Neutral Citation Number: [2025] EWHC 1286 (Ch)

Case No: BL-2023-000186

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

IN THE MATTER OF FIFTY ASSET MANAGEMENT LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Rolls Building
Fetter Lane
London, EC4A 1NL

Date: 23/05/2025

Before:

HHJ CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between:

(1) PETER GLENN
(2) JONATHAN SLATER

Claimants

- and -

(1) ADAM WALKER
(2) JEREMY DYER
(3) FIFTY ASSET MANAGEMENT LIMITED

Defendants

- -
- -

Roger Stewart KC and Will Cook (instructed by **Troutman Pepper Locke UK LLP**) for the **Claimants**
Justin Higgo KC and Andrew Gurr (Instructed by **CANDEY Limited**) for the **First and Second Defendants**

Hearing dates: 25-28 & 31 March, and 1, 3-4 April 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 23 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ CAWSON KC SITTING AS A JUDGE OF THE HIGH COURT

HHJ CAWSON KC:

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Introduction

1. In these proceedings, the Claimants, Peter Glenn ("**Mr Glenn**") and Jonathan Slater ("**Mr Slater**"), allege that they entered into a partnership ("**the Alleged Partnership**") with the First Defendant, Adam Walker ("**Mr Walker**"), and the Second Defendant, Jeremy Dyer ("**Mr Dyer**"), in respect of their involvement as shareholders, directors and otherwise in a number of companies including Fifty ID Limited ("**FID**"), Fifty ID Re Limited ("**FIDRE**"), Fifty ID Re 2 Limited ("**FIDRE 2**") and the Third Defendant, Fifty Asset Management Limited ("**FAM**"). Alternatively, the Claimants allege that they and Mr Walker and Mr Dyer were

involved in a joint venture ("**the Alleged Joint Venture**") an incident of which was the existence of fiduciary duties between the four of them ("**the Four Individuals**").

2. It is the Claimants' case that Mr Walker and Mr Dyer, in breach of their fiduciary duties as partners in the Alleged Partnership, alternatively in breach of their fiduciary duties arising under the Alleged Joint Venture, wrongly and disloyally plotted and procured the exclusion of Mr Glenn and Mr Slater from the Alleged Partnership, alternatively the Alleged Joint Venture, and from the companies in question, and diverted business opportunities belonging to the Alleged Partnership, alternatively the Alleged Joint Venture, to themselves and/or to competing businesses owned by them. On this basis, Mr Glenn and Mr Slater seek equitable compensation and/or damages for the loss that they claim to have suffered by reason thereof, alternatively an account of profits, as against Mr Walker and Mr Dyer.

3. Further, the Claimants allege that Mr Walker and Mr Dyer perpetrated on them an unlawful means conspiracy such that they are entitled to damages for the tort of conspiracy.

4. In addition, the Claimants pursue, on behalf of FAM, a derivative claim under Chapter 1 of Part 11 of the Companies Act 2006 against Mr Walker and Mr Dyer alleging that the latter acted in breach of their statutory fiduciary duties owed to FAM in, essentially, causing it to cease trading by bringing about the circumstances in which FAM lost the benefit of a lucrative asset management contract.

5. Mr Walker and Mr Dyer dispute that there was any partnership ever in existence between them and Mr Glenn and Mr Slater, or that they were subject to any fiduciary duties arising in consequence of any involvement in a joint venture. It is their case that such fiduciary and other duties as they might have owed were limited to those owed as directors of the various companies in which they were involved. Alternatively, if, contrary to their primary case, any fiduciary duties arose as partners in the Alleged Partnership or through their involvement in the Alleged Joint Venture, then Mr Walker and Mr Dyer deny that they plotted or procured the exclusion of Mr Glenn or Mr Slater therefrom, or otherwise acted in breach of fiduciary duty, or that they were party to any unlawful means conspiracy. Further, they deny that they acted in breach of any duties owed to FAM.

6. I will first consider the background to the Alleged Partnership and the Alleged Joint Venture and the involvement of the Four Individuals in various companies, and the business carried on thereby in order to determine whether Mr Walker and Mr Dyer were party to a partnership or joint venture that gave rise to fiduciary duties owed to Mr Glenn and Mr Slater. Whatever my finding in that respect, I will then consider whether, if fiduciary duties owed to Mr Glenn and Mr Slater did arise in such circumstances, Mr Walker and Mr Dyer acted in breach thereof in excluding Mr Glenn and Mr Slater, and procuring for themselves business opportunities properly belonging to the Alleged Partnership or the Alleged Joint Venture, and/or perpetrated an unlawful means conspiracy.

7. It is not in dispute that Mr Glenn and Mr Slater on the one hand, and Mr Walker and Mr Dyer on the other hand, went their separate ways from and after 15 February 2018

following the key events of that day to which I will return. However, it will be necessary to consider in some detail the events leading up to 15 February 2018, and the events of that day and thereafter in some detail in order to determine whether, if Mr Walker and Mr Dyer did owe fiduciary duties to Mr Glenn and Mr Slater, they acted in breach thereof, and/or perpetrated an unlawful means conspiracy, and/or whether there is a good derivative claim against them on behalf of FAM.

8. Mr Glenn and Mr Slater were represented by Roger Stewart KC and Will Cook, and Mr Walker and Mr Dyer were represented by Justin Higgo KC and Andrew Gurr. I am grateful to them for their helpful written and oral submissions, and for the efficient, effective and skilful way in which they all conducted the trial.

Witnesses and approach to the evidence

Witnesses

9. At trial, I heard evidence from Mr Glenn, Mr Slater, Mr Walker, Mr Dyer, and, on behalf of Mr Walker and Mr Dyer, from Benjamin (Ben) Warren ("**Mr Warren**"), a partner in EY and head of EY's energy team in November 2015 (when he first became involved with the Four Individuals).

Approach

10. In this case the Court is required to decide questions of fact relating to events going back to some 10 years or so, with the key events of February 2018 now having occurred over seven years ago. In these circumstances, it is necessary to bear firmly in mind the much repeated observations of Leggatt J (as he then was) in *Gestmin SGPS S.A. v Credit Suisse Limited* [2013] EWHC 3560 (Comm) at [15] – [22] with regard to the unreliability of memory, and his caution to place limited, if any, weight on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts.

11. A particular concern identified by Leggatt J was the ability of a witness, in seeking to recall events that took place some time ago, to falsely do so, but to do so with genuine conviction and belief that their recollection is accurate. Thus, as Leggatt J cautioned in Gestmin at [22]: *"... it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."*

12. Allied to this is a concern that a witness seeking to recall events over a significant period of time is liable, in reconstructing those events in his or her own mind, to do so in a way that inaccurately recalls those events in his or her favour, and to exaggerate perceived advantages to his or her own case, and do so without deliberately seeking to give false evidence.

13. As to the "demeanour" of witnesses, I note the observations of Arden LJ (as she then was) in *Re Mumtaz Properties Ltd [2012] 2 BCLC 109* at [12]:

> "12. There are many situations in which the court is asked to assess the credibility of witnesses from their oral evidence, that is to say, to weigh up their evidence to see whether it is reliable. Witness choice is an essential part of the function of a trial judge and he or she has to decide whose evidence, and how much evidence, to accept. This task is not to be carried out merely by reference to the impression that a witness made giving evidence in the witness box. It is not solely a matter of body language or the tone of voice or other factors that might generally be called the 'demeanour' of a witness. The judge should consider what other independent evidence would be available to support the witness. Such evidence would generally be documentary but it could be other oral evidence …"

14. I also note the observations made as to the importance of contemporaneous documents by Males LJ in *Simetra Global Assets Limited v Ikon Finance Limited* [2019] EWCA Civ 1413 at [48], reinforcing what was said by Leggatt J in *Gestmin:*

> "48. In this regard I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's internal documents including e-mails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents."

15. In addition to documentary evidence, it is plainly appropriate to test the witness evidence against the inherent probabilities of the relevant situation, and considerations such as the consistency (or otherwise) of a particular witness's evidence with other evidence, the internal consistency of that evidence, and the consistency of that evidence with what the witness might have said on other occasions – see e.g. *Kimathi v The FCO* [2018] EWHC 2066 (QB), at [98].

16. The established approach to fact-finding thus requires the reliable contemporaneous documentary evidence to be used as a platform, to which are added known or established facts, agreed facts, or probable facts (both inherently probable and by inferences properly drawn from known, established or agreed facts), which the Court will then build upon by reference to witness testimony which is consistent or compatible with that underlying body of reliable documentary evidence and is not tainted or flawed by other indicators of unreliability – see e.g. *Re Parsonage (deceased)* [2019] EWHC 2362 (Ch), per HHJ Simon Barker QC at [32]-[37].

17. In this case, the parties have each levelled allegations of dishonesty against the other. I remind myself that where a serious allegation is made in a civil case, such as an allegation fraud or dishonesty, the burden remains the same, namely on the Claimants, and the standard of proof remains the civil standard. However, if a serious allegation is made, then more cogent evidence may be required to overcome the unlikelihood of

what is alleged, at least to the extent that it is incumbent on the party making the serious allegation to prove it. This is on the basis that the more serious the allegation the less likely it is that the event occurred and hence the stronger should be the evidence before the Court concludes that the allegation is established on the balance of probability – see Phipson on Evidence, 20th Ed, at 6-57 and *H (Minors)* [1996] AC 563 at 586D-F, per Lord Nicholls.

My assessment of the witnesses

Mr Glenn

18. I regret that I did not find Mr Glenn to be a satisfactory or reliable witness. By his evidence, he struck me as somebody who had a tendency, deliberately or otherwise, to recall what he wanted to recall and what he perceived would help his case, rather than what necessarily actually occurred. It will be necessary to go into some of the following issues in more detail when considering the evidence more fully later in this judgment. However, whilst there are other matters, the particular matters that have led me to conclude that Mr Glenn was not always telling the truth, or at least had falsely recalled events, are the following:

    i) Mr Glenn now says that the steps taken to attempt to remove funds from FIDRE's "Proceeds Account" (referred to below) ("**the FIDRE Proceeds Account**") on 15 February 2018, and to actually remove £75,000 from FAM's bank account on that day, were taken to protect his and Mr Slater's interests having got wind of the fact that Mr Walker and Mr Dyer were planning to exclude them. However, this is inconsistent with what he was saying at the time, in February and March 2018 - see for example his annotated addition to paragraph 6 of Mr Walker's proposed letter prepared on 23 February 2018 to the Directors of Equitix Wind Co 1 Limited ("**Wind Co 1**"). In his annotations, Mr Glenn had said that he had merely attempted to access the FIDRE Proceeds Account to determine if the mandate had changed, and not to seek to withdraw funds.

    ii) The various inconsistent explanations put forward by Mr Glen as to his claimed entitlement to funds in FIDRE's Proceeds Account, including an assertion that funds within that account were held for the benefit of the Four Individuals, and that they had an immediate entitlement to payment thereout of the relevant sums to themselves upon completion of the refinancing of FIDRE by Bayerische Landesbank ("**Bayern**") in late 2017/early 2018 – see paragraph 94 and 95 of the Claimants' Written Opening Submissions. This latter explanation is inconsistent with what Mr Glenn was saying at the time to Equitix[1] regarding the "Base Cost" dividend payable pursuant to Articles 5.1 and 5.2 of Wind Co 1's Articles of Association, and inconsistent with advice being received at the time from Linda Warner ("**Ms Warner**") of Roffe Swayne and other contemporaneous documentation questioning the ability of Wind Co 1 to pay a dividend, and identifying the need, therefore, for Equitix to purchase the Four

[1] A number of "Equitix" companies are relevant to the present case, and they will be individually defined as appropriate. However, references in this judgment to "Equitix" are to the Equitix companies generically.

Individuals' shares in the latter instead as reflected in documents produced by Mr Glenn himself.

iii) Explanations given by Mr Glenn in respect of a number of payments made from FAM's and FID's bank accounts, including, in particular, a payment of £9,600 that Mr Glenn caused to be paid from FAM's account to FID's account on 28 June 2017. This latter payment was shown on FAM's bank statements as payable in respect of "legal expenses" but, in fact, was paid, the same day, from FID's account to Mr Glenn's and his wife's own overdrawn bank account and not used to meet any legal expenses. The payment in question was not identified as having been paid to Mr Glenn in a schedule of payments produced by Mr Glenn provided in February 2018, and it was only comparatively shortly before trial that Mr Walker and Mr Dyer discovered that these monies had been paid to Mr Glenn himself. The evidence is to the effect that Mr Dyer had, on a number of occasions, sought copies of FID's bank statements that would have identified the payment to Mr Glenn personally, but Mr Glenn failed to provide them. Under cross examination (see Day 1/168-173), Mr Glenn described the failure to mention this payment on the schedule of payments as being "a mistake". I found this explanation to be unconvincing, and I accept Mr Walker's and Mr Dyer's case that Mr Glenn had deliberately sought to hide this payment from them, both initially in its description as "legal expenses" when withdrawn from FAM's account and its omission from the schedule of payments provided, and I consider that this further calls into question the manner in which Mr Glenn dealt with, and accounted for other payments.

iv) Whilst there are clearly issues as to how far Mr Glenn went in the course of this conversation, there is cogent contemporaneous evidence to the effect that Mr Glenn, before he emailed Mr Dyer regarding the £75,000 that he had caused to be withdrawn from FAM's account, telephoned Mr Dyer on 15 February 2018 and said that he thought that the relationship between the parties required to be wound up. I note, in particular, Mr Walker's WhatsApp message timed at 16:08 on 15 February 2018 referring to Mr Glenn having called Mr Dyer, and saying: "He thinks it needs to be wound up." I note also Mr Dyer having commented in a WhatsApp message timed at 10:32 on 16 February 2018 that he had just spoken to Mr Glenn and that: "he is clearly wanting to go it alone in some way shape or form." This is in contrast to Mr Glenn's evidence in paragraph 60 of his witness statement to the effect that the purpose of his call to Mr Dyer was to thrash out how the parties were going to "work together moving forward."

Mr Slater

19. On the whole, I found Mr Slater to be an impressive and honest witness clearly telling the truth as he saw it. A difficulty, however, so far as Mr Slater is concerned is that, particularly latterly, he was not significantly involved in events or correspondence, and was very much reliant upon what he was being told by Mr Glenn. As referred to below, this lack of involvement explains why, when it came to FIDRE 2, he did not by agreement, as a shareholder, stand to share equally with the other three individuals. This reliance upon what he was told by Mr Glenn, and lack of contact with Mr Walker and Mr Dyer was, I consider, particularly significant when it came to the events of 15

February 2018, and thereafter, and does, as I see it, explain why Mr Slater sees matters from Mr Glenn's perspective and supports his claim.

20. There is, however, one aspect of Mr Slater's evidence that requires comment. As referred to in more detail below, when it came to the refinancing of FIDRE by Bayern in late 2017/early 2018, a spreadsheet had been prepared modelling the refinancing and showing a fee payable of £715,000. This disappeared from the final spreadsheet that formed the basis of the refinancing itself because it was recognised that the Four Individuals, as shareholders in Wind Co 1, stood to be rewarded through the "Base Case" dividend provided for by Articles 5.1 and 5.2 of the latter's Articles of Association. In evidence, Mr Slater supported the case that the facility agreement with Bayern facilitated the payment of such fee, which effectively meant that there was a fund available to make payments to the Four Individuals without more. In the course of giving evidence, Mr Slater said that he would be guided by the model, although it was apparent that he had not seen the spreadsheet modelling the payment of the £715,000 fee. When shown the spreadsheet that omitted reference to the fee, he suggested that the latter represented a "nasty trick" without, I consider, any proper basis for so suggesting. However, I put this down to a false reconstruction of events in his own mind, influenced by what he had been told by Mr Glenn, rather than any deliberate attempt to mislead the Court.

Mr Walker

21. Despite the criticisms made of his evidence, I considered him to be an essentially honest witness doing his best to assist the court.

22. A number of particular matters were identified on behalf of the Claimants as calling into question his credibility and honesty as a witness. I do not consider that any of them are sufficient to undermine the overall impression that I gained of him as a witness. Nevertheless, I shall comment briefly on each of the most significant criticisms:

    i) It is submitted that Mr Walker dishonestly sought to mislead various representatives of Equitix and poison them against Mr Glenn in an email dated 23 February 2018, in particular by drawing to the attention of the latter that he had just received a call from "the bank" with regard to blocking a couple of transfers that Mr Glenn had sought to make. Particular criticism is made in relation to the reference in this email to an attempted payment of £969 to "our bookkeeper" for work in relation to a "different company that Peter runs". This is contrasted with another earlier email in which Mr Dyer had identified a number of payments that he said to Mr Glenn should be paid, including amounts owed to the bookkeeper, Emmaus Accountants Ltd, and with an email dated 23 February 2018 from Mr Walker in which he had referred to a clear attempt to use FAM's funds (i.e. not those of Equitix or its subsidiaries) to pay for services provided to Home Counties Developments Limited ("**HCDL**"). The argument was advanced that Mr Walker had attempted by the email to the representatives of Equitix to knowingly create the false impression that Mr Glenn was attempting to use their funds, or at least funds of FIDRE or its SPV subsidiaries in which Equitix had an interest, to pay for unconnected liabilities. I consider

that the email that is criticised could have been better expressed, but I have no reason to doubt Mr Walker's evidence that he had received a call from the bank identifying attempts made to effect the withdrawals in question. I consider that, in circumstances in which he genuinely had concerns to which I will return following the events of 15 February 2018, that Mr Glenn would attempt to make further withdrawals, he precipitously jumped to wrong conclusions. Further, with hindsight, Mr Walker might have made further enquiries before emailing in the terms that he did in order to clarify matters, and might subsequently have provided a more accurate description with regard to the relevant payments. However, I do not consider this to fundamentally undermine the general reliability of his evidence, particularly where supported by other evidence.

ii) A further matter relied upon relates to an event in November 2018 when there was an altercation between Mr Glenn and Mr Walker at Waterloo Station. It is said that Mr Walker lied to Mr Slater with regard to there being CCTV evidence available in relation to the incident, when there was not. It may be that Mr Walker did exaggerate the position so far as the availability of CCTV evidence is concerned, but again I do not consider that this fundamentally undermines the general reliability of his evidence.

iii) Reliance is further placed by the Claimants upon Mr Walker having signed the letter of engagement between FID of EY as a "director" of FID when he had not been appointed as a director of FID, and criticism is made of his dismissal of this as "an error" when it is said that he must have known that he was not a director of FID. In similar vein, reliance is placed upon Mr Walker being party to the making of a false declaration to Companies House in relation to the striking off of FAM in November 2021 to the effect that notice had been given to all shareholders, when that was not the case. In seeking to excuse this, Mr Walker suggested that this was not his area of practice, but the point is made that he has huge experience as a corporate lawyer.

I do not attach a great deal of weight to Mr Walker's reference to himself as a director of FID in that, as I shall return to, he was, at the time, being held out more generally to, for example potential investors, as being involved to the same extent as the others in the running and operation of FID. So far as the declaration to Companies House is concerned, this is unfortunate, but I do not consider there to have been any sinister intent behind Mr Walker's actions, or indeed those of Mr Dyer. As Mr Walker explained, the position is that, by November 2021, FAM had not carried on business for over 2 years, and various administration expenses, such as in relation to filing accounts and returns, were being incurred. The present litigation was yet to get off the ground, and I can well understand why Mr Walker and Mr Dyer may quite legitimately have thought it prudent to procure the striking off of FAM at that point, and why they might have overlooked the requirement to give notice to Mr Glenn and Mr Slater in the circumstances as they then existed. The explanation that this was not Mr Walker's area of practice was not a particularly good one, but one can see that Mr Walker might not have had experience of the routine mechanics of filing

documents at Companies House. Again, I do not consider that this matters fundamentally undermine the credibility or reliability of Mr Walker as a witness.

iv) A further key matter relied upon by Mr Glenn and Mr Slater is that of a number of what are said to be unguarded observations made in contemporaneous WhatsApp messages and other exchanges that are said to demonstrate Mr Walker's "unvarnished intentions" so far as developing and then executing a plot to remove Mr Glenn and Mr Slater, and then appropriating the relevant business opportunities is concerned. Reliance is placed upon expressions such as "pulling the trigger", Mr Glenn "sleeping with the fishes", burying "the hatchet … squarely between [Mr Glenn's] shoulder blades", and carrying out a "masterclass" of a "palace coup". I have carefully considered the use of these expressions in context, and with reference to other contemporaneous documentation, and I will return to them below when determining Mr Glenn's and Mr Slater's case as to plot and exclusion. However, for the reasons more fully explained below, I do not consider that, on proper analysis and set in context, they ultimately support the Claimants' case. I observed the embarrassment and what I consider to be genuine sense of regret expressed by Mr Walker when questioned about these statements. As I conclude below, I consider that they are more readily explicable on the basis of an unfortunate and regrettable bravado, but one borne out of a genuine sense of annoyance and frustration in response to Mr Glenn's actions and behaviour, rather than as supporting Mr Glenn's and Mr Slater's case. Indeed, I sensed genuine emotion on Mr Walker's part in dealing with these issues in the witness box.

23. Subject to the qualifications that I have expressed, I found that Mr Walker gave cogent, credible and persuasive answers to questions under cross examination in a way that has led me to conclude as I have as to the general reliability of his evidence, in particular where corroborated by other evidence.

Mr Dyer

24. Mr Dyer was described by Mr Stewart KC as a "hopeless witness". I do not share that assessment. On the whole, I found him to be a persuasive and truthful witness doing his best to assist the court.

25. It is correct to say that Mr Dyer was, on occasion, an argumentative witness, who argued his case rather than answering the question. In appropriate circumstances, such conduct may be explicable on the basis of a witness trying to avoid the question. I did not gain that impression with Mr Dyer. Rather, I am satisfied that his tendency to argue and to become cross in response to the questions that were put to him is more readily explicable on the basis of a genuine annoyance at being challenged on matters that he regarded as true, and at having been brought into the current proceedings as a defendant when he genuinely felt that he should not.

