naeem Shareef. However, that invoice appears to have been created and sent on or about 2 June, not on 29 March. The first version of it, which bore no company details, VAT number or company registration number, was sent by email on 2 June. It was replaced by one which had a VAT number and a company registration number. That was forwarded later on 2 June. It therefore appears clear that the invoice was not raised until 2 June.

- 86 In his closing submissions, Mr Cutler and his instructing solicitor, Mr Baxendale, sought to clarify the seventh defendant's case, with Mr Baxendale directly addressing the court in order to save time. They conceded that there had always been a contract between the seventh defendant and Key 2 to do the works. There was a contractual specification for the work and the employer for the purposes of that work would be Key 2. They argued that there was an agreement that Mr Naeem Shareef and Mr Azher Shareef would contribute equally. They argued that a dispute arose between Mr Naeem Shareef and Mr Azher Shareef as to the amount of that contribution and Mr Naeem Shareef asked for time to pay that in order to resolve the conflict as to how much was to be paid, there was then a direct contract formed between the seventh defendant and Mr Naeem Shareef that he would pay the seventh defendant £75,000 plus VAT and the exchange of emails was the means by which the parties reached that agreement.
- 87 Therefore, I understand the case to be that it was the exchange of emails, particularly those of 2 June, that rendered Mr Naeem Shareef liable to pay the seventh defendant's invoice because, properly construed, they amount to a compromise agreement between Mr Azher Shareef, Mr Naeem Shareef and the seventh defendant, which renders Mr Naeem Shareef directly liable to the seventh defendant.
- 88 On the issue of consideration for the agreement offered by the seventh defendant in exchange for Mr Naeem Shareef becoming directly liable to it, it was argued that it was the seventh defendant's agreement not to pursue any greater sum for its work.
- 89 Whether Mr Naeem Shareef had a liability to someone, whether or not the seventh defendant, exceeding £75,000 plus VAT, is relevant to this issue. If he did not, he would have little incentive to accept a liability of £75,000 plus VAT to the seventh defendant. Of course, if he did not, that does not prove that he did not make a settlement agreement or that the emails are not capable of amounting to a settlement agreement, but it makes it much less likely that the emails should be construed in that way. Mr Naeem Shareef was not VAT registered personally, and so he would be unable to recover any VAT on a direct payment to the seventh defendant, so his liability would be for £90,000, rather than for £75,000 if Key 2 paid the seventh defendant, recovered the VAT and he reimbursed Key 2. This question of whether he was already liable to pay £90,000, or even £75,000, seems to me part of the factual background against which I need to consider whether the emails should be construed as amounting to a settlement agreement under which he agreed to pay £90,000 to Key 2.
- 90 The seventh defendant's case is that the overall liability was considerably in excess of £75,000. Although it was not expressly submitted in the seventh defendant's closing submissions, which did become rather confused, I am mindful of the fact that the alleged agreement was probably tripartite, and that Mr Azher Shareef was also a party to it. To be

generous to the seventh defendant's case, it might be said that Mr Azher Shareef was also giving consideration that was meaningful, and that consideration given by him could be viewed as part of the consideration for the settlement agreement as a whole. Therefore, if there was a liability to someone, not only to the seventh defendant, which exceeded £75,000 plus VAT, that is relevant background.

- 91 It was on this question that Mr Azher Shareef was most anxious to answer questions by reference to the accounts of the companies with which he is concerned. When it was put to him that the overall costs incurred were not as high as he contended, he repeatedly referred to the accounts of his company, Fast Track Investments Limited (Fast Track).
- 92 In re-examination, as far as I am aware for the first time, Mr Azher Shareef gave evidence that the costs were higher than appeared in the seventh defendant's accounts, because Fast Track was a subcontractor to the seventh defendant. He said that Fast Track had spent over £1 million over a few years on salaries and property repairs which could have, or did, include money spent at the site at Coventry.
- 93 His witness statement had made no reference to Fast Track being a subcontractor to the seventh defendant or to any costs it had paid towards the site at Coventry. No documentary evidence was produced in support of the contention that some of the costs in Fast Track's accounts were for this work.
- 94 In his oral evidence, contrary to the pleaded case (which was that there was an agreement to share costs equally) Mr Azher Shareef gave evidence that he and Mr Naeem Shareef had agreed that the seventh defendant would charge the amount set out in a quotation that the seventh defendant had provided to Key 2 at the outset of this project, being £280,000 plus VAT. He confirmed at that point that he was not alleging that the seventh defendant had incurred a cost of £280,000, but that Mr Naeem Shareef and Mr Azher Shareef had agreed that the seventh defendant would charge a price of £280,000, as set out in the quotation it had given to Key 2 at the outset.
- 95 When he was questioned about the actual costs incurred, he said that what was their value, not their cost. This evidence, that the agreement for the works was priced at £280,000, is inconsistent with the seventh defendant's pleaded case. In the witness statement of Mr Azher Shareef, before it was amended in the witness box, read as follows:
- “An initial quotation of £280,000 plus VAT was provided to the seventh defendant but Mr Naeem Shareef did not agree that figure, which would have equated to £140,000 plus VAT each. I therefore entered into negotiations...”*
- 96 At the outset of his oral evidence, he amended his witness statement. After amendment, it read as follows:
- “An initial quotation of £280,000 plus VAT was provided by the seventh defendant which Mr Naeem agreed, which would have equated to £140,000 plus VAT each. I therefore entered into negotiations.....”*
- 97 In summary, the case has progressed, and as oral evidence has been given in chief, in cross-examination and re-examination, Mr Azher Shareef has said at various times that:
- a. the agreement was to pay half the costs and that Mr Azher Shareef had not agreed the figure of £280,000, and that they had negotiated;