26. There are a couple of particular aspects of Mr Dyer's evidence upon which I should comment. I have already mentioned an email dated 19 February 2018 from Mr Dyer to Mr Glenn in which Mr Dyer identified a number of invoices of FAM that needed to be paid, saying "Can you arrange for FAM to pay these bills?" Mr Dyer was cross

examined in relation to this, and he suggested that he had intended that Mr Glenn should pay these bills personally, rather than using FAM's funds to do so, and that that was what he was trying to get Mr Glenn to do. Mr Dyer was then cross examined in relation to Mr Walker's email of 23 February 2018 to Equitix representatives identifying payments that Mr Glenn had attempted to make, and in relation to an exchange of emails on 27 February 2018 between Mr Walker and Mr Dyer in which Mr Dyer had said in relation to the invoices that he had asked Mr Glenn to pay that: "I hadn't checked at that time assumed they were all legitimate bills. Bugger". It was put to him that this was inconsistent with the suggestion that he had required Mr Glenn to pay the bills personally, and that this demonstrated that he was lying.

27. In the light of the exchange of emails on 27 February 2018, I consider it likely that Mr Dyer had, on 19 February 2018, written to Mr Glenn asking him to pay what he understood to be legitimate bills of FAM, without giving any particular thought as to how they would be paid, but mindful that Mr Glenn had exhausted the monies in FAM's bank account by the withdrawal of £75,000 on 15 February 2018. It then emerged that one of the requested payments was to HCDL rather than being a legitimate expense of FAM. I consider it likely that Mr Walker was unaware of this request made by Mr Dyer when he wrote his email dated 23 February 2018. I consider that when questioned on this under cross examination Mr Dyer has, without any intention to lie, subconsciously attempted to explain his actions in asking Mr Glenn to make the payments when he did, and in doing so has rationalised, probably falsely, but genuinely, that he must have intended Mr Glenn to effect the payments using his own monies. I do not consider that this fundamentally undermines the truthfulness of his evidence but it does perhaps demonstrate the potential for him to falsely recall events of which I must be mindful.

28. Another matter raised by the Claimants concerns a meeting called in May 2022 to seek to remove Mr Glenn and Mr Slater as directors of FAM. Mr Dyer was aware that notice in respect of the relevant meeting was sent to Mr Glenn and Mr Slater at an address, 90 Lillie Road, with which they only had a connection because it had been used as, it would seem, a registered office for one or more of the relevant companies. It was put to him that this was, in effect, a deliberate ploy to prevent Mr Glenn and Mr Slater from partaking in the meeting. Having considered the evidence, and his explanation when challenged on this, I am not satisfied that Mr Dyer's role in the convening of this meeting is such as to demonstrate any sinister intent on his part, or to fundamentally undermine his evidence as a whole.

Mr Warren

29. Again, I found Mr Warren an essentially honest and truthful witness doing his best to assist the court.

30. The criticism of him is that he was unhealthily close to Mr Walker and Mr Dyer when he ought to have adopted a more even handed approach between the various interested parties, and that he showed a lack of understanding with regard to conflicts of interest, and in particular what was said to be a conflict of interest between his personal involvement with the Four Individuals and the companies in which they were involved, and his position as a partner in EY. This was said to be particularly the case

in relation to a loan made by Mr Warren personally, and with regard to Mr Warren having been given an option to become personally involved in the venture as an investor, subject to EY's disguised equity (i.e. mechanism for remuneration out of profits) being removed.

31. I am not satisfied that any of these considerations fundamentally undermines the truthfulness or reliability of Mr Warren's evidence.

32. It is submitted by the Claimants that I should reject Mr Warren's evidence because Mr Warren has supported the evidence of Mr Walker and Mr Dyer with regard to the events of 15 February 2018. This rather begs the question to which I will return to in more detail below. However, consistent with my findings below, I consider that Mr Warren's evidence as to the events of 15 February 2018 properly serves to support the evidence of Mr Walker and Mr Dyer with regard to the events of that day, rather than his evidence as a whole being undermined by his evidence of the events of 15 February 2018.

Partnership or joint venture with incidental fiduciary duties?

The background

33. Mr Glenn first met Mr Slater socially in around 2010. Mr Slater subsequently invested in one of Mr Glenn's business ventures in around 2012, following which the two men decided to go into business together.

34. Mr Glenn was first introduced to Mr Dyer in around late 2012 or early 2013. They decided to pursue business opportunities together in the property sector, starting with the renovation of a property in East Grinstead. They approached Mr Slater to provide investment in relation to that business.

35. On 16 May 2014, HCDL was incorporated as a special purpose vehicle ("**SPV**") to purchase and develop as residential accommodation the property in East Grinstead. As from incorporation, Mr Glenn and Mr Dyer were each equal shareholders in, and directors of, HCDL, and they managed the business of HCDL on a day-to-day basis. As Mr Slater had invested via an offshore trust, and required to be at arm's length, Mr Slater's interest in HCDL (having invested money towards the purchase of the property) was recognised otherwise than as a shareholder in, or director of HCDL.

36. Mr Slater has a background in finance, and a particular interest in investment concerning long-dated income streams. At around the time of his investment in HCDL, Mr Slater identified the potential opportunity of acquiring and aggregating assets with government-backed income streams with a notional value less than institutional investors would be prepared to pay for such aggregated assets.

37. The essential idea was to purchase, through a suitable investment portfolio, individual assets or small portfolios of assets with long-dated, inflation linked and government-backed cash flows, and to then aggregate such assets into a larger portfolio which would be attractive to institutional investors. The key feature was that such investors would

agree to purchase the aggregate portfolio at a margin which would then provide returns, with a potential for repeating the process with newly acquired assets.

38. Mr Slater approached Mr Glenn, and Mr Glenn in turn approached Mr Dyer, and the three of them agreed to pursue the opportunity. At the outset, the intention was to acquire either property or renewable assets. However, it transpired that the best opportunities available at the time were in the renewable energy sector, specifically onshore wind, because they enjoyed generous government-backed subsidies in the form of Feed-in Tariffs ("**FiT**"). It was perceived that there was a particular gap in the market for the purchase of smaller renewable energy assets.

39. Mr Glenn and Mr Slater contend that they and Mr Dyer formed the Alleged Partnership by no later than early 2014 as the overarching entity behind the business agreed to be pursued as referred to in the previous paragraph ("**the Business**"), and that they agreed that thenceforth they would operate on the basis of sharing the profits of the Business equally between them. Mr Glenn and Mr Slater contend that the Business (of "Fifty ID") had been established by January 2014, and before any relevant corporate entity had been incorporated. They say that, by this point, the parties had set up the fiftyid.com website and were using an @fiftyid.com email addresses to communicate with one another. Mr Glenn has identified an email dated 13 January 2014 with the subject "Fifty ID - moving forward" in which he noted that he and Mr Dyer had met earlier that day "to plan how we could move Fifty ID forward and determine what our focus should be."

40. FID was incorporated on 14 February 2014, when Mr Glenn was appointed as a director of FID. Mr Slater and Mr Dyer were appointed as directors of FID on 22 April 2014. Returns made to Companies House show that all 3,000 shares were allotted to Mr Glenn, but that in January 2015 he transferred 1,000 shares to each of Mr Slater and Mr Dyer.

41. Mr Glenn and Mr Slater rely upon the Business as having been established prior to the incorporation of FID, and on that basis as having been established as a partnership as referred to above. On the other hand, Mr Walker and Mr Dyer rely upon FID as having been incorporated at the outset, or at least at an early stage, shortly after the parties had come up with the idea behind the Business, and as the mechanism for carrying it out rather than it being carried out through a partnership.

42. So far as respective roles in the Business are concerned, they were, essentially, as follows:

    i) Mr Glenn would spend most of his time working for the Business, focusing on asset origination and negotiating the purchase of underlying assets with vendors;

    ii) Mr Dyer would work for the Business on a part-time basis, using his background in property to assist due diligence and other related matters; and

    iii) Mr Slater would not be involved in the day-to-day operation of the Business, his involvement being restricted by the fact that he worked full-time as CEO of TradeRisks Limited and was regulated by the FCA. However, as well as

providing the original idea for the Business, Mr Slater continue to provide strategic direction and advice, the use of office space, secretarial support and meeting rooms in the City of London, financial modelling, and funding.

43. There is a potential issue that it is not necessary to resolve as to the role played by a Richard Martin ("**Mr Martin**"). Mr Martin is a specialist broker who, on one account, may have played a significant role in bringing the idea behind the Business to the parties, and who may also have acted as an introducer to the parties, sourcing a number of opportunities to purchase turbines, including some of those included within Tranche 1 referred to below.

44. By July 2014, the Business had identified c. 40 renewable energy assets which were "Under Offer/Negotiation". Between 2014 and 2015, the Business proceeded to secure options over more than 100 renewable energy assets, at an aggregate price of approximately £116 million.

45. The original transaction in contemplation was the acquisition of a large portfolio of wind assets for an American company called LightBeam Electric Company ("**LightBeam**"), which was planning to promote an IPO ("**the LightBeam IPO**").

46. In the course of preparing for this transaction:

    i) Mr Glenn, Mr Dyer and Mr Slater took tax advice on the structure to be used to hold and sell the portfolio. This advice was provided by Menzies LLP on 21 July 2014, and was to the effect that it would be risky to structure the investment as an LLP, because it was likely to be deemed to be a trading LLP such that its profits were assessable to income tax. The advice was to consider, instead, incorporating a separate company to hold the assets, with a view to Mr Glenn, Mr Dyer and Mr Slater selling their shares therein in order to make a significant gain.

    ii) Acting on this advice, FIDRE was incorporated on 1 August 2014 as the acquisition vehicle for the purchase of the wind assets. Mr Glenn, Mr Dyer and Mr Slater were each appointed as directors of FIDRE, and shares were allotted such that they each held one third of the issued share capital thereof.

    iii) Mr Walker, who was then a non-practising solicitor with experience in corporate mergers and acquisitions was engaged to complete the legal work for a partial success fee.

    iv) There was the possibility of structuring the transactions as multiple portfolios. Consequently, further acquisition vehicles with sequential numbering were also incorporated. Thus, FIDRE 2 and Fifty ID Re 3 Limited ("**FIDRE 3**") were each incorporated on 12 March 2015. Mr Glenn, Mr Slater and Mr Dyer were appointed directors of, and allotted an equal number of shares in FIDRE 2 and FIDRE 3 from incorporation. Further, on 31 March 2015, Fifty ID Re 4 Limited ("**FIDRE 4**"), Fifty ID Re 5 Limited ("**FIDRE 5**"), Fifty ID Re 6 Limited ("**FIDRE 6**") and Fifty ID Re 7 Limited ("**FIDRE 7**"), were each incorporated as wholly owned subsidiaries of FIDRE. Again, each of Mr Glenn, Mr Slater

and Mr Dyer were appointed as directors of FIDRE 4, FIDRE 5, FIDRE 6 and FIDRE 7 from incorporation.

v) Mr Walker, who had undertaken a substantial amount of work on the LightBeam transaction was given a 7% shareholding in FIDRE by agreement between the parties in September 2014. From that point on, Mr Walker became actively involved in the business, and on Mr Walker's and Mr Dyer's case became a form of acting "General Counsel" to the Business.

vi) Mr Slater made a loan on commercial terms, which was subsequently repaid, in order to secure one of the options.

vii) In the above circumstances, FIDRE proceeded to acquire options over renewable energy assets.

47. LightBeam was, through the LightBeam IPO, seeking to raise up to $500 million by way of an initial public offering on the New York Stock Exchange. The intention was for FIDRE to exercise the options it held over the underlying renewable energy assets and, at the same time, for LightBeam to use approximately $100 million of the funds generated from the LightBeam IPO to purchase the share capital of FIDRE at a margin which would generate substantial returns for the shareholders therein, Mr Glenn, Mr Slater, Mr Dyer and, once he had acquired shares, Mr Walker. On this basis, the latter stood to gain approximately £12 million to £27 million each from the LightBeam IPO if things had gone to plan.

48. Unfortunately, things did not work out as planned, and the LightBeam IPO fell through in July 2015. This left the parties with an identified portfolio of assets in respect of which FIDRE held the benefit of options to purchase the same, but no buyer.

49. Before considering what was done next, I consider further the position of Mr Walker because Mr Glenn and Mr Slater maintain that this is highly material to the question as to whether or not there was a partnership, or joint venture with incidental fiduciary duties.

50. I understand it to be common ground that, after being approached to review transactional documentation for the LightBeam IPO, and to carrying out further work in respect thereof, no formal agreement was reached with Mr Walker as to the basis upon which he was providing such assistance. Whilst there were various discussions regarding the basis upon which Mr Walker might be remunerated, no agreement was reached, and no fees were ever paid to Mr Walker. However, as mentioned, Mr Walker did receive a 7% shareholding in FIDRE in September 2014, which could have been extremely valuable if the LightBeam IPO had come off.

51. On 16 July 2015, Mr Walker emailed Mr Glenn, Mr Slater and Mr Dyer regarding his "role and commitment to the cause over the last 12 months". He went on to state:

> "The three of you have a settled arrangement and that is not the same for me. Specifically my role and input has expanded beyond expectations and we need to look at that… I am delighted to be

> involved and part of the inner circle, but there always seems to be an assumption that I will be picking things up and dealing with them. That is as it should be amongst partners".
>
> …
>
> "I think I have proved my worth and have given to the partnership many fold which I hope puts me on an equal footing with the three of you going forward… I would like to know where you three stand as regards my role/position. I think things have changed and that the four of us are a good team, I believe I have proved my worthiness and what I can bring. I think the last 12 months has more that demonstrated that and we would not be here without all four of us contributing.
>
> …
>
> I hope we can carry on the partnership that circumstances have created – it seems to have a good balance of skills and to work."
>
> [My emphasis]

52. Mr Glenn and Mr Slater place reliance upon Mr Walker's identification of a "partnership" as being a correct identification of the true legal relationship between the Four Individuals.

53. At Mr Dyer's suggestion, Mr Glenn and Mr Slater agreed to Mr Walker joining the Business, essentially on an equal footing with Mr Glenn, Mr Slater and Mr Dyer. The motivation was that the Business could benefit from Mr Walker's legal expertise and wide experience of M&A transactions going forward. On 8 October 2015, Mr Walker emailed Mr Glenn referring to his imminent eligibility to join the "full partnership".

54. Accordingly, to give effect to this, on 1 January 2016, backdated to 1 August 2015, each of Mr Glenn, Mr Slater and Mr Dyer gifted shares in FIDRE, FIDRE 2 and FIDRE 3 to Mr Walker so that the four individuals (including Mr Walker) each held 25% of the issued share capital thereof. Further, on 1 January 2016, Mr Walker was appointed as a director of all the FIDRE companies that had been incorporated.

55. The same arrangement so far as the transfer of shares, and the appointment of Mr Walker as a director, did however not happen in the case of FID, and Mr Glenn, Mr Slater and Mr Dyer remained the sole (equal) shareholders and directors. However, Mr Walker engaged in the affairs of the Business as conducted through FID and as already touched upon, held himself out at various times as either a director of, or shareholder in FID. Indeed, as referred to below, there are occasions on which the other shareholders and directors were party to him being so held out.

56. Following the failure of the LightBeam IPO, FIDRE still held options over some 100 renewable energy assets and the Four Individuals still considered that there was merit in capitalising on the hard work already undertaken, and in seeking an alternative investor to purchase the assets in respect of which FIDRE held options.

57. In order to assist to this end, EY were approached to provide advice and support going forward. The introduction to Mr Warren and his renewable energy team at EY was made by Mr Dyer via a mutual contact. On 11 November 2015, EY entered into a confidentiality agreement with FID. This was signed by Mr Glenn on behalf of FID.

58. Thereafter, on 24 November 2015, EY (Mr Warren) produced a document entitled "Fifty Investment Development ("Fifty ID"): The 'Permanent Captive Fund' Structure Discussion". This document set out a proposed structure for the aggregation of small-scale wind assets to be carried out by the Business ("**the PCF Structure**"). The PCF Structure had the following key features:

    i) Financing would be provided by way of: (i) "sweat equity" (i.e., unpaid labour) provided by one or more of the Four Individuals; (ii) development funding from a development funding partner; and (iii) long term investment from a long term financier;

    ii) The document set out that "Fifty ID" had identified the relevant market potential and that it was understood that "Fifty ID" had secured options to purchase a portfolio of small to medium scale assets, i.e. those that FIDRE had entered into options to purchase;

    iii) Wind assets would be purchased by a development company (i.e., one of the FIDRE entities) upon the exercise of the options held, funded by the sweat equity and development funding;

    iv) Those wind assets would then to be sold to an "Asset Co" financed by the long term financier, producing a development premium;

    v) An equity stake would be held in the Asset Co, generating a long term yield appreciation and revenue stream; and

    vi) The wind assets would be managed by a management company owned by the individuals behind the Business, to provide fee generation and a further revenue stream.

59. It is Mr Glenn's and Mr Slater's case that the PCF Structure was to serve as the basis for a repeatable process which became known as "Project Coral".

60. A document has been produced, referred to in the chronology with which I have been provided as having been produced in November 2015, entitled "European Renewable Energy Investment Case" and described as prepared by FID ("**the November 2015 Investment Document**"). It is unclear whether this pre-dated or post-dated EY's involvement. I note the following, in particular, about this document:

    i) It began by stating that FID (abbreviated to "Fifty") was seeking a financial partner to invest in the European renewable energy market. It referred to FID's experience and the fact that it was proposing to leverage this experience through a new company set up in partnership with a financial partner.

ii) At section 6, it referred to the "Fifty team" as spanning "technical, financial and commercial disciplines", identifying each of Mr Walker, Mr Slater, Mr Dyer and Mr Glenn as members of the "Investment Committee" and setting out their respective roles. Biographies were then provided in respect of "Fifty's founders and principal shareholders", identifying Mr Slater, Mr Dyer, Mr Glyn and Mr Walker as being such.

61. On 4 December 2015, following a meeting which had taken place the previous day, Mr Walker emailed Mr Warren and Ms Louise Shaw of EY (copying in Mr Glenn, Mr Slater and Mr Dyer) stating:

> "We, being the partners in Fifty, have met and worked through the proposal you kindly prepared…. We would be delighted to work with you to realise this opportunity and to create a genuine working partnership. We would envisage that being of a longer term nature as we believe, as we think you do, that this opportunity extends beyond what is immediately in front of us."

62. On 15 January 2016, EY provided an engagement letter relating to: "Fundraising for Fifty Investment Development Ltd ("the "Company")". The letter was marked for the attention of Mr Glenn at FID, and began by thanking Mr Glenn for choosing EY to perform professional services "for Fifty Investment Development Ltd". Although addressed to Mr Glenn, the letter was signed as agreed and accepted by Mr Walker as "General Counsel" for and on behalf of FID. The letter attached a Statement of Work setting out various work streams to be performed "for Fifty ID".

63. On 18 May 2016, EY provided a further engagement letter addressed to FID, and referring to performing professional services for FID, entitled "Project Coral". This letter was again signed by way of agreement on the part of FID by Mr Walker, but this time describing himself as "Director", although he had, as I have identified, never been formally appointed as such. The attached "Statement of Work" identified that, amongst other things, EY would provide various tax services "for Fifty ID and its founder individuals."

64. From around April 2016, Mr Warren (acting in a personal capacity, and not for EY) first began discussing the possibility of investing, and potentially becoming personally involved in the Business. On 17 April 2016, Mr Walker emailed Mr Warren (copying in Mr Glenn, Mr Slater and Mr Dyer) in relation to his "involvement with fifty going forwards", noting that: "The four of us managed to get together yesterday evening". The email went on to state: "We are both trying to find a fair solution in order to balance our respective 'in-puts' to date, your desire not to relinquish your EY position for now …" It suggested that an investment by Mr Warren would secure him a "seat at the Fifty Table" and provide a clear path for him "to go from 3% to 6% to 20%".

65. The email went on to propose various terms, including: "The initial equity (i.e. up to 3%) doubles on the termination of the EY phantom equity for no extra consideration and participates at that rate in future Tranches". The reference to "EY phantom equity" was to the fee structure with EY, which provided for a percentage of the profits derived from each transaction. Mr Walker's email concluded by saying: "Our

rationale for the above is that it commences our partnership and links the real value we all believe you will bring… to a meaningful interest for you". [My emphasis].

66. On 2 June 2016, Mr Walker sent an email to Mr Warren at his personal (rather than EY) email address attaching: "a letter for your consideration regarding FID. It is widely drafted to cover all related entities in the energy space". The attached proposal letter was entitled "Project Porcini" and referred to "the discussions between us relating to your potential investment in the Fifty Group". This proposal letter was sent on behalf of Mr Dyer, Mr Glenn, Mr Slater and Mr Walker (described as "Original Shareholders") and, therein:

    i) "Fifty ID Limited" was defined as the "Company";

    ii) It was noted that the "Company intends to expand its activities into related activities in the energy sector including beyond the UK (**Fifty Business**)";

    iii) "Fifty Group" was defined as "all of those entities established to undertake the Fifty Business";

    iv) It was further noted that Mr Warren had "agreed to invest £200,000 into the Fifty Group in return for a six percent (6%) equity interest and for the avoidance of doubt such interest (to be satisfied by the issue of shares or partnership interests) will be replicated across all entities that comprise the Fifty Group (**Investment**)".

67. On 14 September 2016, Mr Walker sent an email to Mr Warren, Mr Dyer, Mr Glenn and Mr Slater stating: "I am delighted to attach the agreed form document relating to Ben and his intended accession to the partnership", and noting that this "arrangement must be kept strictly private and confidential as between the five of us". The email further noted that Mr Warren would be granted an option to apply for an equal interest in the "Fifty Business" upon the satisfaction of certain conditions, and that: "We are all entering into this with a high degree of trust, as by definition we do not yet know the precise direction the business could take (be that in terms of its activities or structure)".

68. This email attached a further proposal letter to Mr Warren on behalf of the Mr Dyer, Mr Glenn, Mr Slater and Mr Walker, again referred to as "Original Shareholders". This proposal was entitled "Loan to Fifty Group and Grant of Option" and again referred to "the discussions between us relating to your potential investment in the Fifty Group (as defined below)". In this proposal letter:

    i) "Fifty ID RE Limited" was defined as the "Company";

    ii) It was noted that the "Company intends to expand its activities into related activities in the energy sector, including beyond the United Kingdom (**Fifty Business**)";

    iii) "Fifty Group" was again defined as "all of those entities established to undertake the Fifty Business";

iv) It was noted that Mr Warren had "agreed to loan £120,000 (one hundred and twenty thousand) to the Fifty Group on the terms set out in this agreement. Further, and in order to secure your potential future involvement in the Fifty Business, the Original Shareholders wish to grant you an option to acquire an equal interest in the Fifty Group as set out below (**Option**)";

v) It was agreed that Mr Warren would be "granted an option to become an equal shareholder with the Original Shareholders in respect of all future Fifty Business". The "Option Interests" over which Mr Warren held such an Option were defined as "a share in the Fifty Group equal to the share held by each Original Shareholder (whether such share comprises interests in equities, partner interests in the Fifty Group or any… analogous rights)…";

vi) Mr Warren was only entitled to exercise the Option if one of four conditions had been satisfied. One of those conditions was "the removal of the EY Share", and the "EY Share" was in turn defined as "the sum payable to EY LLP in consideration of advice provided by them and being a sum equal to 20% of the pre-tax profits arising from the Platform".

69. The sum of £120,000 was subsequently paid by Mr Warren to FID's bank account on 15 September 2016.

70. Mr Warren dealt with these arrangement in a single line in his witness statement, noting that in September 2016 he "lent Fifty £120,000", and that the loan had been repaid by Mr Walker and Mr Dyer personally. So far as liability for the repayment of the monies advanced by Mr Warren is concerned, it was common ground between the parties that none of Mr Glenn, Mr Slater, Mr Walker or Mr Dyer became personally liable for the repayment thereof.

71. EY pursuant to its retainer, introduced a number of potential investors, including an infrastructure fund named Equitix Limited.

72. On 18 July 2016, "Heads of Terms" were entered into between FIDRE and Equitix Investment Management Limited ("**EIML**") ("**the Heads of Terms**"). The relevant letter was signed by Mr Walker on behalf of FIDRE, and by Ross Cooper ("**Mr Cooper**") on behalf of EIML. The letter stated that it set out terms and conditions on and subject to which EIML was willing to invest in a newly formed private company established to act as an onshore wind aggregation platform whose issued share capital would be owned by EIML and FIDRE and which should be funded by way of investment capital from EIML.

73. Under the Heads of Terms, FIDRE agreed to identify tranches of assets (i.e. a number of individual wind turbines, or companies which owned them) in which EIML could invest. FIDRE was to identify and secure options to purchase turbines and handle the due diligence and financial modelling which EIML required to satisfy its investment committee that the relevant tranche would generate a suitable rate of return on the capital investment.

74. Clause 4 of the Heads of Terms provided that once the acquisitions completed, FIDRE (or a group company or affiliate) would provide asset management services for the turbines (e.g. managing the bank accounts, getting in the FIT income, arranging maintenance, providing performance reports to EIML, and preparing and filing accounts). FAM was subsequently incorporated on 9 September 2016 for this purpose.

75. Clause 5 of the Heads of Terms provided that the parties would negotiate in good faith to agree an over-arching investment agreement containing the terms set out in Schedule 1 to the Heads of Terms.

76. The Heads of Terms envisaged the assets being refinanced by a third-party senior debt facility (the aim being to release capital for reinvestment by EIML, while maintaining a modest income stream net of the borrowing costs).

77. Schedule 1 to the Heads of Terms set out the main commercial terms, although completion of the transaction envisaged by the Heads of Terms was expressed to be subject to the signing by the parties of the detailed and legally binding agreements envisaged by the Heads of Terms. As provided for by Schedule 1:

    i) EIML required a rate of return on its capital, assuming a baseline set of assumptions about the performance of the turbines and their operational costs ("the Base Case Assumptions"), of 7.85% - see paragraph 2.

    ii) The following instruments would be created to distribute returns to EIML:

        a) a "preferential instrument" providing for the 7.85% return on the "Base Case Assumptions" (i.e. an intra-group debt instrument, by which SPV income was moved up the structure in the form of interest payments);

        b) an "Equity instrument" which provided for further distributions out of any profits remaining after servicing the 7.85% "Base Case" return (e.g. if the price of energy rose, or the turbines were operational more often than modelled);

        c) A "refinancing instrument" structured to "deliver any gains provided by refinancing".

        - See paragraph 4.

    iii) The return to FIDRE was intended to be:

        a) A percentage of the "Base Case" return, also structured as an interest-bearing debt instrument and calculated based on the difference between the value of the future "Base Case" cash flows (i.e. the net present value, on a discounted cash flow valuation, of EIML's Base Case return) and the actual price EIML paid on completion (including any transaction costs). The effect thereof would be that the parties' share of the returns was intended to increase if they obtained a better price for EIML but decrease if the transaction costs increased.

b) A residual "Equity" stake, which would entitle FIDRE to a percentage of any over-performance dividend (calculated by reference to its percentage of the Base Case return plus 15%, capped at 25%).

c) A proportion of any "refinancing gain" on any refinancing, depending on what was refinanced, calculated as 5% over its Base Case percentage.

d) An additional "Development Fee" of £750,000 for the first tranche, and £100,000 "*per shareholder*" for subsequent tranches, assuming 3 Tranches per annum.

- See paragraphs 5-8.

78. Following the entry into of the Heads of Terms, assets were sourced by causing FIDRE to acquire new call options, including assets from the aborted LightBeam transaction, with a view to selling them to EIML in accordance with the Heads of Terms. The first tranche ("**Tranche 1**") was completed on 21 December 2016.

79. Tranche 1's target assets were 4 SPVs each holding one turbine: Pitbeadlie Renewables Ltd (turbine in Aberdeenshire), MG SPV No. 1 Ltd (turbine at East Balsdon), MG SPV No. 2 Ltd (turbine at Little Tinney), and MG SPV No. 3 Ltd (turbine at Campfield). FIDRE acquired options to purchase these SPVs, and the total purchase completion monies subsequently funded by Equitix were £10,894,973.

80. A significant issue arose in the lead-up to Tranche 1, which led to its value being substantially below the £20 million tranche threshold under the Heads of Terms. Equitix informed the parties that it only wished to invest in assets made by two specific manufacturers (EWT and Enercon), which required a significant proportion of the assets under consideration (including 10 turbines in one portfolio ("the Venti assets")) to be abandoned. This limited the size of Tranche 1, leaving FIDRE and FID with significant incurred costs.

81. The way that the transaction was ultimately structured was informed by advice received from EY, including in a "Project Coral: Tax Structure Report" dated 30 September 2016 in which EY referred to having been engaged by "FiftyID Ltd and Peter Glenn, Adam Walker, Jon Slater and Jeremy Dyer ("the Shareholders")".

82. In consequence of the developments referred to above, and the tax advice received, the structure deployed varied somewhat from that provided for by the Heads of Terms and was governed by, amongst other things, the terms of an Investment Agreement made between Equitix Infrastructure 4 Limited ("**EI4L**") (described as "Investor") (1), Mr Slater, Glenn, Mr Walker and Mr Dyer (described as "the Individual Shareholders") (2) and Wind Co 1 (described as "the Company") ("**the Tranche 1 Investment Agreement**").

83. The Tranche 1 Investment Agreement included:

i) At Recital C, a recital to the effect that EI4L had agreed to subscribe for new shares and loan notes in Wind Co 1 on the terms and subject to the conditions set out in the Investment Agreement; and

ii) At Recital D, a recital that: "The Investor and Individual Shareholders have agreed that the Company shall purchase the whole of the issued share capital of Fifty ID RE Limited in exchange for the issue of shares and loan notes by the Company on the terms and subject to the conditions set out in the Share Exchange Agreement."

84. Thus, as part of the transaction, the new investment vehicle Wind Co 1 was created by Equitix to acquire FIDRE. Wind Co 1's parent company was EI4L, behind which sat a complex offshore structure. On completion, Mr Glenn, Mr Slater, Mr Walker and Mr Dyer exchange their FIDRE shares for shares in Wind Co 1, and loan notes issued by Wind Co 1 under the terms of a Share Exchange Agreement dated 21 December 2016.

85. Each of Mr Glenn, Mr Slater, Mr Walker and Mr Dyer received 0.1% of Wind Co 1's issued share capital, split between 2 classes (A2 and B2 shares), in exchange for their shares in FIDRE. Bespoke Articles of Association were adopted for Wind Co 1, which governed the rights attaching to the A2 and B2 shares, with the transaction as a whole being governed by the Tranche 1 Investment Agreement.

86. The actual structure was, in essence, as follows:

i) The proceeds of energy generation (i.e. the return on Equitix's investment) were moved up the group structure by a series of debt instruments. Wind Co 1's debt instrument authorised it to issue up to £11,597,981 in loan notes to EI4L and to Mr Glenn, Mr Slater, Mr Walker Mr Dyer. Interest was payable on any notes created under the Instrument at 7.8% (i.e. a slightly lower rate of return than Heads of Terms envisaged). Clause 3 of the debt instrument permitted the creation of further notes on the same terms by special resolution of Wind Co 1.

ii) Pursuant to the Wind Co debt instrument, £10,892,981 in loan notes were issued to EI4L as envisaged. However, given the change of structure, the development fee envisaged by the Heads of Terms as payable to FIDRE was not paid, and nor was any percentage of the Base Case Return. Instead, to achieve a cash payment to the parties on completion, Equitix issued loan notes (£121,250 to each of Mr Glenn, Mr Slater, Mr Walker and Mr Dyer) against which, so the evidence suggests, the latter took directors' loans of equivalent value.

iii) Likewise, the structure for distributing a percentage of the refinancing gains and any profits over the Base Case Return changed. The A2 and B2 shares were intended to provide a mechanism to cover these elements of the consideration. Thus:

a) Under Articles 5.1 and 5.2 of Wind Co 1's Articles, Wind Co 1 could declare a "Base Case Dividend" out of distributable profits following a refinancing, subject to approval by special resolution.

b) Distributable profits would only have existed in Wind Co 1 following a refinancing if FIDRE, after paying any instalments of senior debt, made distributions to Wind Co 1 (either by declaring dividends or paying interest on outstanding Wind Co 1 loan notes) in excess of what was payable by Wind Co 1 under the outstanding EI4L loan notes. Mr Walker and Mr Dyer realistically maintain that the creation of such profits could not therefore have happened automatically, and would have required careful decisions to be made about what distributions should be made based upon turbine performance, the prevailing interest rates under the refinancing facility, and the potentially complex corporation tax position.

c) Under Article 5.3, the B shareholders were entitled to an "Over Performance Dividend", i.e. of any distributable profits remaining after a Base Case Dividend had been paid in full, including back-payments for years in which Base Case Dividends had not been declared (a "Make Whole Amount"). It was, at all relevant times, unlikely that any Over Performance Dividend would be declared.

d) As commented upon further below, the A2 shares did not otherwise provide for a share of the 'refinancing gain' to be distributed as envisaged by the Heads of Terms.

87. Mr Walker and Mr Dyer maintain that Tranche 1 represented a significant underperformance in the parties' expectations. This is said to be because transaction costs were priced into the forecast model, which (given that Equitix was not bound, or willing, to invest in an acquisition unless its rate of return would be met), ate into the consideration realisable by Mr Glenn, Mr Slater, Mr Walker and Mr Dyer and affected their ability to bid for assets at a competitive price and also stored up problems for the future.

88. As I have already identified, FAM was incorporated in order to provide the asset management services as envisaged by the Heads of Terms. On incorporation, each of Mr Glenn, Mr Slater, Mr Walker and Mr Dyer were appointed directors of FAM, and shares therein were allotted to them equally. FAM entered into a Services Agreement with Wind Co 1 on 21 December 2016 ("**the MSA**") on the completion of Tranche 1, for a period of 20 years terminable on 1 year's notice without cause (Clause 17), or immediately with cause (Clause 18.2).

89. Under the terms of the MSA, FAM was entitled to a fee of £6,700 per asset per annum payable in bi-annual instalments in arrears (Clause 3.3). Mr Walker and Mr Dyer realistically suggest that the comparatively small fee provided for reflected the fact that the services to be provided were largely administrative. FAM was also entitled to be reimbursed for any expenses paid on behalf of the SPVs, provided they were within an agreed "Operating Budget" (Clause 6).

90. Reliance is placed by Mr Glenn and Mr Slater upon an email dated 1 January 2017 from Mr Walker to Mr Dyer, Mr Glenn, Mr Slater and Mr Warren in which Mr Walker noted that their "success" in 2016 was "something we should all be proud of". Mr

Walker went on: "I feel 2017 will be a fantastic year and with a good dose of serendipity we have a good and complimentary partnership. We need to meet and be clear about, roles, functions and what we are aiming for this year… I have genuinely enjoyed coming to the office and we have worked well together; our advisers like working with us; we got there first; we have a committed finance partner – if there was ever a time for 'steroids' – it is now". Mr Walker concluded by thanking them for being his "Partners". Reliance is placed by Mr Glenn and Mr Slater upon the various references by Mr Walker to "partner", "partners" and "partnership", although I note that he had also referred to a "committed financial partner", Equitix.

91. One of the Tranche 1 portfolios, named 'Project Clodagh' (an SPV named Kinetica Micklehurst Ltd), was delayed in completing as a result of Equitix's rejection of the 'Venti' assets. Clause 3.2 of the T1 Share Exchange Agreement provided for further loan notes up to a maximum aggregate of £220,000 to be issued to the parties, and for the financial model to be re-run, in the event that the Project Clodagh assets were purchased by FIDRE by 31 March 2017, as in fact occurred with Tranche 1A (relating thereto) being completed on or about 26 January 2017.

92. Tranche 1/1A (prior to refinancing) generated profits for each of Mr Glenn, Mr Slater, Mr Walker, and Mr Dyer personally in the amount of £179,819 each. Upon the sale of the shares in FIDRE to Wind Co 1, the Loan Notes were duly issued to the Four Individuals in the sum of £110,000 each in respect of Tranche 1 and £69,819 each in respect of Tranche 1A. While Mr Glenn, Mr Walker and Mr Dyer received the proceeds of the Loan Notes for Tranche 1/1A directly into their personal bank accounts, Mr Slater directed that his share be paid to FAM to provide working capital to the Business. There is an issue between the parties as to the basis upon which these monies were provided which is not necessary to determine for present purposes.

93. On around 3 October 2017, FIDRE 2 was used by Mr Glenn, Mr Slater, Mr Walker and Mr Dyer as the corporate vehicle to negotiate and carry out the purchase of the second tranche of wind assets to be acquired, held and managed under Project Coral ("**Tranche 2**"), with further Loan Notes issued in respect of those assets shortly afterwards ("**Tranche 2A**"). Tranche 2 consisted of two wind turbines, both held by one individual SPV, GHF Energy Limited. The same process was used as for Tranche 1/1A, save that FIDRE 2 was used as the relevant corporate vehicle rather than FIDRE.

94. Tranche 2 was thus implemented by way of a series of agreements and instruments executed on 3 October 2017, in particular:

    i) Equitix established a new company, Equitix Wind Co 2 Limited ("**Wind Co 2**") on 3 October 2017;

    ii) Wind Co 2 provided a loan to FIDRE 2 to fund FIDRE 2's purchase of the individual SPV, and FIDRE 2 entered into a Share Purchase Agreement with the owner of the individual SPV;

    iii) Mr Glenn, Mr Slater, Mr Walker and Mr Dyer (1) and Wind Co 2 (2) entered into a Share Exchange Agreement ("**the Tranche 2 Share Exchange**

Agreement"), pursuant to which the Mr Glenn, Mr Slater, Mr Walker and Mr Dyer sold their shareholdings in FIDRE 2 to Wind Co 2, in consideration for the issue of further loan notes and minority shareholdings in Wind Co 2 (A2 and B2 shares);

iv) The loan notes were issued by Wind Co 2;

v) Mr Glenn, Mr Slater, Mr Walker and Mr Dyer (1), Wind Co 2 (2) and EI4L (3) entered into an Investment Agreement ("**the Tranche 2 Investment Agreement**") pursuant to which the Four Individuals were granted the Loan Notes and minority shareholdings in Wind Co 2 in accordance with the Share Exchange Agreement, and Equitix provided funding to Wind Co 2 for its purchase of FIDRE 2 in exchange for the allotment of shares and issue of further loan notes. The Partners were also each made directors of Wind Co 2;

vi) As envisaged by the MSA, FAM began to provide asset management services to Wind Co 2 in respect of the Tranche 2 assets.

95. The Tranche 2 Share Exchange Agreement also identified three further potential acquisitions of wind assets by FIDRE 2, namely: (i) Project Eva, which was the proposed acquisition by FIDRE 2 of Berwick Community Energy Limited; (ii) Project Frank, which was the proposed acquisition by FIDRE 2 of certain SPVs holding nine wind turbines from EDF; and (iii) Project Gertrude, which was the proposed acquisition by FIDRE 2 of certain SPVs holding four EWT constructed wind turbines from VG Energy Limited. Clause 3.3(b) provided that additional Loan Notes would be allotted upon the completion of each of Project Eva, Project Frank and Project Gertrude, provided they completed by 31 January 2018.

96. Unlike in Tranche 1/1A, and despite their equal shareholdings in FIDRE 2, Mr Glenn, Mr Slater, Mr Walker and Mr Dyer did not receive loan notes in respect of Tranche 2/2A in equal shares. Rather, as already touched upon, Mr Slater agreed (at Mr Walker's request) to a one-off reduction in his share of the Tranche 2/2A Loan Notes from 25% to 4% (and a corresponding increase in the shares of the other Partners from 25% to 32%) to reflect the limited role that he was playing in the Business. The value of the Tranche 2/2A Loan Notes was accordingly £23,128 for Mr Slater and £156,511 for each of Mr Glenn, Mr Walker and Mr Dyer.

97. It is Mr Slater's evidence that this agreement arose because Mr Walker claimed that he was not getting sufficiently rewarded for his work and that it was unfair that Mr Slater should receive an equal share given his respective contribution to the Business. Mr Glenn and Mr Slater now say that these claims do not appear to be justifiable. They make the point that Mr Slater had originally developed the idea behind the Business, had contributed substantial capital sums prior to Tranche 1, and had re-invested his share of the Tranche 1/1A loan notes by way of further contribution. However, the fact of the matter is that this was what was agreed, although it is Mr Glenn's and Mr Slater's case that this was a one-off, goodwill gesture to placate Mr Walker which was not formally recorded save in the allotment of shares in Wind Co 2 in the Share Exchange Agreement itself and which would not extend to future tranches.

98. It is said by the Claimants that a document prepared on around 18 October 2017 and entitled "Pipeline" identified c. 200 individual wind assets which had been identified as further potential acquisitions for Project Coral. However, a number of these wind assets refer, against the same, to "offer rej", and it is by no means clear how many, if any, of the assets so identified represented live and realistic opportunities as at 18 October 2017 in contrast to the assets the subject matter of Tranches 1/1A and 2.

99. A refinancing did subsequently occur upon FIDRE entering into a facility agreement with Bayern on 21 December 2017 ("**the Bayern Facility Agreement**"). The entitlement of Mr Glenn, Mr Slater, Mr Walker and Mr Dyer thereupon is highly relevant to the key events of 15 February 2018, and is an issue which I determine below.

100. It necessary at this stage to describe the circumstances behind and following this refinancing.

101. I have already referred to the spreadsheet dated 29 November 2017 modelling the refinancing transaction, and identifying a "Fifty fee" of £715,000, which was omitted from the subsequent spreadsheet dated 22 December 2017 which provided the actual model for the refinancing.

102. By an email dated 6 November 2017 to Mr Glenn, Mr Walker and Mr Dyer, Ms Warner of Roffe Swayne advised that she had looked at the drafting of the return that they were entitled to on refinancing, and had identified that she considered that this could only be determined as a dividend. She further identified that there was an issue as to whether there were reserves available from which a dividend could be paid. This was consistent with advice that Ms Warner subsequently gave a number of occasions

103. There was an email exchange on 18 December 2017 relating to the "Fifty fee" of £715,000. In the first email in the relevant chain, a representative of Bayern, in an email to Mr Glenn and others, sought confirmation that the fee of £715,000 remained "unchanged in the model". Mr Glenn responded to the effect that it reduced by £324,000, but Roshni Patel of EY subsequently responded that the fee would not be included as a cost line in the model "as it will be paid out and apportioned as a shareholder remuneration from the refi proceeds." The final model was then produced not referring to the fee.

104. The Bayern Facility Agreement was then entered into on 21 December 2017. The parties thereto were FIDRE (as "Borrower"), a number of subsidiary SPVs (as "Projectcos" and "Guarantors") and Bayern (in various capacities including as Original Lender).

105. The Bayern Facility Agreement provided for the sums advanced by Bayern to be paid into the FIDRE Proceeds Account. Bayern was granted certain security rights over the monies in the FIDRE Proceeds Account, and there were restrictions imposed on the use that could be made of the monies therein. Particular reliance is placed by Mr Glenn and Mr Slater upon clause 3.1 of the Bayern Facility Agreement setting out the purposes for which the monies borrowed might be applied, and referring to them as

including, amongst other things: "such fees payable by [FIDRE] to the advisers which are included in the Financial Model".