- b. that Mr Naeem Shareef had agreed the seventh defendant's quotation of £280,000 plus VAT;
- c. that the works that the seventh defendant carried out did in fact cost £280,000, being the sums that the seventh defendant had spent and a further £200,000 that is somewhere in the salaries and repair costs in the accounts of Fast Track, and that the seventh defendant owes Fast Track £200,000;
- d. that it is the value of the work, rather than the cost of the work, that is relevant and the work was worth more than it actually cost;
- e. that the figure of £500,000 (which was put in Mr Azher Shareef's CV in the last five years or so as being the development cost of the project) was a retail value rather than wholesale cost and £280,000 was in fact the wholesale cost of the work; and
- f. that Mr Azher Shareef's contribution was partly the time he spent on the work and his expertise, and his contribution to the costs should take that into account (which suggests that he did accept he was liable to make an equal financial contribution to the cost).

- 98 In short, Mr Azher Shareef's explanation as to the amount said to be Mr Naeem Shareef's liability has repeatedly changed and developed and contains numerous inconsistencies, including numerous inconsistencies in his own evidence even in the witness box. It is simply not credible.
- 99 There is no evidence to enable me to find that Mr Naeem Shareef's liability to fund Key 2 exceeded the sums that the seventh defendant had incurred and which were shown in its accounts. According to its accounts, the seventh defendant incurred costs of around £74,000 plus VAT.
- 100 With this background, it is difficult to understand why Mr Naeem Shareef, who was the company's accountant, would agree to pay £90,000 inclusive of VAT as his half share of those costs, if the accounts showed total costs of about £74,000. The factual background to the alleged settlement agreement makes it unlikely that such an agreement was entered into, because the agreement does not appear to make commercial sense.
- 101 Of course, that is not the end of the matter. Not all commercial agreements appear to make perfect commercial sense. I still need to consider whether the emails, properly construed, amount to a settlement agreement under which Mr Naeem Shareef became directly liable to the seventh defendant in circumstances where (as the seventh defendant concedes) he was not previously liable to it directly. It is necessary for this purpose to look carefully at the correspondence to see whether the emails amount to the alleged settlement agreement.
- 102 On 1 June 2011, an email was sent by Mr Naeem Shareef to Mr Azher Shareef chasing for fees which says:
- “When my debtors are reduced as will be the case here, I will start the direct debit for £1,000 per month. Please let me have the final invoice to Key Investments 2 Limited showing my share due”*
- 103 I pause there to note that it appears that, even before the particular emails which are said to create the settlement agreement, Mr Naeem Shareef and Mr Azher Shareef appear to have had some discussion about a direct debit for £1,000 per month. That of course is not the seventh defendant's pleaded case, which is that the agreement for the £1,000 direct debit was part of the settlement agreement. Also, importantly, it is clear from that email that Mr

Naeem Shareef was saying the day before the alleged settlement agreement that he expected the seventh defendant to invoice Key 2.

- 104 The specific emails on which the seventh defendant relies are as follows. On 2 June 2011, Mr Azher Shareef emailed Mr Naeem Shareef as follows:

*“Please find attached the invoice due for Coventry which is your portion. Please can you set up a standing order for £1,000 on a monthly basis commencing from this month? Once this has been done, please confirm as we could keep a record of the payments. Please make the following payments to Property Link Professional Services Limited”.*

- 105 The email goes on to set out the bank details, which I assume are the seventh defendant’s bank details. In the bundle, behind that email, is what I assume is the attachment. It is an invoice dated 29 March addressed to Mr Naeem Shareef. The copy on the file bears the name “Property Link” at the top. I note that more than one company in Mr Azher Shareef’s group begins with the name “Property Link” - both the sixth defendant and the seventh defendant, for example. All emails from Mr Azher Shareef appear to come from “Property Link”. There is no formal company name, company number or VAT number on that document. It claims £75,000 plus VAT at 20 per cent for works carried out to storage in Coventry. The invoice does not identify the legal entity raising it or the VAT number for it and is not, to my mind, a proper VAT invoice.