106. Contemporaneously with the entry into of the Bayern Facility Agreement, Mr Glenn produced a funds flow structure chart that showed loan proceeds of £9,924,680, and 9,206,519.60 thereof being paid up by FIDRE to Wind Co 1 after deduction of transaction costs. It further referred to £535,932.72 of the monies paid up to Wind Co 1 being "… retained to acquire directors shares". This funds flow structure chart was sent by Mr Glenn to Tom Cunningham ("**Mr Cunningham**") and Mr Cooper of Equitix on 20 December 2017, with Mr Glenn seeking confirmation from them that it was acceptable.

107. The figure of £9,924,680 is consistent with the amount shown on a signed utilisation request from FIDRE to Bayern dated 21 December 2017, pursuant to which that sum was credited to the FIDRE Proceeds Account.

108. On 2 January 2018, Mr Cooper responded to Mr Glenn's email of 20 December 2018 saying: "I guess it's too late now, but I was expecting the Fifty share of the refi proceeds to be calculated on the net proceeds, i.e. after all uses of funds have been deducted (including the transaction costs and the EY fee). Why were the transaction costs not netted off?" This is relied upon by Mr Glenn and Mr Slater as showing that Equitix believed that monies due to Mr Glenn, Mr Slater, Mr Walker and Mr Dyer on refinancing had been paid over to them, otherwise why would Mr Cooper have guessed that it was "too late now" to correct the error that had been identified.

109. Mr Glenn replied to this email from Mr Cooper by an email dated 2 January 2018 saying: "you are correct - it would appear that the 5.4% calc is based on the gross proceeds rather than the net. It is not too late to change this as the funds have not been distributed. The plan was to hold these proceeds until 26 Jan and then use them to acquire shares from us. Suggest we address this as part of the share acquisition on the 26th or thereabouts."

110. This latter email reflects the fact that by the date thereof it was anticipated that the appropriate mechanism for any refinance proceeds to be paid to Mr Glenn, Mr Slater, Mr Walker and Mr Dyer was through the acquisition of their A2 shares in Wind Co 1 given the perceived difficulty in making any dividend payment absent distributable profits. The position was explained by Ms Warner in an email to Mr Glenn dated 9 February 2018. Ms Warner began this email by saying that it was sent further to a discussion that morning, and that Ms Warner was summarising the query that needed to be considered before any funds were paid to Mr Glenn. Ms Warner referred to Articles 5.1 and 5.2 of Wind Co 1's Articles of Association and identified that Mr Glenn's entitlement to any payment on a refinancing arose out of Article 5.1 which referred to the relevant payment as a "Base Case Dividend". She identified that as the rights attached to shares, it would be subject to income tax as a dividend. She considered the possible waiver of any dividend, and said: "What is not clear is whether from the legal position the entitlement to the dividend rises on the refinancing or only when the dividend can be made lawfully when reserves are available. This is the question that needs to be raised with Osborne Clarke".

Relevant principles

111. The issue is as to whether, at the time that the relationship between Mr Glenn and Mr Slater on the one hand, and Mr Walker and Mr Dyer on the other hand, broke down in February 2018, they were either in partnership together or, if there was no partnership, they were involved in a joint venture incidental to which were fiduciary duties as between them.

112. So far as partnership is concerned, this is a settled category of fiduciary relationship, and if there was a partnership, then the partners will have owed fiduciary duties to each other – see e.g. Snell's Equity, 35th Edn at 7-003(b) referring to, amongst other cases, *Don King Productions Inc v. Warren* [2000] Ch 291.

113. S.1 of the Partnership Act 1890 ("**the 1890 Act**") provides:

> "(1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.
> (2) But the relation between members of any company or association which is—
> (a) registered under the Companies Act 2006, […]
> is not a partnership within the meaning of this Act."

114. S.2 of the 1890 Act provides interpretative guidance. This includes that the sharing of "*gross returns*" does not of itself create a partnership (s.2(2)). However, the sharing of "*profits*" (i.e. income less expenses) is prima facie evidence of partnership, but not where such profits are shared by the receipt of a debt or other liquidated amounts by instalments (s.2(3)).

115. Whether a partnership exists is a question of fact, to be answered by reference to what the parties have agreed. Partnership requires a substantive agreement, whether express or implicit in conduct: *Greville v Venables* [2007] EWCA Civ 878, at [40], per Lloyd LJ. As it is put in Lindley & Banks on Partnership, 21st Edn at 5-03:

> "… in determining the existence of a partnership … regard must be paid to the true contract and intention of the parties as appearing from the whole facts of the case. Although this principle is no longer expressed it is still law."

116. While the fact that the parties have used the words "partners" or "partnership" will not be determinative, it may provide good evidence of their intentions - Lindley & Banks (supra) at 5-05-5-08. However, as Megarry J made clear in *Stekel v Ellice* [1973] 1 WLR 191 at 199G, whether a partnership exists is a question of substance rather than label. Further, in *Dutia v Geldof* [2016] EWHC 547 (Ch), at [35], [50], [65], [71]–[74], Nugee J identified that it is "wrong to seize on the words "partnership" and "partner" on the basis that these are words with "very little value" because they are commonly used to refer to "a member of a team running a business", or to a senior employee, regardless of the structure being used. It is clear therefore that where it is asserted that the existence of a partnership is supported by the use of the word "partner" or "partnership", it is necessary to consider with care the context in which

those words have been used, and whether they in fact point to there being an agreement as to partnership or are being used more generically to describe some other business relationship.

117. Mr Walker and Mr Dyer submit, and I agree, that the distinction between s.1(1) of the 1890 Act (relations between partners) and s.1(2) of the 1890 Act (relations between company members) requires the Court to consider *which* entity is in fact carrying on the relevant business with a view to profit. I accept that the authorities establish the following propositions:

    i) Where parties intend to operate the relevant business through a corporate structure, such an arrangement will generally speaking at least not involve the ingredients of partnership – see e.g. *Achom v Lalic* [2014] EWHC 1888 (Ch) at [77]–[78], per Newey J.

    ii) To show that a partnership exists notwithstanding the deliberate structuring of a business through companies, it is likely to be necessary to show a business being carried on "over and above the business of […] the group companies" – *see Al Nehayan v Kent* [2018] EWHC 333 (Comm), at [152], per Leggatt LJ.

    iii) Even where parties are in partnership before a relevant corporate entity has been established to carry out a business, the transfer of the business to that entity will dissolve the partnership. Absent express agreement, there is no room for any partnership over whatever interests in the business vehicle the parties acquire - see e.g. *Ilott v Williams* [2013] EWCA Civ 645. This latter case concerned an unsuccessful attempt to superimpose a partnership over interests in an LLP – see at [19]–[21], per Arden LJ.

118. It is material to note that the existence of a partnership has a number of significant consequences, which may be relevant to the question as to whether the parties intended a partnership, e.g.:

    i) Each partner has authority to bind the others jointly to personal and unlimited liability for debts, unless agreed otherwise – see s. 9 of the 1890 Act.

    ii) Special tax rules apply, for example that partners are required to prepare returns as if the firm were an individual, and the individual partners' profits are required to be assessed by reference to the partnership accounts – see ss. 847–850 of the Income Tax (Trading and Other Income) Act 2005.

119. The fact that parties did not prepare or agree partnership accounts, particularly if they did not do so over a number of years, may be an evidential factor weighing heavily against the existence of a partnership - see *Donellan v Ward* [2024] EWHC 2304 (Ch), at [401], per Louise Hutton KC. I agree with the submission made on behalf of Mr Walker and Mr Dyer that this factor is likely to be of more significant weight where the parties are advised regarding the tax consequences before entering into business, and engage professional accountants.

120. Whilst not all joint ventures give rise to a fiduciary relationship, it is well established that joint venturers may owe fiduciary duties to each other, if the fiduciary expectation is found to be appropriate in the circumstances of the relationship between them – see Snell (supra) at 7-008.

121. In their submissions, Mr Glenn and Mr Slater referred to *Murad v Al-Saraj* [2004] EWHC 1235 (Ch), a case in which fiduciary duties were found to be owed by joint venturers to one another. They also refer to the fact that in the subsequent case of *Ross River Ltd v Waveley Commercial Ltd* [2012] EWHC 81 (Ch), Morgan J at [247] commented on the latter case as follows:

> "… the claimants successfully argued that the defendant owed them fiduciary duties in connection with a joint venture to acquire a hotel. The fiduciary duties were held to arise because the parties were in the position of joint venturers, the relationship was one of trust and confidence, the defendant had taken on a number of responsibilities in connection with the joint venture, in some respects acting as the claimants' agent, the claimants had no relevant experience, they had no knowledge of the arrangements made by the defendant with third parties and they entrusted the defendant with extensive discretion to act in relation to venture which affected the claimants' interests."

122. The circumstances in which a fiduciary duty may be held to exist as between joint venturers was considered in some detail by Leggatt LJ in *Al Nehayan v Kent* (supra) at [154]-[165]. He held that the existence of a relationship of trust and confidence was not sufficient by itself to give rise to fiduciary obligations. At [165], Leggatt LJ explained:

> "At a basic level any contracting party is entitled to rely on the other party to perform its contractual obligations without having to monitor performance or even if (as in *Re Goldcorp Exchange Ltd*) it is unable to monitor performance. The kind of trust and confidence characteristic of a fiduciary relationship is different. As discussed above, it is founded on the acceptance by one party of a role which requires exercising judgment and making discretionary decisions on behalf of another and constitutes trust and confidence in the loyalty of the decision-maker to put aside his or her own interests and act solely in the interests of the principal." [My emphasis].

123. Leggatt LJ had, earlier, at [160], considered both *Murad v Al-Saraj* and *Ross River Ltd v Waveley Commercial Ltd*, and regarded it as being a significant factor in finding that the defendants in those cases were subject to fiduciary obligations that:

i) In the first case, the claimant had entrusted the defendant with extensive discretion to act on their behalf and in their interests in selecting suitable property for investment and in negotiating and arranging the transaction for them; and

ii) In the second case the control which the defendant had over all aspects of the management of the joint venture project, and over the disposal of the funds arising from it and the assets comprised in it, and the control which its director was able to exercise over the defendant and what it did in these and all other respects, justified the conclusion that both the company and the director were under the identified fiduciary duties.

124. On behalf of Mr Glenn and Mr Slater, reliance is placed upon the fact that in *Ross River Ltd v Waveley Commercial Ltd*, the fiduciary obligations held to be owed by the defendant were owed even though the joint venture was carried out through a jointly owned company (Danescroft), and even though the defendant was not a shareholder in Danescroft, shares instead being held by a company wholly owned by him. However, as is apparent from Leggatt LJ's analysis of the case, the significant point was that the defendant and its director had, and had been entrusted with control over all aspects of the management of the relevant joint venture project and over the disposal of the funds arising from it and the assets comprised in it.

125. Leggatt LJ did observe at [157] that it was "exceptional" for fiduciary duties to arise other than in certain settled categories of relationship, and that these categories did not include shareholders, either in relation to the company in which they owned shares or each other.

The Claimants' case

126. The Claimants' principal arguments advanced in support of their contention that the Four Individuals agreed to carry on business together in partnership or, alternatively, as joint venturers in circumstances in which fiduciary duties existed as between them, were as follows:

i) The Claimants point to what they say is the absence of an overarching corporate entity, and to the fact that the Business came into existence before any of the corporate entities were incorporated. The Claimants point to what they say is the lack of formal separation between the various companies, and to the requirement for a partnership between the Four Individuals in order to fill the gap and provide an overarching entity.

ii) The Claimants submit that this analysis is supported by the fact that no overarching corporate entity was used in order to enter into the formal framework agreement contemplated by the Heads of Terms with EIML, as to which I note that it was the Four Individuals who each joined as parties to the Tranche 1 Investment Agreement albeit described as "Individual Shareholders", rather than any corporate entity that they controlled.

iii) It is the Claimants' case that the role of overarching corporate entity was not filled by either FID or FIDRE. As to FID, the Claimants rely upon what was said by Mr Walker with regard to FID in the context of him having signed a retainer letter for EY on behalf of FID, describing himself as a "director", and to him saying that he had in fact understood that EY were to be engaged by FIDRE "because that was the entity that was carrying out the activities", thus

downplaying the role of FID and his involvement in it (Day 5/5-6). As to FIDRE, the point is made by the Claimants that it was to be one of a series of companies to be involved in the acquisition of separate tranches of renewable energy assets, rather than having any overarching role, and one over which control would be lost on the completion of Tranche 1.

iv) The Claimants submit that the fact of there being an agreement as to there being an overarching partnership is supported by what is said to have been an overarching understanding between the Four Individuals, subject to the particular circumstances of Mr Slater's involvement with Tranche 2, that each of them would have an equal interest in whatever corporate or other entities were used for what was envisaged to be a repeatable process involving the acquisition of a series of tranches of renewable energy assets. The Claimants point to Mr Walker having said in an email dated 4 February 2018 that: "… we have no shareholder agreement and each deal is done on a case-by-case basis assuming a defined split."

v) In similar vein, the Claimants point to the fact that the letter dated 15 September 2016, from the four individuals (described as "Original Shareholders") to Mr Warren with regard to "Loan to Fifty Group and Grant of Option", referred to "Fifty Group" as meaning "all of those entities established to undertake the Fifty Business". The Claimants say that this ties in with an acceptance by Mr Walker in the course of his evidence that it had not been determined what vehicles or entities, i.e. companies, partnerships etc., would necessarily be used for future business, and supports their case as to there having been an overarching partnership.

vi) The Claimants contend that Mr Walker and Mr Dyer cannot explain for whose benefit the parties continued to source assets and opportunities as part of the ongoing origination business if not the individuals as partners. They point to the fact that, by 2018, there remained a significant pipeline of potential future acquisitions. They say that, on the Defendants' case each individual would simply have been entitled, at any time, to exploit any such opportunities for their own benefit, and that this cannot be right.

vii) The Claimants contend that Mr Walker's and Mr Dyer's case that the parties solely operated and carried on business through corporate entities in which the Four Individuals were involved is undermined by two key matters. Firstly, at no stage did Mr Walker have any formal position as director or shareholder in FID. Secondly, so far as FIDRE is concerned, the four individuals ceased to have any shareholding therein when they sold their shares in exchange for loan notes and shares in Wind Co 1. This, it is submitted, discloses a lacuna which could only realistically have been filled by an overarching partnership as between the four individuals.

viii) The Claimants further submit that Mr Walker and Mr Dyer cannot explain why the parties would have expended such significant time and personal capital (including after the LightBeam IPO) in obtaining detailed tax advice from EY in their personal capacities, and in devising a structure reliant upon a repeatable

process of asset acquisitions, if the circumstances were such that any of the four individuals could have taken the entirety of the benefit of the work done for themselves.

ix) The Claimants point to what they say is Mr Walker's own evidence that there came a point when he regarded himself as a free agent, i.e. suggesting that he did not previously so regard himself. The Claimants rely upon Mr Walker having said: "Equitix needed to know what is going on. I did not owe obligations any more to Mr Glenn", i.e. after the events of 15 February 2018.

x) The Claimants point to the frequent reference to "partner" and "partnership" in contemporaneous correspondence, in particular from Mr Walker. The Claimants rely on the fact that Mr Walker was an experienced corporate lawyer, and they say that his frequent and consistent use of these expressions was not accidental, but reflected the reality of the relationship that existed. The Claimants submit that Mr Walker's attempts to brush this off by saying that he used these words because "partnership" was a more collaborative term than say, "my fellow director" or "my colleague", is unconvincing. The Claimants point to Mr Walker having used these expressions in the context of Mr Warren's potential "accession to the partnership", and when referring to them being "in partnership with a view to profit", thus alluding to the terms of the 1890 Act itself. The reference to Mr Warren's potential "accession to the partnership" was in the email dated 14 September 2016 in which Mr Walker had said to Mr Warren, Mr Dyer, Mr Glenn and Mr Slater: "We are all entering into this with a high degree of trust."

xi) The Claimants also rely on the way matters were expressed by Mr Walker's and Mr Dyer's Solicitors, Candey, in a letter of Claim to Equitix's Solicitors dated 17 December 2021. In this letter, Cape Re Limited, the new name for FIDRE, was described as "originally a partnership of four individuals" [my emphasis], naming Mr Walker, Mr Dyer, Mr Glenn, and Mr Slater.

xii) The Claimants submit that Mr Walker and Mr Dyer's focus on the lack of partnership accounts, and other such formalities, elevates form over substance, and is of no assistance to them having regard to the fact that the partnership was an informal one constituted by the overarching agreement to share any profits of the Business equally, whatever specific entities it transpired were used to transact the business.

xiii) The Claimants submit that even if there was no partnership under the 1890 Act, there was undoubtedly a fiduciary joint venture in circumstances where the relationship between the four individuals was intended to be one of trust and confidence.

The Defendants' case

127. The principal arguments put forward on behalf of Mr Walker and Mr Dyer as to why there was no overarching or other partnership, and no joint venture that gave rise to

fiduciary duties as between Mr Glenn, Mr Slater, Mr Walker and Mr Dyer are the following:

i) They point to the fact that FID was incorporated in January 2014, at an early stage in the business relationship between Mr Glenn, Mr Slater and Mr Dyer, and that the following July tax advice was received from Menzies LLP to the effect that carrying on business through an LLP had adverse tax consequences as against carrying on business through a corporate structure. A partnership would have had similar tax consequences to an LLP. Therefore, so it is said, a partnership cannot have been intended.

ii) There would be the potential at least for significant conflicts of interest if fiduciary duties existed as between Mr Glenn, Mr Slater, Mr Walker and Mr Dyer in circumstances in which they each owed fiduciary duties to the companies of which they were directors and which formed an integral part of Project Coral. It is submitted that the fiduciary duties that they owed to those companies represented the full extent of the fiduciary duties that they owed.

iii) It is pointed out that liabilities were consistently allocated to the companies through which the individuals carried on business, rather than the Four Individuals, whether as partners or otherwise, assuming any personal liability, collectively or otherwise. Thus, for example:

   a) EY was formally engaged by FID, subject to a term entitling EY to charge any entity for whom work was actually performed;

   b) Fees in relation to Tranche 1 were incurred by FIDRE. Whilst they were paid by Mr Dyer, he was reimbursed, and they were recognised as being transaction costs of acquiring FIDRE in Wind Co 1's accounts. The position was the same in relation to Tranche 2 and FIDRE2.

   c) Whilst Mr Warren's loan of £120,000 was expressed to be to "Fifty Group", the latter was defined as the entities established to undertake the Fifty Business, i.e. initially FIDRE, cf. Mr Walker's evidence (Day 3/180:25-183:18). Further, all the parties disclaimed personal liability for this loan.

   d) The loan alleged to have been made by Mr Slater was made to FAM and not to the individuals or any of them – see Mr Slater's evidence (Day 3/94:1-8). Other loans were made by Mr Slater to Mr Glenn, but this was a personal loan that was not disclosed to Mr Walker or Mr Dyer.

   e) The FAM bank statements show sundry and business development costs being defrayed by FAM as from December 2016. Likewise, FAM paid office rent.

iv) Mr Walker and Mr Dyer maintain that there is no lacuna or gap so far as business opportunities are concerned. It is their case that maturing business opportunities were allocated to the deal vehicle which had not yet been sold to Equitix when

the opportunity was identified. Project Eva was thus allocated to FIDRE 2 and deferred consideration was provided for it in the Tranche 2 Share Exchange Agreement. Mr Walker and Mr Dyer submit that after Tranche 2 completed, no relevant new opportunities were identified, only Tranche 1 and 2 refinancings and the identified Tranche 2A opportunities (Eva, Frank and Gertrude) were being worked on. If and to the extent that there were other opportunities, then, so it is submitted, they would have belonged to FIDRE 3, which was not a subsidiary of FIDRE and thus remained under the control of the Four Individuals as the next corporate vehicle to use for the purposes of Project Coral.

v) Mr Walker and Mr Dyer point to the fact that matters were structured so that profits were taken individually by Mr Glenn, Mr Slater, Mr Walker and Mr Dyer as shareholders upon the sale of their shares in FIDRE and, potentially, through the refinancing, rather than as partnership profits. Consequently, there were no partnership profits within the traditional meaning of the net amount remaining after paying out of the receipts of the business all the expenses incurred in obtaining those receipts.

vi) Mr Walker and Mr Dyer point to the absence of partnership accounts.

vii) Further, Mr Walker and Mr Dyer point to the absence of a partnership agreement, noting that on 8 February 2018 Mr Glenn wrote to Mr Walker and Mr Dyer suggesting that: " … we should look at drawing up a proper shareholder agreement that governs all aspects of the business."

128. As to the question as to whether there was a joint venture incidental to which fiduciary duties existed as between the Four Individuals is concerned, Mr Higgo emphasised in submissions that the mere fact that individuals placed trust and confidence in one another, if indeed they did, is insufficient to give rise to fiduciary duties. Mr Higgo submitted that what "very likely" was required was an imbalance of power or control. He submitted that no such factor was present in the present case, and therefore that no fiduciary protection was necessary given the corporate structure, and if there was no partnership.

Was there an overarching partnership?

129. As the authorities referred to in paragraph 115 above demonstrate, whether a partnership exists is a question of fact to be answered by reference to what the parties have agreed. This is because partnership requires a substantive agreement, whether express or implicit in conduct, between the partners that they should carry on business together in partnership.

130. In the present case, there was no express agreement as to partnership, and so the question is whether one is to be implied from the parties' conduct and the circumstances. In accordance with the usual rules for determining the existence of the contract, this is, as I see it, an objective question – see Chitty on Contracts, 35th Edn, at 4-002 et seq.

131. Given that activities of the Business were indisputably carried out through the corporate entities, namely FID, FIDRE, FIDRE 2 and FAM, I consider that the present is a case in which the observations of Leggatt LJ in *Al Nehayan v Kent* (supra) at [152] are of particular relevance. Where there has been a deliberate structuring of a business through limited companies, then in order to show that a partnership exists notwithstanding, it is likely to be necessary to show business being carried on "over and above the business of" the relevant companies.

132. I regard it as significant that FID was incorporated at an early stage on 14 February 2014 in circumstances in which, on Mr Glenn's and Mr Slater's own case, the Business was only established in January 2014. Even then, apart from discussion regarding the idea behind the Business, and some limited preliminary steps, there is no evidence of any significant business activity prior to the incorporation of FID. That begs the question as to why FID was incorporated, if not to perform some form of overarching role in the development of the Business. These considerations point, in my judgement, firmly against the Business having been established as a partnership as between Mr Glenn, Mr Slater and Mr Dyer, as opposed to Mr Glenn, Mr Slater and Mr Dyer having agreed that FID should be used as the corporate vehicle for the relevant business activity. To the extent that there might, technically, have been some form of partnership as between Mr Glenn, Mr Slater and Mr Dyer prior to the incorporation of FID, then I consider that the likelihood is that any such partnership would have been dissolved upon the incorporation of FID as the latter took its place, cf. *Ilott v Williams* (supra) referred to in paragraph 117(iii) above.

133. The way that events then subsequently unfolded further supports, in my judgment, the conclusion that there was no overarching partnership. I regard the following as being significant factors in this respect:

    i) The tax advice received from Menzies LLP in July 2014 referred to in paragraph 45(i) above cautioned against structuring the proposed investment as an LLP, because its profits were liable to be assessed for income tax. Similar considerations would have applied if any business were being conducted with a view to profit through a partnership. For this reason, the parties will have wished to avoid carrying on business with a view to profit through a partnership, thus serving to negative any intention to so carry on business.

    ii) It was in consequence of the tax advice that had been received that FIDRE was incorporated with a view to Mr Glenn, Mr Dyer and Mr Slater making their profit by selling their shares therein and as the appropriate corporate vehicle for that purpose.

    iii) As referred to above, EY was formally engaged by FID as reflected in the various engagement letters that have been produced. It is in the context of having been so engaged by FID that EY produced the PCF Structure Document referred to in paragraph 58 above, and other relevant documentation concerning Project Coral.

    iv) After the LightBeam IPO had fallen through:

a) FID was used as the corporate vehicle for seeking investment as reflected in the November 2015 Investment Document referred to in paragraph 60 above. Mr Slater, Mr Dyer, Mr Glenn and Mr Walker were identified therein as "founders and principal shareholders", notwithstanding that Mr Walker had not been appointed as a director of FID, and had never held shares in therein; and

b) On the advice of EY and Mr Warren, and pursuant to the PCF Structure Document, FIDRE was used as the corporate vehicle to deal with Equitix.

v) Mr Glenn, Mr Slater, Mr Walker, Mr Dyer did not assume any personal liabilities so far as the Business was concerned. To the extent that Mr Glenn incurred personal liabilities to Mr Slater in respect of monies which he borrowed from Mr Slater, which was a matter between the two of them that was not disclosed to Mr Walker or Mr Dyer. Thus, as referred to in paragraph 127 (iii) above, the liabilities therein referred to were assumed by the relevant corporate entities rather than by the four individuals personally.

vi) In the above circumstances, any profits being made would have been made by the respective corporate entities, and to the extent that Mr Glenn, Mr Slater, Mr Walker, and Mr Dyer stood to benefit therefrom, through a share exchange, loan notes, dividends or otherwise, this was in their capacity as "Individual Shareholders" (as they were described in in the Tranche 1 Investment Agreement), against which there were no partnership liabilities to apply. This no doubt explains why no partnership accounts were ever prepared and it does, I consider, make it extremely difficult to maintain that the Four Individuals ever did, as individuals, carry on a business in common with a view of profit.

134. It is necessary to consider at this point whether the position is affected by the involvement of Mr Walker, and the fact that he never became a shareholder in, or director of FID. In view of the above considerations, I have concluded that, at the time that Mr Walker became involved in or about July 2014 providing assistance with the LightBeam IPO, there was no partnership in existence as between Mr Glenn, Mr Slater, Mr Dyer, and that FID was being used as their corporate vehicle for the Business, with FIDRE being incorporated in addition shortly after, if not contemporaneously with Mr Walker becoming involved. The question therefore is, as I see it, whether the position was changed by Mr Walker's involvement.

135. I am not persuaded that the position was changed by Mr Walker's involvement. The evidence suggests that his involvement increased over time from initially providing legal advice and assistance, to being treated on an equal footing with Mr Glenn, Mr Slater and Mr Dyer, as reflected in, for example, the November 2015 Investment Document. However, by this stage FIDRE, and for future transactions, FIDRE 2, FIDRE 3 etc., had been identified as the appropriate corporate vehicles through which to conduct the Business and make profits or gains, hence, no doubt, Mr Walker being appointed a director thereof, and him being placed on an equal footing with Mr Glenn, Mr Slater and Mr Dyer so far as shareholdings therein were concerned, in January 2016, backdated to 1 August 2015.

136. One can understand why, in these circumstances, there may have been no imperative to make Mr Walker an equal shareholder together with the others in FID, and no necessity to appoint him formally as a director given that he was being held out, e.g. in the November 2015 Investment Document, as being on an equal footing with the others. The important consideration plainly was that Mr Walker should be placed on an equal footing so far as FIDRE and the other FIDRE companies were concerned because that is where the money was to be made. It is, as I see it, understandable in these circumstances that Mr Walker felt able to sign documentation on behalf of FID as a "director". If FID had been a mere non trading shell, then one can see that, in those circumstances, it might be possible to infer from the fact that Mr Walker was not appointed a director of FID and was given no shares therein, that there was some overarching partnership between the Four Individuals. But that was not the case as evidenced by, for example, the engagement of EY by FID and the production of the November 2015 Investment Document.

137. It is also necessary to consider how the position is affected by the arrangements ultimately put in place concerning FIDRE and Tranche 1, and the fact that, thereunder, Mr Glenn, Mr Slater, Mr Walker and Mr Dyer disposed of their interests in FIDRE in return for shares in Wind Co 1 (with the rights attached thereto) and loan notes. The argument is that this left a lacuna which could only be filled by the existence of an overarching partnership between the Four Individuals. This does, as I see it, tie in with the further argument advanced by Mr Glenn and Mr Slater that, in any event, absent an overarching partnership and/or some other mechanism for imposing fiduciary duties as between the Four Iindividuals, it would have been open to any of them to exploit for their own benefit corporate opportunities obtained by the Business, and that Mr Walker and Mr Dyer cannot explain for whose benefit the parties continued to source assets and opportunities as part of the ongoing origination, if not the Four Individuals as partners.

138. However, I am not persuaded that either of these considerations leads to the conclusion, on the present facts, that the parties had agreed that their affairs should be regulated by some form of overarching partnership. I consider it important to bear in mind that the business was about aggregating renewable energy assets within a corporate entity for which investment funding would be used to fund the purchase of the assets. The incorporation of the series of FIDRE companies reflected the fact that this would be done by way of a series of tranches, using separate companies in which the four individuals were each directors and equal shareholders. The fact that control over the relevant FIDRE company might have been lost once each tranche was completed is, as I see it, of no particular significance so far as the existence of any overarching partnership is concerned. This is because, so far as each particular tranche was concerned, the Four Individuals, under the relevant Investment Agreement, gained individually the benefit of the rights conferred on them thereunder and under the other documentation associated therewith such as the share transfers, the loan notes and the Articles of Association of the relevant Wind Co.

139. So far as opportunities identified for the benefit of a particular FIDRE company were concerned, they were, as I see it, properly to be regarded as the property of the relevant FIDRE company. I consider that the way that matters were set up were such that

particular renewable energy assets would, in practice, have been sourced and aggregated for the benefit of the particular FIDRE companies in turn. Thus, once those assets identified for acquisition by FIDRE had been ascertained, the presumption would have been that all further outstanding opportunities at that stage were being exploited for the potential benefit of the next FIDRE company in line, FIDRE 2, until all the assets that it was to acquire had been identified, after which the presumption would be that outstanding opportunities would be pursued for the benefit of FIDRE 3. It is true that control over FIDRE 4 and the subsequent FIDRE companies was lost on completion of Tranche 1 as they were subsidiaries of FIDRE, but FIDRE 3 remained under the control of the four individuals. I consider that once all the Tranche 2 assets had been identified, then to the extent that there were further outstanding opportunities to acquire further assets, Mr Glenn, Mr Slater, Mr Walker and Mr Dyer would each have been entitled to insist, as directors and shareholders of FIDRE 3, that those opportunities were exploited for the benefit of FIDRE 3 rather than being open to be exploited by any one or more of the four individuals personally.

140. In this context, I note Mr Slater's evidence under cross examination that the parties went out and sought to originate assets, and that it was then decided which company was going to be the option holder (see Day 3/89-90). However, it was put to him by Mr Higgo that when they were accumulating options, they were also engaged as directors and shareholders of FID at the time, which Mr Slater accepted was the case.

141. Consequently, if the opportunity did belong to the relevant FIDRE company, but was taken or otherwise exploited by any party or parties prior to completion of the transaction concerning the relevant tranche of assets with Equitix, then a claim for an account, or for breach of fiduciary duty could have been brought against the relevant misfeasant director, as a director of the relevant FIDRE company. Alternatively, if control rested with a wrongdoing majority that had exploited the opportunities for themselves, then there would be potential remedies by way of derivative action or unfair prejudice petition.

142. Thus, I am satisfied that there is, on proper analysis, not the lacuna identified by Mr Glenn and Mr Slater. However, even if there was such a lacuna, I do not consider that it leads to the inevitable conclusion that there is a gap that can only be filled by finding that there was an overarching partnership in the present circumstances, where there are so many other factors pointing against the parties having agreed that their relationship should be governed by a partnership.

143. In this context one cannot, I consider, ignore the position of FID, which was intended to have some form of overarching role, albeit complicated by the fact that Mr Walker was never made a shareholder therein, or a director thereof. However, if the relevant opportunities did not belong to the relevant FIDRE companies, then I see no conceptual difficulty in saying that they must belong to FID notwithstanding the position so far as Mr Walker is concerned. There is no suggestion that Mr Walker sought, but was refused a shareholding or directorship in FID. If the relevant opportunities did belong to FID and Mr Walker had sought to exploit them for his own benefit, then it is difficult to see that FID would not have had some remedy against him as a fiduciary with fiduciary duties owed to FID given his role therein as "General Counsel" and, quite possibly, as a de facto director. Of course, Mr Glenn,

Mr Slater and Mr Dyer would have owed fiduciary and other duties to FID as directors thereof, but not to each other.

144. I would add that I do not attach a great deal of weight to what was said by Mr Walker under cross examination with regard to his considering the true engagement as being between EY and FIDRE: " … because that was the entity that was carrying out the activities". The inescapable fact of the matter is that the relevant engagement letters were as between EY and FID, and the November 2015 Investment Document was put out in the name of FID.

145. There is Mr Glenn's and Mr Slater's contention that there was some underlying intention that each of the Four Individuals would have an equal interest in whatever corporate or other entities were used in what was envisaged to be a repeatable process, and that this points to there being some overarching partnership between them to give effect thereto. However, I do not consider that this necessarily follows. The fact of the matter is that FIDRE was set up on an equal basis as between Mr Glenn, Mr Slater and Mr Dyer, and Mr Walker was given an equal share therein at the appropriate stage. To this extent, the parties' rights to equality were entrenched within this corporate structure through which it was envisaged that the relevant transactions would be conducted tranche by tranche.

146. Mr Walker, in his email dated 4 February 2018, referred to each deal being done "on a case-by-case basis assuming a defined split", and it is certainly true, as recognised by Mr Walker in the course of his evidence, that it had not been determined what vehicles or entities would necessarily be used for future business, as also reflected in the letter dated 15 September 2016 from the "Original Shareholders" to Mr Warren. However, balanced against the other considerations identified above that I consider point firmly against an agreement as to partnership, I do not consider that these latter considerations tip the balance in favour of a partnership bearing in mind the way that FID and the FIDRE companies had been structured, and that it would have been necessary in any event to reach agreement between the parties with regard to any other form of entity that might have been used in order to conduct the Business in the future. Further, as demonstrated by the reduction of Mr Slater's entitlement from one of equality in respect of Tranche 2, any understanding as to equality cannot be regarded as having been cast in stone.

147. So far as Mr Walker saying that he had reached a point at which he regarded himself as a "free agent", I do not consider that this necessarily points to Mr Walker understanding that he owed fiduciary duties or obligations to Mr Glenn, Mr Slater or Mr Dyer as individuals or partners, as opposed to owing fiduciary and other duties as a director of the various relevant companies including FIDRE, Wind Co 1, and FAM, and the consequences thereof so far as his position vis-à-vis Mr Glenn and Mr Slater was concerned.

148. The frequent references to "partner" and "partnership" that I have mentioned are, of course, of some relevance. However, I do not accept that Mr Walker's explanation that he considered these terms to be more collaborative terms than, say, "my fellow director" or "my colleague" is unconvincing, as Mr Glenn and Mr Slater suggest. As Nugee J identified in *Dutia v Geldorf* (supra), the words "partner" and "partnership" are

commonly used to refer to a member of the team running a business, or a senior employee, whatever the structure used, and I do not consider that the use of these expressions in the present case leads to the conclusion that the relevant individuals were truly in partnership with one another within the meaning of s. 1 of the 1890 Act. The use of these expressions certainly does not, I consider, serve to outweigh the other considerations which, in my judgement, point firmly away from any agreement as to partnership.

149. In short, therefore, I do not consider that any partnership came into existence between Mr Glenn, Mr Slater, Mr Walker and Mr Dyer.

Fiduciary duties within the context of a joint venture?

150. Having concluded that there was no overarching partnership, and that Mr Glenn, Mr Slater, Mr Walker and Mr Dyer did not owe fiduciary duties to one another on the basis that they were partners carrying on business in common with a view of profit, it is necessary to consider whether they owed fiduciary duties to one another as participants in a joint venture.

151. I have concluded that there was no overarching partnership in the circumstances of the present case, essentially because the parties had chosen to conduct their affairs through a corporate structure, and there was no business over and above that carried on by the companies within that corporate structure in in respect of which partnership could have existed. This being the case, I do not consider that there can be any real scope for finding that there existed as between the Four Individuals fiduciary duties or obligations arising in the context of a joint venture unless, as against the party against whom the fiduciary duty or obligation is sought to be asserted, it can properly be said not only that trust and confidence had been placed in them, but that they had accepted a role which required exercising judgement and making discretionary decisions on behalf of another – see *Al Nehayan v Kent* (supra) at [165], per Leggatt LJ.

152. As Leggatt LJ identified in the latter case at [160], that was found to be the case within a corporate structure in *Ross River Ltd v Waverley Commercial Ltd* (supra), because of the control which the defendant had over all aspects of the management of the joint venture project, and over the disposal of funds arising from it and the assets comprised in it. The present case is, as I see it, a very different case from the latter case in which there was a clear imbalance between the position of the parties as was also the case in *Murad v Al-Saraj* (supra). I do not consider that Mr Walker or Mr Dyer can properly be considered to have been in any such position so as to give rise to fiduciary duties or obligations as between them and Mr Glenn or Mr Slater.

Conclusion in respect of fiduciary duties alleged to have been owed

153. The Claimants' personal claim as against Mr Walker and Mr Dyer for equitable compensation, damages and/or for an account of profits is based upon the latter having been subject to fiduciary duties and/or obligations in consequence of being partners together with the Claimants, or on the basis of fiduciary duties and/or obligations arising in the context of a joint venture. Given that I have found that no such fiduciary

duties or obligations arose in the circumstances of the present case, it follows that those claims must fail.

154. This still leaves the claim for damages for unlawful means conspiracy, albeit without being able to rely upon breach of fiduciary duty as being the unlawful act, and the derivative claim brought on behalf of FAM. In the event that I am wrong as to my conclusion that Mr Walker and Mr Dyer did not owe fiduciary duties and/or were not subject to fiduciary obligations as alleged, I will proceed to consider the position had they been subject to fiduciary duties and obligations alleged by Mr Glenn and Mr Slater, before considering whether the unlawful means conspiracy case is made out (whether or not Mr Walker and Mr Dyer acted in breach of fiduciary duty), and the derivative claim.

Entitlement on re-financing

155. There is one further matter that I should consider on a preliminary basis before turning to consider the Claimants' claims and the circumstances behind the breakdown in the relationship between the parties, and the claims that are said to arise in consequence thereof. This is the entitlement of Mr Glenn, Mr Slater, Mr Walker and Mr Dyer upon the refinancing of FIDRE by Bayern in late 2017/early 2018.

156. This issue is relevant to unsuccessful attempts made by Mr Glenn during the course of the events of 15 February 2018 to cause what he perceived to be his and Mr Slater's share of such entitlement to be paid to him from the FIDRE Proceeds Account, and in subsequently causing the sum of £75,000 to be paid to him out of FAM's bank account essentially on account of such entitlement. The issues are, I consider, relevant to the question of whether Mr Glenn's actions were justified, and, further, as to whether the reactions of Mr Walker and Mr Dyer to Mr Glenn's actions themselves were justified.

157. The position of Mr Glenn and Mr Slater, as expressed in paragraphs 138-140 of their Written Opening Submissions was that the Four Individuals had an immediate entitlement as against the FIDRE Proceeds Account following the Tranche 1/1A refinancing by Bayern, and that the only reason that that had delayed payment prior to 15 February 2018 was that tax advice had been sought from Roffe Swayne regarding the most tax efficient way in which such sums in question could be paid. It is further asserted that such advice had been received by 15 February 2018, and so there was no further reasonable justification for delaying payment of what was due from the FIDRE Proceeds Account. Accordingly, so it is said, Mr Glenn spoke with Mr Slater, and they agreed that they should withdraw their respective shares of the proceeds without further reference to Mr Dyer or Mr Walker.

158. The legal basis relied upon for this immediate entitlement as against the Proceeds Account is not entirely clear. In paragraph 53 of his witness statement, Mr Glenn makes reference to entitlement under "clause 5.3 or 5.5 of the articles of the business which basically said that when Equitix took their share of the distribution the individuals are entitled to elect how they took their share. This amounted to about £120,000 each."

159. However, in opening the case, a new argument was advanced by Mr Glenn and Mr Slater for the first time, relying upon clause 3.1 of the Bayern Facilities Agreement. In

paragraph 94 of the Claimants' Opening Submissions, it was asserted that the financial model as drafted and approved by Bayern included various transaction costs including the fees payable to the "Partners" on refinancing. On this basis, it was asserted that the relevant monies held in the FIDRE Proceeds Account were held for the benefit of the "Partners", i.e. Mr Glenn, Mr Slater, Mr Walker and Mr Dyer.

160. I have considered the structure for distributing the relevant percentage of the refinancing gains and any profits over the Base Case Return in paragraph 86(iii) above, where reference is made to the mechanism provided by Articles 5.1 and 5.2 of Wind Co's Articles of Association. I have referred to the circumstances behind the refinancing at paragraphs 99 to 110 above.

161. The conclusions that I draw therefrom are as follows:

i) I do not consider that clause 3.1 of the Bayern Facility Agreement assists Mr Glenn and Mr Slater in that:

a) The parties thereto were Bayern and FIDRE (plus subsidiaries), and did not include EIML, EI4L, or Messrs Glenn, Slater, Walker or Dyer. The entitlement to any share of the refinancing gain must, as I see it, be a matter for the Tranche 1 Investment Agreement, and associated documentation such as Wind Co 1's Articles of Association.

b) Further, contrary to the suggestion in paragraph 94 of Mr Glenn's and Mr Slater's Opening Submissions, whilst there was an earlier financial model prepared in respect of the refinancing that did show a "Fifty fee" of £715,000, the financial model ultimately approved by Bayern that formed the basis of the refinancing transaction did not include any such fee. It was suggested in the course of submissions that this fee was removed from the earlier model for "presentational reasons" to do with how the rate of return was represented. However, there is no evidence to support this, and the earlier financial model does not accord with the legal rights provided for by the Tranche 1 Investment Agreement and associated documentation.

ii) Articles 5.1 and 5.2 of Wind Co 1's Articles of Association appear clear to the effect that any entitlement of the Four Individuals is in their capacity as A2 shareholders of Wind Co 1, is through the payment of the dividend as provided for by those provisions.

iii) Articles 5.1 and 5.2 provided that any such dividend was dependent upon the passing of a special resolution. Further, as a matter of general principle, it would be unlawful to make a payment of any dividend unless there were profits available for distribution (s. 830 of the Companies Act 2006).

iv) The evidence suggests that there were not profits available for distribution, and so it was necessary to find some other mechanism to effect payment of sums of approximately £120,000 to each of Mr Glenn, Mr Slater, Mr Walker and Mr Dyer.

v) The mechanism chosen was for EIML or EI4L to purchase the Four Individuals' respective A2 shares in Wind Co 1, and that was what was proposed at the time that the refinancing transaction took place. I consider this to be clear from the funds flow structure chart prepared by Mr Glenn that showed £535,932.72 being "retained to acquire directors shares". Consistent therewith is Mr Glenn's email to Mr Cooper dated 2 January 2018 in which he referred to a plan to hold the proceeds until 26 January 2018 "and then use them to acquire shares from us."

vi) Matters were clearly delayed in that the A2 shares were not acquired by EIML/EI4L on 26 January 2018. It would appear that this was because tax advice was still being obtained from Ms Warner of Roffe Swayne. This is supported by Ms Warner's email dated 9 February 2018 to Mr Glenn referring to a conversation earlier that day with him, and setting out the issues and identifying queries required to be answered before any funds were paid to Mr Glenn. That is how matters stood as at 15 February 2018.