- 106 Also attached to that email was a breakdown of works, which sets out the various works done. At the end of it, it states:

*“Amount owed for complete works is £75,000 plus VAT. This is less than cost. This is considerably overdue and would appreciate payment by return as this amount has been outstanding since March 2008”.*

- 107 It is not at all clear to me how the amount could be said to have been outstanding since March 2008. In any event, I note that the assertion is inconsistent with the seventh defendant’s pleaded case and the case as it was finally argued at trial, which is that the liability arises from the settlement agreement, not from any earlier agreement.

- 108 The next email on which the seventh defendant relies is an email of 2 June from Mr Naeem Shareef to Mr Azher Shareef:

*“Thanks for that. Can we do something about the VAT? Your invoice should be addressed to Coventry and then I pay you and every year we do an inter-company adjustment crediting my contribution against your invoice, so when you invoice Coventry they claim the VAT and you have to pay it. We will discuss this next time we meet. I have set up the direct debit so it comes out in the middle of each month, starting on 15 June. If I can afford to, I will make lump sum payments now and then”.*

- 109 It is clear from the email of 1 June that there had been earlier discussion and agreement to pay £1,000 per month before 1 June. Therefore, agreeing to pay £1,000 a month is not evidence of acceptance of any offer to compromise on terms that the seventh defendant would be entitled to payment direct from Mr Naeem Shareef.

110 Mr Naeem Shareef's evidence, which I accept, is that he had agreed to pay £1,000 on account of a liability he knew he had. He knew costs had been incurred. He knew that he was liable for a considerable sum of money and that he should be paying on account. It is also apparent from the email of 2 June that he made very clear that the invoice should be addressed to Coventry. By "Coventry", he obviously meant Key 2. He explained, as is no doubt correct, that "Coventry" or Key 2 would reclaim the VAT and "you", which I understand to mean the seventh defendant, would have to pay VAT to HMRC. Invoicing and accounting for VAT in this way is exactly what one would expect if Mr Naeem Shareef was to put Key 2 in funds to pay the seventh defendant's costs. It is inconsistent with Mr Naeem Shareef being substituted for Key 2 as the party who was liable to pay the seventh defendant's invoices.

111 Although the later correspondence is not relied on as creating the alleged settlement agreement, it is relied on as amounting to acknowledgement of the debt arising from it. Shaz, who was Mr Azher Shareef's PA, said in an email on 6 June:

*"The invoice is for a company formerly known as Property Link Self Storage Limited, which is now trading as Link Surveys Limited, so you will be able to reclaim the VAT back. We have attached the invoice with a VAT number. Azher said this should be sufficient. If not, let me know please".*

112 Attached is an invoice bearing the company number of the seventh defendant, though still not bearing its correct name. It is probably only at this point that it became clear who the invoice was from. It seems to me that Shaz had missed the point. She seemed to think that the problem was the lack of a proper VAT invoice, rather than the fact that the addressee on the invoice was the wrong entity, in that it was Mr Naeem Shareef rather than Key 2.

113 Mr Naeem Shareef had made clear in his email of 1 June that he expected to pay Key 2. On 7 June, he responded to Shaz as follows:

*"The invoice should be addressed to Coventry so they could claim this as expenses. They also claim the VAT and you have to pay for it, but don't worry too much about invoicing them now as you will only have to pay the VAT sooner. Therefore, I should only have to pay the net cost, not the VAT amount. I know this sounds confusing but your company needs to invoice Coventry for £150,000 plus VAT. I pay half this net as Azher has in his company, which will be adjusted via an inter-company adjustment. This leaves the balance as follows: paid by Azher through his company, £75,000, to be paid by Naeem, £75,000, VAT to be paid to your company by Coventry, £30,000. Your company needs to pay this to the VAT man. Total received, £180,000. I am at Heartlands tomorrow morning so let me know if you want to discuss this".*

114 From this correspondence, it is clear to me that Mr Naeem Shareef was at all times expecting that the seventh defendant would invoice Key 2 £150,000 plus VAT, that the seventh defendant would pay the VAT, that Key 2 would recover the VAT and that his contribution would be half the net amount that Key 2 would have paid the seventh defendant, after Key 2 recovered the VAT. Mr Naeem Shareef also believed that Mr Azher Shareef had paid £75,000 to his company and that he expected £75,000 to be half the total amount which Key 2 would pay the seventh defendant. All of that is entirely consistent with what Mr Naeem Shareef has maintained at all times was the original agreement. It is not

evidence that he has accepted he should be substituted as the paying party in place of Key 2 or that he has rendered himself directly liable to Key 2.