162. In the above circumstances, I do not consider that there can be any proper basis for the assertion that any money standing to the credit of the FIDRE Proceeds Account was held for the benefit of Mr Glenn, Mr Slater, Mr Walker or Mr Dyer such that they had an immediate entitlement to have those monies paid to them without more. Ms Warner's email of 9 February 2018 had identified issues that require to be resolved, which had first been identified in her email dated 6 November 2017. If a dividend were to be paid, then it was necessary for a special resolution to be passed and for the parties to be satisfied that there were profits available for distribution, which does not appear to have been the case. If shares were to be acquired, then apart from any outstanding tax issues, there would need to be the formality of a transfer of the relevant A2 shares in return for the consideration payable for them.

163. Further, it is, as I see it, a relevant consideration that FIDRE had certain obligations under the Bayern Facility Agreement with regard to the use of the FIDRE Proceeds Account, which is of potential relevance at least as to the propriety of a director seeking to draw on the FIDRE Proceeds Account without a formal board resolution, or at least consulting with the other directors as to the propriety of any proposed withdrawal.

The Claimants' Claims

Overview of the Claimants' case

164. The gist of the Claimants' case is as follows:

i) In or about mid-2017, Mr Walker and Mr Dyer decided that they did not wish to remain in business with Mr Glenn and so, thereafter, plotted (together with Mr Warren) to get rid of him, and his involvement in the Business and the various entities through which the Business had been carried out, including FID, the FIDRE companies, the Wind Co companies and FAM.

ii) Whilst the Defendants have come up with various grounds to put forward to seek to justify their actions, it is the Claimants' case that these have been used

as a pretext to exclude Mr Glenn, and that, in reality, Mr Walker and Mr Dyer had no legitimate concerns regarding Mr Glenn's continued involvement in the Business. So far as there might be contemporaneous documentation suggesting that Mr Walker and/or Mr Dyer did have contemporaneous concerns, this was described by Mr Glenn in giving evidence as having been "papered up", by which I understood him to mean created in order to give a false or at least exaggerated impression of their concerns.

iii) Because of what he says were his concerns with regard to feeling excluded from meetings, and seemingly frozen out from social events, Mr Glenn began to secretly monitor emails between Mr Walker, Mr Dyer and Mr Warren. He says that, in the course of so doing, he discovered the alleged plot to remove him, involving, most significantly, Mr Walker and Mr Dyer arranging a lunch meeting with Mr Cunningham (of Equitix) on 15 February 2018 in order to unjustifiably disparage Mr Glenn to Equitix, and get the latter on board with Mr Walker and Mr Dyer so the plot could be carried into execution.

iv) The emails that were secretly monitored by Mr Glenn included emails from Mr Walker:

a) On 2 February 2018 that talked in terms of "either a managed exit or a trigger is pulled";

b) On 10 February 2018 that talked in terms of not wanting to "pull any triggers" until Equitix had been spoken to in order to ensure that they would "back the remaining team"; and

c) An email sent early in the morning on 15 February 2018 setting out the various ways in which Mr Glenn would be disparaged to Mr Cunningham at the lunch meeting with him later that day.

v) It is the Claimants' case that the lunch meeting duly took place with Mr Cunningham on 15 February 2018, when Mr Glenn was disparaged to Equitix on wholly unjustified grounds as part of a process of poisoning Equitix against Mr Glenn.

vi) Mr Glenn says that he brought Mr Slater up to speed about the attempts to exclude him, and they decided that Mr Glenn should seek to protect their positions by causing to be withdrawn from the FIDRE Proceeds Account their share of the refinancing gain (said to be £111,788.01 each). Mr Glenn says that he was unable to effect the withdrawals on discovering that he was no longer on the relevant bank mandate, and therefore he caused £75,000, representing virtually all the monies in FAM's bank account, to be paid out so that it could be paid to him and Mr Slater on account of the refinancing gain.

vii) Mr Glenn then emailed Mr Dyer informing him about the withdrawal of the £75,000 from FAM's account on account of the sum said to be due, and asking him to cause £111,788.01 to be paid to Mr Slater, and a balancing payment of £36,788.01 to be paid to him from the FIDRE Proceeds Account.

viii) Mr Walker and Mr Dyer objected in strong terms to Mr Glenn having taken this action, and in communication with Mr Cunningham said that Mr Glenn had stolen the money in question, and was a thief. Mr Glenn maintains that Mr Walker and Mr Dyer were well aware that he and Mr Slater were entitled to the money in question, and so there can have been no question of Mr Glenn having stolen the money. Consequently, there was no basis, as it is said Mr Walker and Mr Dyer well knew, for calling Mr Glenn a thief to Mr Cunningham and otherwise to Equitix, and in so describing Mr Glenn, Mr Walker and Mr Dyer were further seeking to disparage Mr Glenn in the eyes of Equitix, poison the relationship between Equitix and Mr Glenn, and execute the plot.

ix) It is the Claimants' case that before sending his email to Mr Dyer informing him about the withdrawal of the £75,000, Mr Glenn telephoned Mr Dyer informing him the business relationship was not working and that they needed urgently to meet to thrash out how they were going to work together moving forward (see paragraph 80 of Mr Glenn's witness statement). The Claimants deny the evidence of Mr Walker and Mr Dyer that in this telephone call Mr Glenn said that he wanted to bring the relationship to an end, or wind the same up.

x) It is the Claimants' case that whilst there was a meeting between the parties on 17 February 2018 in order to seek to negotiate a settlement, and various offers made backwards and forwards thereafter, Mr Walker and Mr Dyer had no genuine intention of reaching a proper negotiated settlement, and succeeded in poisoning Equitix against Mr Glenn, such that they took steps to remove him as a director of FIDRE, FIDRE 2, Wind Co 1 and Wind Co 2. Further, it is the Claimants' case that Mr Walker and Mr Dyer positively encouraged Equitix to terminate the MSA, thereby damaging the interests of FAM and its ability to trade, and to do so at a profit.

xi) It is the Claimants' case that Mr Walker, if not also Mr Dyer, sought to influence any settlement as between Equitix and Mr Glenn in a way disadvantageous to Mr Glenn, with the result that whilst Mr Glenn did reach a settlement agreement with Equitix allowing for his A2 shares in Wind Co and Wind Co 2 to be bought out, the Claimants allege that this was on disadvantageous terms.

xii) The Claimants say that, in these circumstances, they have been wrongfully excluded from the Business (on the Claimants' case as carried on through the Alleged Partnership or the Alleged Joint Venture), and their entitlement to be involved in the corporate entities associated therewith.

xiii) Complaint is made that Mr Walker and Mr Dyer incorporated Cape Renewables Limited ("**CRL**") on 22 February 2018 as part of the process of carrying their plot into execution and as vehicle for pursuing opportunities properly belonging to the Alleged Partnership or Alleged Joint Venture.

xiv) The Claimants allege that Mr Walker's and Mr Dyer's wrongful conduct enabled them to divert to themselves business opportunities the property of the Alleged Partnership, or otherwise in respect of which they are liable to account to the Claimants by virtue of their involvement in the Alleged Joint Venture.

165. It is therefore alleged that, in the above circumstances, so far as the personal claim of Mr Glenn and Mr Slater is concerned:

i) Mr Walker and Mr Dyer acted in breach of the fiduciary duties that the Claimants allege that they owed to both Mr Glenn and Mr Slater, either as partners or as joint venturers, including a duty not to benefit themselves or a third party at the expense of the other partners or joint venturers, and a duty not to put themselves in a position of conflict with their duties to the other partners or joint venturers.

ii) Further or in the alternative, the Claimants allege that Mr Walker and Mr Dyer are liable to them in the tort of unlawful means conspiracy, the allegation being that Mr Walker and Mr Dyer conspired together to injure Mr Glenn and Mr Slater, and did so by unlawful means, i.e. by acting in breach of fiduciary duty and/or by defaming Mr Glenn to Equitix by telling Equitix that Mr Glenn was a thief when, so it is alleged, Mr Walker and Mr Dyer had no basis for so describing Mr Glenn.

iii) It is alleged that Mr Walker's and Mr Dyer's actions caused loss and damage in that had they complied with their fiduciary duties, and/or had they not been guilty of unlawful means conspiracy, then the relationship between the parties would not have been destroyed, and the repeatable process through the use of FIDRE companies could and would have continued generating very significant profits. The Claimants' expert, Mr Slark puts the loss at somewhere between £2,816,541 and £7,102,227 for each of Mr Glenn and Mr Slater, depending upon the number of further tranches that would have been carried out between 6 and 15. Further, Mr Glenn seeks damages representing the value of his shares in Wind Co 1 and Wind Co 2 lost as a result of what is alleged to be the disadvantageous settlement with Equitix which he alleges caused him to sell the same at a significant undervalue, assessed by the Claimants' expert, Mr Slark, at £390,000.

iv) In the alternative, the Claimant seek an account of profits.

166. So far as the derivative claim brought on behalf of FAM is concerned, it is alleged that Mr Walker and Mr Dyer acted in breach of their statutory fiduciary duties owed to FAM as directors thereof pursuant to s. 172 and 175 of the Companies Act 2006 in procuring and/or engineering the termination of the MSA by Equitix, and/or that they failed to use FAM for their business subsequently conducted under the "Cape Renewables" brand using the Project Coral structure. It is alleged that this has caused FAM to fail to make the profits that it would otherwise have been made. So far as those profits are concerned, the Claimants' expert, Mr Slark, has assessed them as being between £642,309 and £3,751,287 on the assumption that the MSA ran for its full term of 20 years, dependent upon the number of tranches carried out; alternatively, as being between £25,115 and £438,804 on the assumption that the MSA ran for 5 years, again dependent upon the number of tranches carried out.

Overview of Mr Walker's and Mr Dyer's case

167. A broad summary of Mr Walker's and Mr Dyer's case in response to that of the Claimants is as follows:

i) From mid-2017 through to the events of mid-February 2018, Mr Walker and Mr Dyer had increasing concerns with regard to remaining in business with Mr Glenn. The position so far as their relationship with Mr Slater is concerned is rather different, in that Mr Slater was making a minimal contribution, which was an additional concern.

ii) So far as Mr Glenn is concerned, the concerns were, it is said, real and substantial, the primary concerns, as developed, being:

a) The failure of Mr Glenn to give a proper account of his dealings with the FID and FAM bank accounts, including payments made to or for the benefit of HCDL, and payments made to himself;

b) A failure to appreciate the proper concerns of Mr Walker, in particular, with regard to his failure to give a proper account of his dealings, and making payments to himself notwithstanding the objections of Mr Walker and Mr Dyer;

c) The use by Mr Glenn of the FID and/or FAM bank accounts to pay incidental expenses, and to do so without providing a proper account in respect thereof to Mr Walker and Mr Dyer;

d) The way that Mr Glenn came across to potential investors in the quest for better cost of capital from potential investors, including making exaggerated statements with regard to the Business;

e) Mr Glenn's attitude to the relationship with EY, and Mr Warren;

f) In circumstances in which there were difficulties faced in servicing the relationship with Equitix given the rejection by the latter of Venti assets, pressing for Mr Slater's share to be restored to equality in relation to future tranches, and seeking to be paid a commission at a meeting on 22 January 2018.

iii) Mr Walker and Mr Dyer were unaware that their emails were being secretly intercepted and read by Mr Glenn, and only realised that this was what Mr Glenn was doing once matters came to a head on 15 February 2018. In respect of these secret interceptions, it is their case that:

a) Mr Glenn can have had no good reason for this conduct, and can only have been secretly reading emails in this way in order to see whether Mr Walker or Mr Dyer were onto the fact that he was stealing monies, an example being the £9,600 paid by FID to FAM as "legal fees" but then paid by FAM to Mr Glenn's and his wife's overdrawn bank account;

b) This conduct amounted to a gross breach of trust on Mr Glenn's part, who himself recognised that if Mr Walker or Mr Dyer had found out about it, then that would be the end of the relationship between them and Mr Glenn.

iv) In view of their concerns, Mr Walker Mr Dyer decided that they should look to determine their relationship with Mr Glenn, but wished to agree a "fair exit" with him. It is said that it is in this context that Mr Walker spoke in terms of a managed exit or a "trigger is pulled", and bringing matters to a head with Mr Glenn was not intended to affect the completion of Tranches 1 and 2, and the parties' entitlements thereunder which required little or no further input from Mr Glenn.

v) However, before taking matters further, it was considered sensible to take Equitix's temperature by raising with Mr Cunningham, a relatively junior person at Equitix, the possibility of a breakup and its impact on future, as yet uncontracted business. Hence, the lunch with Mr Cunningham was arranged for 15 February 2018. It is said that it had been intended to raise with Mr Cunningham the difficulties with Mr Glenn, but ultimately it was decided ahead of the meeting not to do so on the basis it was considered that it could be counter-productive, but simply to discuss the commercial relationship with Equitix, and develop the relationship with Mr Cunnigham, for which purpose Mr Warren prepared a paper for the lunch meeting.

vi) It is Mr Walker's and Mr Dyer's case that that there was no plot behind Mr Glenn's back to exclude him, and that Mr Walker and Mr Dyer were simply exploring their options, as they were entitled to do, in the light of their genuine and serious concerns with regard to Mr Glenn. However, Mr Glenn had read emails passing between Mr Walker, Mr Dyer and Mr Warren, and had got the wrong end of the stick and convinced himself that there was a plot against him which required him to react. It is Mr Walker's and Mr Dyer's case that the Claimants' case requires the Court to misread the correspondence in question, and to adopt what Mr Walker and Mr Dyer referred to in submissions as being the "paranoid perspective" from which Mr Glenn was viewing matters.

vii) It Mr Walker's and Mr Dyer's case that Mr Glenn, adopting this paranoid perspective, decided to pull the trigger first by:

a) Attempting to raid the FIDRE Proceeds Account to pay himself and Mr Slater sums of approximately £111,000 each, and on being unable to doing so, raiding the FAM bank account for the £75,000 representing virtually all that was in that account. As to this, it is submitted that, in the light of the difficulties identified in simply paying a dividend pursuant to Articles 5.1 and 5.2 of Wind Co 1's Articles of Association, Mr Glenn must have known that he could not simply help himself to these monies, without any formality or obtaining Equitix's agreement.

b) Preventing Mr Walker and Mr Dyer gaining access to the "Fifty" Outlook email account, thereby preventing them from sending emails on that account.

c) Approaching Mr Cunningham himself, by telephone call made prior to Mr Cunningham's lunch with Mr Walker, Mr Dyer and Mr Warren, and following this up with an email raising a personal business proposition; and

d) Telephoning Mr Dyer to inform him that the relationship was at an end, and that he wanted the relationship to be wound up.

viii) It is Mr Walker's and Mr Dyer's case that, in the light of all this:

a) They were entitled to treat the relationship as at an end as from 15 February 2018, or at the very least from 17 February 2018 when the parties met at Mr Dyer's house to discuss how they would go their separate ways;

b) They were perfectly entitled to refer to Mr Glenn as a "thief", and as having stolen monies, because that is what they honestly believed in the light of Mr Glenn's actions.

c) Further, they were entitled, if not also obliged, to raise their concerns as to what they considered to be Mr Glenn's dishonest conduct with Equitix, and entitled in the light of Mr Glenn's conduct, to join in seeking to remove Mr Glenn as a director of the relevant companies, out of a genuinely held concern that Mr Glenn would seek to help himself to monies in the FIDRE Proceeds Account, or in the accounts of SPV subsidiaries, if such action were not taken.

ix) Mr Walker and Mr Glenn deny that they poisoned Equitix against Mr Glenn, and say that Mr Glenn brought Equitix's reaction upon his own head by his own actions, and that Equitix only acted after having given Mr Glenn the opportunity to explain his position to Equitix, and after Mr Glenn had been unable to provide a cogent explanation for his actions in seeking to raid the FIDRE Proceeds Account without any due process.

x) In the circumstances, there is no question but that Equitix reached its own commercial view as to how to proceed vis-à-vis Mr Glenn, and was not influenced by Mr Walker or Mr Dyer to adopt a harder position then it would otherwise have adopted.

xi) Mr Walker and Mr Glenn say that they attempted to reach a fair settlement with Mr Glenn, but this was hindered by Mr Glenn's failure realistically to react to the approach taken by Equitix. They point out that Mr Glenn was, however, able to reach a settlement with Equitix providing for the payment to him of substantial sums of money, and they deny that Mr Glenn was forced into a disadvantage is settlement.

xii) So far as FAM is concerned, it is Mr Walker's and Mr Dyer's case that Mr Glenn himself hindered its operation, and himself looked to provide asset management services for Equitix. In any event, in view of the dispute that had arisen, FAM was hopelessly deadlocked, and in the light of the breakdown in the relationship between Mr Walker and Mr Dyer on the one hand, and Mr Glenn and Mr Slater on the other hand, Equitix was entitled to, and did terminate the MSA.

168. In the above circumstances, it is Mr Walker's and Mr Dyer's case that:

i) If, contrary to their primary case and my finding, they did personally owe fiduciary duties and/or obligations to Mr Glenn and Mr Slater as partners or co-joint venturers, they did not act in breach thereof, whether by wrongly excluding Mr Glenn or by wrongly diverting business opportunities or otherwise. Rather, the parties went their separate ways in the circumstances described, and any fiduciary duties (if they ever existed between them) came to an end upon them doing so.

ii) There can be no question of any unlawful means conspiracy as Mr Walker and Mr Dyer did not intend to injure Mr Glenn and/or Mr Slater, and were not, in any event, guilty of any unlawful act. They did not breach any fiduciary duty, and they did not defame Mr Glenn because they did not say anything that they did not reasonably believe to be true, and which was not true.

iii) Further, it is Mr Walker's and Mr Dyer's case that they did not act in breach of their fiduciary duties to FAM, not least because they were not responsible for FAM ceasing to trade and losing the MSA.

iv) So far as the Claimants' case as to damages is concerned, it is Mr Walker's and Mr Dyer's case that the Claimants' case proceeds on the false premise that, but for any breach of fiduciary duty on the part of Mr Walker and Mr Dyer, the business relationship would have continued for many years and through a significant number of further tranches. It is submitted that this is unrealistic, and that the relationship between the parties was at an effective end in any event, and so no profits would have been made by any party going beyond those to be made and/or received in respect of Tranche 1/1A and Tranche 2. Mr Higgo submitted that if I found liability established, then I should invite further submissions on the question of damages and relief more generally in the light of my specific findings.

169. Mr Walker and Mr Dyer thus submit that the claim should be dismissed.

Issues arising in respect of the claims

Introduction

170. Before determining the various claims themselves, I will consider in turn the various issues that I consider that it is necessary to determine in deciding whether the Claimants' claims or any of them have been made out. I will do so on the premise that

Mr Walker and Mr Dyer did owe fiduciary duties or obligations to Mr Glenn and Mr Slater, albeit that it is my finding that no such duties or obligations were owed, and that the only fiduciary duties or obligations that were owed, were owed to the respective companies of which the Four Individuals were directors and which therefore do not permit of a personal claim by the Claimants of the present kind, albeit potentially permitting the derivative claim on behalf of FAM.

Did Mr Walker and Mr Dyer have legitimate concerns regarding Mr Glenn?

171. The first issue that I consider arises is as to whether Mr Walker and Mr Dyer did have legitimate concerns regarding remaining in business with Mr Glenn, or whether, as Mr Glenn contends, they have been confected, or at least largely confected, as a pretext to remove him from the Business, and to take for the benefit of themselves or a company under their control, business opportunities properly belonging to the Alleged Partnership or the Alleged Joint Venture, in breach of their fiduciary duties (if they existed).

172. I am satisfied that Mr Walker and Mr Dyer did have legitimate and well founded concerns about remaining in business with Mr Glenn, and that there were proper personal and commercial reasons why they were entitled to at least consider determining any relationship that gave rise to fiduciary duties and obligations, and the options that might have been available to them should they do so. In the course of closing submissions, Mr Stewart KC, on behalf of the Claimants, focused upon the pleaded case in the Defence regarding Mr Walker's and Mr Dyer's concerns. Whilst is plainly right to keep in mind the pleaded case in this respect, I consider that Mr Higgo KC was right to say that matters have moved on since the case was pleaded, and that the concerns in question have been more fully articulated in the evidence, including the parties' witness statements, and in the light of documents that have been disclosed, such that I am not confined to a consideration of the pleaded case. Certainly, no pleading objections were taken at the commencement of the trial as to the way that Mr Walker's and Mr Dyer's case had been articulated in their lengthy Trial Skeleton Argument, and the evidence adduced and tested at trial was not so limited.

173. I will deal in turn with the various points of concern that were expressed as summarised in paragraph 167(ii) above.

Use of bank accounts

174. The first matter in respect of which I consider that Mr Walker and Mr Dyer did have legitimate concerns are the matters referred to in paragraphs 167(ii)(a) to (c) above concerning Mr Glenn's dealings with the FID and FAM bank accounts, and his failure to give a proper account in respect of his dealings therewith and to properly appreciate the legitimate concerns of Mr Walker, in particular, in respect thereof.

175. The first evidence of concerns appears from an email dated 11 May 2017 from Mr Dyer to Mr Walker referring to a "frank/fraut" (sic) conversation with Mr Glenn over dinner regarding expenses. There is then the text of what I understand to be a draft email proposed to be sent by Mr Walker to Mr Glenn and Mr Dyer, the meta data of which suggests that it was prepared on 23 May 2017. This draft email makes the point,

amongst others, that all expenditure must be accounted for in detail. The draft also touched upon other payments received by Mr Glenn, including a figure of £180,000, and the question of equalisation of payments.

176. The concerns turned out to be justified, not least in relation to the £9,600 that Mr Glenn caused to be paid from FAM's bank account, described as "legal fees", to FID's bank account, and then to Mr Glenn's and his wife's overdrawn bank account on or about 27 June 2017. As already identified, this only came to light fairly recently following the disclosure of FID's bank statements. The latter had not previously been provided notwithstanding several requests for Mr Glenn to provide the same before the events of 15 February 2018. Mr Glenn sought to explain away this payment as a "mistake", but as referred to in paragraph 18(ii) above, I am driven to conclude that Mr Glenn dishonestly concealed this payment in order to appropriate the monies for his own benefit.

177. I am further satisfied that Mr Glenn attempted the same thing with the sum of £25,000 transferred from FAM to FID on 31 July 2017, described as "legal fees", of which £9,900 was then transferred to Mr Glenn's and his wife's overdrawn bank account on 1 August 2017, and of which only £14,172.32 was actually applied in meeting HCDL's legal fees. In this case, Mr Dyer contemporaneously picked up on the fact that the legal fees were only approximately £15,000, and this led to the making of equalisation payments of £10,000 to each of Mr Walker and Mr Dyer in January 2018. However, the payment of the £9,600 remained concealed and unaccounted for.

178. The above, coupled with the fact that Mr Glenn had control over the relevant bank accounts, and that FAM's account was being used to make payments on behalf of HCDL because the latter did not have its own bank account, does, in my judgment, more than justify Mr Walker's and Mr Glenn's contemporaneous concerns, and their attempts to ensure that Mr Glenn properly accounted for payments that he was making out of the relevant bank accounts.

179. Mr Walker's and Mr Dyer's concerns were raised again by Mr Walker in an email dated 30 September 2017 to Mr Glenn and Mr Dyer where Mr Walker said, amongst other things, that he felt "very uncomfortable not knowing where we are." Matters were taken up again in correspondence in 2018, and there was an important exchange of emails on 7 and 8 February 2018.

180. Prior to this latter exchange, there had been an exchange about fixing an agreed amount for expenses and, in an email dated 7 February 2018, Mr Glenn picked up on Mr Walker's idea of £2,000 per annum to cover incidentals. He then suggested a payment of £2,000 for the previous year, and a payment of £1,500 for the current year. In an email in response sent the same day, Mr Walker said that he would like the position to be clear, and all figures reconciled before <u>any</u> payments were made, and he identified a need for: "Our own P&L for FAM." Mr Glenn responded that Sarah (a representative of FAM's accountants) was "on the case", but he then caused payments of £3,500 to be paid to each of himself, Mr Walker and Mr Dyer. Mr Dyer responded to Mr Glenn the following day expressing surprise that £3,500 had been sent to his account regarding expenses and made the point that there had been no netting off of any money spent last year, and so the payment was "a little premature".

In response to Mr Glenn's email, Mr Walker made it clear that the payments of £3,500 should not have happened, referring to his email regarding "a full reconciliation". He "formally" asked that all accounts were frozen, except for normal course of business payments, until all was reconciled. He continued: "No money should go to individuals until we have financial sign off from all re past monies. I think this is wrong." I had the benefit of seeing both Mr Walker and Mr Dyer cross examined with regard to these concerns. Mr Walker, in particular, came across to me as being very genuine with regard to what he said about the profoundly serious concerns that he had with regard to payments not being properly accounted for by Mr Glenn, and about remaining in business with a man who behaved in this way.

181. This is how matters rested when the events of 15 February 2018 occurred, and this exchange of emails on 7 and 8 February 2018 is, I consider, highly relevant as to how and why the parties behaved and reacted in the way that they did on 15 February 2018 and thereafter.

182. It was submitted on behalf of the Claimants that Mr Walker could have drafted a policy regarding the payment of expenses. To the extent that this was a criticism of Mr Walker, I consider it to be an unfair one. It is, as I see it, clear from the correspondence that he sought to reach agreement with regard to how expenses should be dealt with, and with regard to reconciling payments, but that Mr Glenn simply failed to grasp the seriousness and importance of the situation, whether wilfully or otherwise.

How Mr Glenn came across to investors

183. Mr Glenn was plainly aggrieved by the suggestion that he did not attend an investor meeting with Downing LLP on 20 November 2017, as revealed by the tenor of an e-mail sent that day to Mr Walker and Mr Dyer in response to an email from Mr Walker in which he had said that it was proposed that only Mr Walker and Mr Warren attend the meeting. In an earlier exchange on 8 November 2017 between Mr Warren and Mr Walker, Mr Walker had suggested that Mr Glenn should definitely not attend the meeting with Downing LLP. One asks why Mr Walker might have so suggested. Was this an early attempt to exclude Mr Glenn from the Business, or was it out of genuine concern as to how Mr Glenn might perform at the meeting? I am satisfied that it is the latter explanation.

184. This is consistent with concerns that were expressed following a meeting the following day, 21 November 2017, with Grosvenor. In an email exchange on 21 November 2017, following the meeting, Mr Walker said to Mr Warren that Mr Glenn's "USA comment annoys me. We need a truth and reconciliation piece," to which Mr Warren responded: "Absolutely, he's a liability." This does, to my mind, demonstrate that Mr Walker and Mr Warren had genuinely held concerns at the time as to Mr Glenn's performance at investor meetings. As already touched upon, Mr Glenn's response in giving evidence was that remarks such as these in email correspondence amounted to "papering up", i.e. creating a false or exaggerated paper trail of complaint. I reject this suggestion.

185. As to the meeting with Grosvenor on 21 November 2017, the specific complaint related to what Mr Glenn had said about opportunities in the pipeline in the USA, and a concern that Mr Glenn had exaggerated the position. Mr Warren's evidence in relation to this meeting went unchallenged at trial. Whilst Mr Walker was challenged on the point, this was by reference to Mr Walker having made observations about prospects in the USA in support of an application for banking facilities over a year previously. Mr Glenn did say in evidence, that there were prospects in the USA following on from the collapse of the LightBeam IPO, but I am satisfied that Mr Walker and Mr Warren did have a legitimate concern that Mr Glenn had inappropriately exaggerated the position to Grosvenor, and that this had caused considerable embarrassment to them and that they had a concern that what they reasonably perceived to be his unprofessional conduct would be repeated at future investor meetings.

Mr Glenn's attitude to the relationship with EY

186. Mr Walker's and Mr Dyer's principal concerns related to an email dated 16 January 2018 that Mr Glenn sent to Mr Warren and the entire EY team working for the Business, complaining that "there doesn't appear to have been much progress" with sourcing investors, and saying that Mr Glenn was "keen to avoid the Downing fiasco." Mr Walker and Mr Dyer were copied into this email, and Mr Walker replied noting that this had caused "upset", and he suggested an urgent meeting. Mr Dyer also responded to say that he was upset at the tone. Mr Glenn responded to say that he did not see any problem with what he had done, and that he had put in a call to speak to Mr Warren one-to-one.

187. However, Mr Glenn's mindset at the time is further revealed by a draft letter to Mr Warren dated 19 January 2018, that was apparently not sent which included statements that:

> "… the Fifty team are not a happy team", and "there is quite a bit of back stabbing and under mining [sic] going on – most of it directed at me"... "if you piss me and Jon of, [sic] we have now [sic] alternative other than to go over your head and fire an Exocet at the EY board …… which would be awfully messy and we would all lose"..

188. Although Mr Walker and Mr Dyer did not see the latter document, they say that the email dated 16 January 2018 and subsequent exchanges caused them concern that that Mr Glenn was undermining the relationship with Mr Warren and EY, and I can understand why Mr Walker and Mr Dyer now, not unreasonably, say that that this email was a catalyst for the termination of the business relationship between them and Mr Glenn.

189. So far as the suggestion of "back stabbing and under mining (sic)" is concerned, I can only conclude but that this was a misreading of the position on Mr Glenn's part caused by his secret surveillance of emails.

Other concerns

190. I consider that, in circumstances in which there were difficulties faced in servicing the relationship with Equitix given the rejection by the latter of Venti assets, Mr Walker and Mr Dyer had genuine concerns about an attempt on 13 February 2018 by Mr Glenn to agitate for Mr Slater's share in respect of Project Eva to be increased from 4% to 25%, in respect of which Mr Walker commented in an email to Mr Dyer that: "if he thinks Jon entitled to 25% I'm resigning now." Further, Mr Walker and Mr Dyer had what I consider to be legitimate concerns, in the circumstances, regarding Mr Glenn asking to be paid commission at a meeting on 22 January 2018.

191. A further consideration was Mr Glenn's financial position, and the discovery that unbeknown to Mr Walker and Mr Dyer, Mr Glenn had borrowed significant sums from Mr Slater. On 9 February 2018, Mr Glenn emailed Mr Walker, copying in Mr Dyer, raising the question of monies payable following the refinancing of FIDRE, and saying that he needed to get this sorted and to get some monies into his account, going on to say that if this could not be sorted within the next week, he was going to have to ask for a loan against his share of the funds already allocated for the purpose.

Why did Mr Glenn secretly read emails?

192. It is relevant to consider why Mr Glenn started to read emails passing between Mr Walker, Mr Dyer and Mr Warren. He says, in short, that he considered that he was being frozen out, as evidenced by the unwillingness to have him at the meeting with Downing LLC on 20 November 2017 and him not being invited to social events that he considers that he might otherwise have been expected to have been invited to.

193. It is Mr Glenn's evidence that he began to monitor emails from late October/early November 2017, and there is an issue as to whether he was monitoring emails when the email exchange took place between Mr Walker and Mr Warren on 8 November 2018. I do not consider that it strictly necessary to determine this issue. However, I consider that the likely reason for Mr Glenn beginning to monitor emails was because Mr Walker and Mr Dyer had begun to raise concerns about Mr Glenn's failure to account properly for his dealings, in circumstances in which he was aware that he had taken monies that he could not properly account for. In the circumstances, it was in his interests to keep an eye on exactly how much Mr Walker and Mr Dyer knew. I consider that it is likely that, thereafter, in the course of monitoring emails, he came across emails that he read as indicating that Mr Walker and/or Mr Dyer wished to exclude him. However, whatever Mr Glenn might have perceived, I do not consider that he had any reasonable grounds for concluding that Mr Walker and Mr Dyer did wish to exclude him, at least prior to correspondence in February 2018 to which I will return. I agree with the submissions made on behalf of Mr Walker and Mr Dyer that the likelihood is that Mr Glenn perceived that there was a conspiracy against him to exclude him when there was not, and that this informed his thinking and his actions. Hence the contents of his draft email dated 19 January 2018, and his mindset when it did come to the events of 15 February 2018.

194. I certainly do not consider that there was any proper justification for Mr Glenn secretly monitoring, and forwarding to himself on a different email account, emails as between Mr Walker, Mr Dyer and Mr Warren. As I have said, Mr Glenn, himself, accepted that if this had become known to Mr Walker and Mr Dyer, then that is likely to have

been the catalyst for the end of the relationship between him and Mr Walker and Mr Dyer. This is a material consideration when one considers that, at some time after the meeting on 15 February 2018 to which I will return, Mr Walker and Mr Dyer did get wind of the fact that emails must have been monitored, because that was the only way that Mr Glenn could have known to request a copy of the paper that Mr Warren had prepared for the lunch meeting with Mr Cunningham on 15 February 2018. It is likely to have informed in some way their thinking and attitude towards Mr Glenn at that point, and not unreasonably.

What was Mr Walker's and Mr Dyer's thinking in February 2018?

195. It is necessary to consider at this stage Mr Walker's and Mr Dyer's thinking in February 2018, and the purpose behind the lunch meeting with Mr Cunningham on 15 February 2018, and whether it formed part of a plot to oust Mr Glenn. This is best informed by a consideration of the contemporaneous emails.

196. On 2 February 2018, at 17:29, Mr Walker emailed Mr Dyer and Mr Warren with the subject "*My Thoughts – Private – Attached*". The attached document detailed issues that had been raised by Mr Glenn, and Mr Walker's response thereto, listed some ten issues relating to "PG Behaviour", and listed a number of "small matters which go to the heart of the partnership". Mr Walker noted that:

> "We are at a cross-road in the partnership. In my personal view he has not been honest with us, when asked he still failed to be open. It is not the quantum - it is the behaviour. He does not respect a partnership approach…
>
> His business rationale and sole trader mentality makes him unsuitable to be a partner. My trust in him has been lost. I cannot see how I can find that again.
>
> I want to do the fair thing, by us all. It is either a managed exit or a trigger is pulled".

197. What I read Mr Walker to be saying at this stage is that, in the light of the matters that he had identified relating to Mr Glenn's behaviour, he considered that the relationship with Mr Glenn had irretrievably broken down. He wanted to do the fair thing, which would be to try and negotiate some form of agreed exit, but if that was not possible, then more drastic action might be required.

198. Mr Dyer responded the following day at 10:51, saying: "It is hard to disagree with anything you say". Mr Warren replied stating: "I think you are both confirming what you already know. Worth further thought, and certainly would advise you to be crystal clear on the legalities and process of asking him to leave… Also would suggest that if you did go down this path, you should consider Jon's future role too… You certainly have my full support if this is what you want to do, both now and in the future".

199. Mr Walker responded to Mr Dyer and Mr Warren at 18:57 on 4 February 2018, saying:

> "Thanks both. Plenty to think about.
> In terms of legalities – we have no shareholder agreement and each deal is done on a case by case basis assuming a defined split.
> This would clearly cover Eva and Frank – and their respective refis – quite rightly.
> Thereafter it is more straightforward. Would either PG or JS claim some sort of 'intellectual property' in the idea- in my view there is none – we have all created this equally.
> …
> FAM is less clear as it has an on-going contract with the platform and is owned equally. That would take a little more unravelling.
> WE three need to meet face to face."

200. I do not read into this anything more than Mr Walker considering how a split from Mr Glenn, and also possibly also Mr Slater, might be properly and lawfully achieved.

201. There then followed the important exchange of emails on 7 and 8 February 2018 that I have referred to in paragraphs 179 and 180 above, in which Mr Walker had also observed, in the context of Mr Glenn causing the payments of £3,500 to be paid to each of himself, Mr Walker and Mr Dyer: "if I needed a straw, this is it". The Claimants rely upon the fact that Mr Walker also noted that he was "cc'ing Ben as an investor and hopeful partner". I do not consider that this necessarily points to anything untoward, with Mr Walker merely, it seems to me, giving consideration to how matters might proceed were there to be a split with Mr Glenn, and also potentially Mr Slater.

202. On 9 February 2018, following the email from Mr Glenn of that date referred to in paragraph 191 above, Mr Walker emailed Mr Dyer stating: "Enough already!!!". The email from Mr Glenn had commented on a reconciliation exercise in respect of expenses, but it is clear from Mr Walker's email to Mr Dyer, that what caused more concern was that in his email, Mr Glenn had suggested that he was in financial difficulties, and that he needed to "get monies into" his account, suggesting that he would have to ask for a loan against his share of "the funds allocated for this purpose" if things were not sorted within the next few days. In this context, I read Mr Walker's reference to "Enough already" as being an observation that he considered that the time had come to bring matters to a head with Mr Glenn in the manner envisaged in the earlier correspondence.

203. The Claimants rely upon an email sent by Mr Walker to Mr Warren (copying in Mr Dyer) at 08:08 on 10 February 2018, in which Mr Walker referred to an unnamed individual who had allegedly done business with Mr Glenn in the past, and his alleged view that Mr Glenn was "appalling and cannot be trusted". Mr Walker went on to say: "You are an investor/creditor of the business and it is right to hear our concerns and give your views. I do not want to pull any triggers until we have spoken to Eqtx to ensure they would back the remaining team".

204. Mr Dyer replied at 09:26 stating; "The trust, what little there was has gone!".

205. Mr Warren replied at 11:57, saying:

> "I think we all know what needs to be done.
> Adam, why don't we get an audience with Tom to run this through with him…
> Do you want to see if he's available this week?
> Suggest all three of us go see Tom, and depending on his guidance, deal with rest of the Equitix bunch from there. I have no concerns whatsoever about their continued support".

206. The reference to "Tom" was to Mr Cunningham of Equitix with whom the Defendants were in close contact and who was primarily responsible for asset management services at Equitix.

207. At 15:29, Mr Walker responded stating:

> "Tom was up for a drink etc.
> I will see if he's around Thursday? We know we are all free.
> I would feel more comfortable going into a meeting with PG knowing the Eqtx position.
> Glad to hear Ben's thoughts re them
> Jerry – we need to think about an offer to PG for him to move on. He and Jon hold 25% each of FAM, so that needs some thought."

208. At 18:58, Mr Dyer responded stating:

> "I think good to sound out Tom asap
> Won't be an easy conversation but a necessary one
> Adam, agree re Fam, Ben do you want to 'buy in' ie somehow use your exposure to Fifty?"

209. At 00:26 on 11 February 2018, Mr Walker responded to say: "Tom replied immediatemant. Suggest lunch on thurs… Let's chat re tactics".

210. A lunch meeting at Le Caprice restaurant in London was arranged, and subsequently took place between Mr Walker, Mr Dyer, Mr Warren and Mr Cunningham on Thursday 15 February 2018 ("**the 15 February Lunch**"). I will return to consider the detail of the 15 February Lunch in due course.

211. The Claimants point to the fact that in the Defence, Mr Walker and Mr Dyer allege that "chat re tactics" was merely "a reference to discussions that the Defendants and Mr Warren wished to have with Mr Cunningham about purely commercial matters" (see paragraph 30). The Claimants submit that messages subsequently exchanged on 11 February 2018 in a WhatsApp group containing Mr Walker, Mr Dyer and Mr Warren make clear that it was nothing of the sort:

    i) Mr Walker (14:16): "Toms reply re lunch on thurs … need to agree what we re saying and if we add Jerry … TC said … "Cracking idea. Let me know where and when later in the week";

ii) Mr Dyer (19:46): "Am confused. Am I coming or not? Again don't mind but if it's the exit of P think united front better?";

iii) Mr Warren (19:50): "I don't think this will be a massive thing for Tom, but it would be useful to do the United front bit, and probably talk him through how we're planning on tackling the origination going forward";

iv) Mr Walker (23:12): "Origination. This was PGs role… If we three could talk thro before mtg Tom so much the better. Onwards mes braves".

212. On 13 February 2018, the Defendants exchanged further WhatsApp messages as follows:

i) Mr Walker (17:41): "What do we do with Jon – ask him to move on also ? … Wild thought – what about Tom C being part of the team – he can asset manage. Knows what investors want. Would earn more and a better replacement to pg ??";

ii) Mr Dyer (17:55): "Think we need Tom where he is for now! But long term?? Maybe we have a chat with Jon explain our position see what he says might be worth 4%. See what Ben thinks";

iii) Mr Walker (18:47): "Agree. Not sure re jon to be honest. What's he actually done for FIDRE – left some £ behind that we worked to create".

213. At 21:40 on 14 February 2018, Mr Walker emailed Mr Dyer stating: "Do we mention the account dealings ? Re Jon. We should speak to him immediately before speaking to pg. if we offered for him to retain 4% might that swing him our way. I cannot believe he will endorse pg actions". Mr Dyer responded at 22:30 stating: "Let's speak in the morning".

214. The Claimants rely upon the fact that in their Defence, Mr Walker and Mr Dyer allege that the reference to "swing him our way" was, to the best of their recollection, merely to "the possibility of persuading Mr Slater to remain in the business and exercise influence over Mr Glenn to adjust his conduct" (paragraph 31.3). This is said to be hopeless and plainly inconsistent with the messages referred to above.

215. Also on 14 February 2018, Mr Warren sent the Defendants (and not the Claimants) a paper prepared by EY and entitled "Coral Platform – Value carve out discussion". In an email timed at 19:04, Mr Walker said that he had "some hard copies to bring along tomorrow to discuss with Tom". In paragraphs 109-110 of his witness statement, Mr Walker asserts that it was "a very bland document" and "not a strategy to create a business without PG and JS". He admits taking the paper to the 15 February Lunch to show to Mr Cunningham, but maintains that: "although I took the document along to the meeting in my bag, it was never shown to Tom or even discussed." I note that although this document may have been produced shortly prior to the 15 February Lunch, it deals with more general issues concerning the Business going forward and the cost of capital. It does not address or touch upon any possible departure from the Business of Mr Glenn or Mr Slater. I accept Mr Walker's evidence that it was not part

of any strategy to create a business without Mr Glenn and Mr Slater, but rather was produced to promote more generally the relationship with Equitix, albeit that Mr Walker's and Mr Dyer's association with the document might have been intended to help firm up their own relationship with Equitix. I consider that it might well have been produced at the lunch notwithstanding Mr Walker's evidence to the contrary.

216. It is the Claimants' case that the communications exchanged in early February 2018 make perfectly clear that the reason the 15 February Lunch was arranged was for the Defendants and Mr Warren to attempt to get Mr Cunningham "on side" in their dispute with Mr Glenn, and persuade Mr Cunningham to procure Equitix's continued involvement in Project Coral to the exclusion of the Claimants, or at least Mr Glenn.

217. I consider that the Claimants' case reads too much into the communications in question. It is clear that Mr Walker and Mr Dyer, with the assistance of Mr Warren, considered it sensible to sound out the views of Mr Cunningham as to whether Equitix would continue to back them if Mr Glenn, and also possibly Mr Slater, were no longer involved in the Business. In the context of the deteriorating relationship between themselves and Mr Glenn and the limited role played by Mr Slater in the Business, I do not see anything inherently wrong in this even if they did owe fiduciary duties to Mr Glenn and Mr Slater.

218. Again, I read the reference to "pull any trigger" in Mr Walker's email timed at 08:08 on 10 February 2018, as simply being a reference to bringing matters to a head with Mr Glenn. I note Mr Walker's observation in his later email timed at 15:29 the same day about feeling more comfortable going into a meeting with Mr Glenn knowing the Equitix position. This, to my mind, supports Mr Walker's evidence that he was looking for an orderly exit with Mr Glenn on agreed terms following a meeting, rather than simply a forced expulsion of some kind. I consider that this is further supported by the reference (addressed to My Dyer) in the same email to needing to think of an offer to Mr Glenn "for him to move on".