- 115 Mr Naeem Shareef mailed Shaz on 21 June: “£1,000 in your account today. I will set up a direct debit in the future”. The evidence was that no further payments were made and I assume that a direct debit was not in fact set up.
- 116 Both parties’ evidence was that Mr Naeem Shareef regularly, through his accountancy practice, accounted for inter-company adjustments between the companies in the Shareef group. In addition, it is clear from the parties’ evidence and from the documents in the trial bundle that it was common for there to be inter-company loans and support between the companies in the group, particularly when cash flow was tight. It was also clear that Mr Naeem Shareef was mindful that the seventh defendant raising an invoice to Key 2 would crystallise the VAT liability, so the seventh defendant would have to pay the VAT, and that he was not necessarily recommending that the invoice be raised at that time. It could be raised later and inter-company adjustments made to reflect the true nature of the transactions.
- 117 In the light of all the evidence and the email correspondence, I find that the facts that Mr Naeem Shareef paid one payment of £1,000 to the seventh defendant directly and that he said he would set up a direct debit does not mean he was accepting that he was directly liable to the seventh defendant. Even if the payment was made to the seventh defendant, he clearly intended to make the appropriate inter-company adjustments in the ledgers so that they would show the correct legal liabilities and the correct flow of money. I also find that, on a true construction of the correspondence, Mr Naeem Shareef did not agree with Mr Azher Shareef and/or with the seventh defendant that he would be liable to pay the seventh defendant directly. At all times he made clear that invoicing would follow the correct route, and that the true transactions would be reflected in the company’s ledgers, and would be consistent with what had been agreed between Mr Naeem Shareef and Mr Azher Shareef at the outset.
- 118 I would also comment that it would seem to me the agreement contended for the seventh defendant would make absolutely no commercial sense. Even if he had thought that he was liable for the sum that it is alleged he agreed to pay, Mr Naeem Shareef was not registered for VAT personally and could not recover the VAT on an invoice addressed to him. The agreement alleged by the seventh defendant would have deprived Key 2 of the ability to recover the VAT, and would have increased Mr Naeem Shareef’s liability by £15,000, being the VAT on £75,000. It seems to me inherently unlikely that he would have agreed to that, or even that Mr Azher Shareef would have proposed that, as that would be £15,000 unnecessarily lost to HMRC that would otherwise be available to the parties.
- 119 Mr Baxendale, solicitor for the seventh defendant, sought to argue that that would not be the case. I did not entirely understand the argument. As I understood it, Mr Baxendale suggested that recoverability of VAT depends on to whom the service is rendered rather than to whom the invoice is addressed and therefore Key 2 could recover the VAT, even on an invoice addressed to Mr Naeem Shareef. It is my understanding that a party cannot recover VAT except for services rendered to it, but I am unfamiliar with the concept that a company which is not in receipt of a VAT invoice for services rendered to it can recover the VAT on an invoice addressed to a third party. I was not provided with any authority for the proposition that Key 2 could recover the VAT without an invoice addressed to it.

120 Finally, the seventh defendant's case was that it was in March 2011 (as pleaded) or in June 2011 (as set out in the Part 18 replies) that the settlement agreement was made. In re-examination, Mr Azher Shareef gave evidence that he agreed with Mr Naeem Shareef that Mr Naeem Shareef would pay £75,000 by instalments of £1,000 in March 2010, which was over a year before the settlement agreement is alleged to have been made. Later in his re-examination, he said, in response to a question about what happened in April 2011, "*that was when he went to £75,000*". However, his evidence in cross-examination was also that he had said to Mr Naeem Shareef, "*If you are willing to pay £75,000 plus VAT straight away, we can agree*"; that Mr Naeem Shareef had contacted him a few months after that and said, "*I can't afford the full amount and I will pay £1,000 a month*". Mr Azher Shareef's evidence in court was at various times that:

- a. the £75,000 figure was agreed first, then there was a request for time to pay; and
- b. the agreement to pay £75,000 was in April 2011.

Neither of those statements is consistent with the seventh defendant's case, which is that the emails June 2011 created the agreement and that the consideration was the agreement to accept £75,000 by instalments.

121 In conclusion, I find that, at all times, Mr Naeem Shareef made clear that he expected the seventh defendant to invoice Key 2 and his liability was always to Key 2. There was no settlement agreement between Mr Naeem Shareef, the seventh defendant and/or Mr Azher Shareef under which Mr Naeem Shareef agreed to become directly liable to the seventh defendant. It follows that he is under no liability for the seventh defendant's Part 20 claim and the seventh defendant has no cause of action against him. The Part 20 claim is dismissed.

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**CERTIFICATE**

Opus 2 International Ltd. Hereby certifies that the above is an accurate and complete record of the judgment or part thereof.

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