219. I consider that it is in this context that the references to "tactics" in respect of the 15 February Lunch require to be considered, as do the references to how Mr Slater might be approached, and indeed to Mr Cunningham himself potentially coming on board going forward if Mr Glenn were to leave. It is, I consider, important to bear in mind that we are concerned with internal communications between Mr Walker and Mr Dyer, albeit also including Mr Warren who, by this stage, is clearly on their side. Inevitably, they will have wished to explore various options that might have been available to them given the circumstances in which they found themselves with the deteriorating relationship with Mr Glenn which, as I have held, was not contrived as a pretext to exclude Mr Glenn, but was a result of the genuine concerns that they had regarding remaining in business with him.

220. I reject the Claimants' contention that the 15 February Lunch was arranged to disparage Mr Glenn in order to get Equitix on Mr Walker's and Mr Dyer's side when the parties went their separate ways. Rather, I consider that it was to sound out Mr Cunningham before the decision was taken as to whether Mr Walker and Mr Dyer should go their separate way having discussed with Mr Glenn, if not also Mr Slater, terms upon which the parties might do so. On the other hand, I do not accept the

contention in paragraph 30 of the Defence that the reference to "chat re tactics" was a reference to discussions "purely about commercial matters". It seems to me that Mr Walker, Mr Dyer and Mr Warren were preparing for the 15 February Lunch with a view to raising the issue of the potential termination of their arrangement with Mr Glenn, but also with a view to discussing commercial matters more generally as evidenced by the preparation of Mr Warren's paper.

221. I consider that my findings in the previous paragraph are supported by an email sent by Mr Walker to Mr Dyer and Mr Warren at 08:13 on 15 February 2018. This was sent ahead of a telephone discussion planned for 08:30 the same morning. In the email, Mr Walker set out his thoughts "for the 3 areas to raise with TC", being "Business Approach Style", "Origination", and "Financial Management". The email identified that:

> "For the above reasons we would wish to agree a fair exit with PG from the business and continue with Equitix. All of the active team and key advisers will remain in place and have confirmed this. They have each had their issues with PG. If we cannot agree a deal with him we would propose closing formally winding up Fifty and approaching Equitix as a new team, being the same but without PG. We would undertake to ensure, personally, that none of this would affect the current T1 and T2 work. PG is not required for this work."

222. The email then sought Mr Warren's thoughts on the above - "especially his lack of financial discipline - do we raise? It's all true, ignoring us, acting on his own et cetera. But might that reflect on us?" Mr Walker then wished Mr Warren "good luck with the pitch" – a reference to a pitch that Mr Warren was to make at another unconnected meeting that morning.

223. The contents of this email suggests to me that Mr Walker and Mr Dyer contemplated explaining the circumstances behind their falling out with Mr Glenn to Mr Cunningham, but had a concern that laying it on too thick regarding Mr Glenn's conduct might be counter-productive by reflecting on them.

224. I consider it highly unlikely that any of Mr Walker, Mr Dyer and Mr Warren have, after this length of time, an accurate actual reflection as to what was discussed at any subsequent meeting at 08:30. However, I consider that the contemporaneous documentation, when taken together with what the witnesses can recall, suggests that the likelihood is that at some stage prior to the lunch, Mr Walker and Mr Dyer decided that it would be best to play down any significant discussion regarding why their relationship with Mr Glenn had broken down out of concern, for the reasons touched on in the email timed 08:13, namely that doing so, and thereby disparaging Mr Glenn, could be counter-productive. In reaching this conclusion, I have considered the contents of Mr Walker's 09:51 email that I refer to further below, and the fact that the WhatsApp messages suggest that there was no further contact with Mr Warren after the telephone call arranged at 08:30 and before they met with Mr Cunningham at the lunch in order to discuss further what was to be said about Mr Glenn. However, this does not mean that the approach regarding not disparaging Mr Glenn was not agreed

upon in the telephone call arranged at 08:30 or made clear to Mr Warren at the lunch itself. Alternatively, there might have been another telephone call.

What was said at the 15 February Lunch?

225. The evidence is to the effect that Mr Glenn had, through intercepting Mr Walker's and Mr Dyer's emails, found out that the 15 February Lunch was to take place, and that he telephoned Mr Cunningham, essentially to put a marker down, as well as to raise a business proposition of his own.

226. Each of Mr Walker, Mr Dyer and Mr Warren gave evidence to the effect that there was no discussion concerning Mr Glenn or his conduct at the 15 February Lunch, Mr Walker and Mr Dyer referring to a decision not to raise these matters believing that it would be counter-productive to do so. Mr Walker and Mr Dyer had sought to serve a witness summary in respect of Mr Cunningham, and to call him as a witness. However, they only applied to do so at the Pre-Trial Review, and their application was rejected as being too late. Mr Walker and Mr Dyer say that it would have been open to the Claimants to cross examine Mr Cunningham had they not objected to him being called as a witness, and that that is something that I should take into account. I do not consider that it is appropriate for me to do so in circumstances in which the application to serve a witness summary and call Mr Cunningham was rejected on procedural grounds. However, I do consider that Mr Walker and Mr Dyer are entitled to rely upon what Mr Cunningham said in a subsequent telephone conversation with Mr Glenn, that Mr Glenn recorded. The transcript records Mr Cunningham as having said that, following the telephone call that he had received from Mr Glenn, when it came to the 15 February Lunch, and in the light of what had been said by Mr Glenn, he closed down any conversation at the lunch in respect of Mr Glenn when Mr Walker and Mr Dyer had sought to raise the subject matter.

227. A number of points have been taken by the Claimants in respect of what Mr Cunningham is recorded as having said in the course of this conversation. Firstly, it is said that I should not accept anything that Mr Cunningham might have said in the course of the relevant telephone conversation as true given that Mr Cunningham has given, so it is said, a false account to Mr Walker with regard to an encounter with Mr Glenn shortly prior to the incident at Waterloo Station in November 2018 involving Mr Glenn and Mr Walker. There is contemporaneous documentary evidence to suggest that Mr Cunningham had met Mr Glenn for dinner on the evening in question, whereas Mr Cunningham informed Mr Walker that he had merely seen Mr Glenn on the other side of a restaurant that evening. Secondly, it was, perhaps, in Mr Cunningham's interests to inform Mr Glenn in the telephone call with him that there had been no discussion about him at the 15 February Lunch. Thirdly, the point is made that Mr Cunningham's account to Mr Glenn differs from that of Mr Walker and Mr Dyer in that whilst Mr Cunningham says that he closed down any conversation with regard to Mr Glenn, Mr Walker's and Mr Dyer's case is that the subject was never raised.

228. I do not consider that Mr Cunningham's account can be so easily dismissed. In talking to Mr Walker, he had a motive for playing down his contact with Mr Glenn in November 2018 given the acrimonious split between Mr Walker and Mr Glenn. It is

true that in speaking to Mr Glenn in the recorded conversation, Mr Cunningham may have had a motive for playing down the extent of any discussion about Mr Glenn at the 15 February Lunch, and I take this into account.

229. Having regard to the evidence as a whole, and taking into account and giving due regard to what the Claimants say regarding how matters were expressed by Mr Walker and Mr Dyer in pre-action correspondence and in their Defence, I consider that the more likely explanation is that whilst Mr Walker and Mr Dyer probably did decide that it would be counter-productive to disparage Mr Glenn at the 15 February Lunch, they did raise the fact of the difficulties of their relationship with Mr Glenn as they had developed at that time in the context of a more general discussion as to commercial matters, with a view to sounding Mr Cunnigham out and to get the message across that if the relationship with Mr Glenn did go the way that it appeared to be going, they were keen to understand how that might affect the relationship with Equitix which they wished to maintain. I consider it likely that in response, Mr Cunningham, who had by then received a call from Mr Glenn, made clear that that the question of the relationship with Mr Glenn was not a discussion that he wanted to get into, whereupon there was no further significant discussion with regard to Mr Glenn. I consider it likely that the lunch then proceeded as an amicable social event, but with Mr Walker and Mr Dyer using the opportunity to seek to strengthen their relationship with Mr Cunningham, quite possibly bringing up the subject of the paper that EY had prepared.

230. Both sides rely upon what was said in WhatsApp messages sent during the course of the day, and into the evening on 15 February 2018 in order to support what they say was said during the course of the 15 February Lunch.

231. In particular, the Claimants rely upon the following messages as supporting their case that there had been a detailed discussion with regard to Mr Glenn during the course of the February 2015 Lunch at which Mr Glenn had been disparaged, notwithstanding Mr Walker's and Mr Dyer's protestations that there had not:

    i) At 09:51 (i.e., after Mr Walker, Mr Dyer and Mr Warren had spoken at 08:30 as referred to above), Mr Walker sent a message to Mr Cunningham stating: "Tom. See u shortly. Any objection to Ben joining J and I – there's something v confidential we'd like to talk thro".

    ii) At 16:15, i.e. following the lunch, Mr Walker sent a message to Mr Cunningham saying: "Tom. Update. Peter has called us to say 'he feels we need to wind things up'. He said he knew you and I has (sic) lunch as he spoke to you ! As discussed at lunch we will take this forward for you and Equitix";

    iii) At 20:08, Mr Cunningham messaged Mr Walker to say: "Peter emailed me this afternoon (after speaking to you earlier) and asked me to give him a call tomorrow, as he has a business proposal. I don't want to get stuck in the middle of it all, or give the impression to Peter that we have spoken about the 'situation'. Should I call him or not? If he brings the subject up, I will tell him it's none of my business and I don't want to discuss it. Thoughts?";

iv) At 20:16, Mr Cunningham messaged Mr Walker saying: "I'll avoid phoning him if you are going to act swiftly. If you wait till Jerry gets back I will phone him, so that he doesn't think meeting you today was to discuss him… We will move this forward together as a team, need to use Ben's influence to push things through".

232. I do not regard these messages, properly analysed, as undermining the evidence of Mr Walker and Mr Dyer, or indeed that of Mr Warren, with regard to what was said at the February 2015 Lunch. I read the messages relied upon by the Claimants in the following way:

i) The message timed at 09:51 asks Mr Cunningham as to whether he has any objection to Mr Warren joining him and Mr Dyer. It is in that context that the "something v. Confidential" to talk through is mentioned. Mr Walker accepted under cross examination that this must have been a reference to discussing the situation with Mr Glenn. However, even if that is right, it does not mean that that Mr Walker intended to disparage Mr Glenn, or do anything more than identify that issues had arisen with Mr Glenn, and that Mr Walker and Mr Dyer intended to sound out what Equitix's position was before they met with Mr Glenn to discuss going their separate ways.

ii) As to the message timed at 16:15, I do not attach particular importance to Mr Walker's use of the word "Update". This is a word that Mr Walker seems to use fairly frequently in his messages, and the reference to Mr Glenn having telephoned regarding winding things up was relevant whether or not Mr Glenn had been discussed at any length at the lunch. The reference to "As discussed at lunch we will take this forward for you and Eqtx", does not mean that there had been anything more discussed at the lunch other than that difficulties has arisen with Mr Glenn, and that if this resulted in a split then Mr Walker and Mr Dyer at least would be available to service the relationship with Equitix. Further, this has to be read in the context of Mr Glenn having, since the lunch, said that he felt that things needed to be wound up, and Mr Walker believing that Mr Cunningham may have needed some reassurance that this would not affect taking the Business going forward generally in the way that might have been discussed at the lunch.

iii) So far as the message timed at 20:08 is concerned, the Claimants' key point is that this message refers to Mr Cunningham not wanting to give the impression to Mr Glenn that "we have spoken about the 'situation'", which is said can only be the situation concerning the relationship with Mr Glenn. It is said that this shows that this "situation" must have been discussed at the 15 February Lunch. However, I was taken in submissions to a WhatsApp message sent by Mr Dyer in the WhatsApp group between himself and Mr Walker and Mr Warren, at 08:22 the following day (16 February 2018), in which Mr Dyer said: "Adam spoke to Tom yesterday." This must, it seems to me to be a reference to a conversation other than at the lunch because Mr Warren had been present at the lunch, and so Mr Dyer would not have needed to refer to it unless referring to a conversation outside the lunch. Although Mr Walker did not refer to any such conversation in his witness statement, this was probably because he did not

recall it after this length of time. Mr Dyer's message thus suggests that there was a conversation between Mr Walker and Mr Cunningham at some point the previous day, most likely at some stage after the lunch. I consider that the likelihood is that it was in the context of such a conversation that took place after Mr Glenn had telephoned Mr Dyer to talk about winding things up, that the "situation" was discussed as between Mr Walker and Mr Cunningham, with Mr Walker reassuring Mr Cunningham that he and Mr Dyer would be in a position to take matters forward and seeking to get him onside at that point in the light of developments. I do not therefore consider that Mr Cunningham's message timed at 20:08 on 15 February 2018 does, properly considered, undermine Mr Walker's, Mr Dyer's and Mr Warren's evidence as to what was discussed at the lunch.

iv) This leaves the message timed at 20:16 in which Mr Cunningham refers to wanting to avoid Mr Glenn thinking that "meeting you today was to discuss him." However, whether or not Mr Glenn was discussed at the meeting, Mr Cunningham would still have an interest in not wanting Mr Glenn to believe that he had been discussed. More so perhaps, if he had not in fact been discussed.

233. I therefore proceed on the basis that there was very limited discussion concerning Mr Glenn during the course of the 15 February Lunch, and that it is unlikely that Mr Walker and Mr Dyer used the opportunity of the lunch to disparage Mr Glenn with a view to getting Equitix on their side. At the most, I consider that Mr Walker and Mr Dyer used the opportunity of the lunch to sound Mr Cunningham out by identifying that difficulties with Mr Glenn had arisen such that they might end up parting company with him, with a view to judging Mr Cunnigham's reaction and making it clear that they would still be available to service Equitix's needs. However, Mr Cunningham made clear that he was not interested in any substantive discussion regarding Mr Glenn.

Who pulled the trigger first?

234. I do not consider that any triggers were pulled by Mr Walker or Mr Dyer prior to the February 2015 Lunch, at the lunch itself, or in the immediate aftermath thereof. They had their opportunity to meet with Mr Cunningham in order to sound him out as best they could in the circumstances, and given the constraints that I have identified, and, following the lunch, they would no doubt have had to consider what to do next given their outstanding issues with Mr Glenn before meeting him to discuss the parties going their separate ways.

235. I consider that the focus at this point must be upon Mr Glenn. As I have identified, he had read the internal correspondence as between Mr Walker, Mr Dyer and Mr Warren and would therefore have been aware of their concerns and that they were meeting Mr Cunningham. He plainly feared that they were moving to exclude him, but there is force in the point taken on behalf of Mr Walker and Mr Dyer that Mr Glenn was coming at matters from something of a "paranoid perspective", not least because I consider that Mr Walker and Mr Dyer did intend to have a genuine discussion with Mr Glenn, following the meeting with Mr Cunningham, in order to discuss a "fair exit" with Mr Glenn.

236. I have mentioned Mr Glenn's call to Mr Cunningham prior to the lunch on 15 February 2018, but Mr Cunningham's WhatsApp message timed at 20:08 on 15 February 2018 suggests that, later in the day, after he had spoken to Mr Dyer in the circumstances to which I will return, Mr Glenn telephoned Mr Cunningham again to say that he had a "business proposal" that he wished to discuss. This suggests to me that, in the light of what he picked up from the correspondence that he had eavesdropped upon, Mr Glenn had decided to pursue his own independent strategy.

237. It is in this context that Mr Glenn telephoned Mr Dyer in the circumstances that I have already considered in paragraph 18 (iv) above dealing with the credibility and reliability of Mr Glenn as a witness. As I have therein identified, Mr Glenn says in paragraph 60 of his witness statement that the purpose of his call to Mr Dyer was to thrash out how the parties were going to "work together moving forward". This is inconsistent not only with Mr Dyer's evidence, but, I consider, with the contemporaneous documentation that I referred to in paragraph 16(iv) above. In particular, there is, as I see it, no good reason why Mr Walker would have contemporaneously messaged both Mr Cunningham and Mr Warren to say that Mr Glenn had called to say that "he feels we need to wind things up" if he had not done so but had, instead, suggested thrashing things out with a view to working together moving forward. I note also the WhatsApp message sent by Mr Dyer within the group with Mr Walker and Mr Warren at 10:32 on 16 February 2018 in which Mr Dyer said that he had just spoken to Mr Glenn, and that "he is clearly wanting to go it alone in some way shape or form."

238. In these circumstances, I consider it likely that during the course of his conversation with Mr Dyer on 15 February 2018, Mr Glenn did say that he considered that the relationship was at an end, and that he wanted it wound up.

239. There is some inconsistency in Mr Walker's and Mr Dyer's case as to when Mr Glenn telephoned Mr Dyer on 15 February 2018. In correspondence in 2022, it was suggested that the call was during the course of the lunch. It is Mr Walker's and Mr Dyer's evidence now that the telephone call was made whilst they were in a bar following the lunch, when Mr Dyer had had to come up to street level in order to take the call. It might be suggested that the correspondence provides the better evidence given that it was written closer to the events in question. However, even the correspondence was written some 4 years after the events of 15 February 2018. Having regard, in particular, to the sequence of WhatsApp messages, I consider it likely that the conversation did take place following the lunch, quite possibly whilst Mr Walker and Mr Dyer were in a bar. If the call had been received during the lunch, then there is no logical reason why Mr Walker would have messaged Mr Cunningham and Mr Warren, who were both present at the lunch, to tell them about the call.

240. My conclusion that Mr Glenn is likely to have said to Mr Dyer that the relationship was at an end and that he wanted it wound up is consistent with Mr Glenn's further actions that day in preventing Mr Walker and Mr Dyer from gaining access to the "Fifty" Outlook Account, attempting to extract funds from FIDRE's Proceeds Account, and then extracting £75,000 from FAM's account. It is further consistent, I consider, with the explanation now provided by Mr Glenn for the latter steps, namely,

to protect his and Mr Slater's interests and to seek to improve Mr Glenn's negotiating position.

241. It is necessary to consider further the circumstances behind the attempt to withdraw funds from the FIDRE Proceeds Account, and the actual withdrawal of the £75,000 from the FAM account. In particular:

i) So far as the steps taken to remove funds from FIDRE' Proceeds Account are concerned, it is important to bear in mind the inconsistency between Mr Glenn's explanation for his actions now, and that provided at the time, and in particular in his annotations to Mr Walker's proposed letter prepared on 23 February 2018 to the Directors of Wind Co 1, when Mr Glenn had suggested that he had merely sought access to the FIDRE Proceeds Account in order to determine if the mandate had changed as referred to in paragraph 18(i) above.

ii) It is further important to bear in mind the various inconsistent explanations put forward by Mr Glenn as to his claimed entitlement to help himself to monies standing to the credit of the Proceeds Account, as to which see paragraph 18(ii) above. I would add to the matters identified therein the conflict between what Mr Glenn said in paragraphs 56-57 of his witness statement with regard to checking the Articles of Association of Wind Co 1 first, before seeking to effect withdrawals from the FIDRE Proceeds Account, and an email dated 25 February 2018 in which Mr Glenn informed Mr Slater that he had not found "the 5.4% clause yet". I agree with the submissions made on behalf of Mr Walker and Mr Dyer that this demonstrates that Mr Glenn is unlikely to have had a justification for the withdrawals in mind at the time that he sought to make them from the FIDRE Proceeds Account, and did withdraw the £75,000 from FAM's account.

iii) In this respect, it is, I consider, further relevant that:

a) Mr Glenn referred in his funds distribution diagram prepared in connection with the FIDRE refinancing to a balance being retained to "acquire directors shares";

b) Mr Glenn referred in his email to Mr Cooper dated 2 January 2018 to a plan to hold the proceeds until 26 January 2018 "and then use them to acquire shares from us"; and

c) Ms Warner had written to Mr Glenn on 9 February 2018 identifying queries that required to be answered before funds were paid to Mr Glenn.

iv) In the course of giving evidence, Mr Glenn appeared to accept that, given the issues that had arisen regarding the ability of Wind Co 1 to pay a dividend as anticipated by Articles 5.1 and 5.2 of its Articles of Association, how any funds were to be paid was a matter for agreement between the parties, rather than simply for Mr Glenn to act unilaterally (see Day 2/166:17-167:2).

v) Mr Glenn would have known, not least from Mr Walker's email dated 8 February 2018 (10:59) to Mr Dyer, copied in to Mr Glenn, that Mr Walker had

> requested that the accounts were frozen, save for normal course of business payments, until all was reconciled, and that no money was to be paid to individuals "until we have financial sign off from all re past monies." Further, it is likely that Mr Glenn would, from his interception of emails at this time, have seen that Mr Walker had regarded Mr Glenn's payment of £3,500 to himself, Mr Walker and Mr Dyer as something of a last straw in a context in which Mr Walker and Mr Dyer plainly had concerns as to Mr Glenn's need for money as expressed in his email raising the need for a loan if he did not receive monies very quickly.

242. It was by his email dated 15 February 2018 (18:36) to Mr Dyer, copying in Mr Walker and Mr Slater, that Mr Glenn contended that the Four Individuals were each entitled to be paid £111,788.01 from the FIDRE Proceeds Account, and requested that £111,788.01 be paid to Mr Slater and £36,788.01 to himself, Mr Glenn informing Mr Dyer that of his entitlement to £111,788.01, £75,000 had "already been sent by FAM", i.e. that he had caused £75,000 to be paid from FAM's account to his own, leaving the balance of £36,788.01. He then asked that "£75,000 of my share" be transferred from the FIDRE Proceeds Account back to FAM.

243. I note that Mr Glenn began this email by stating that the actions had been taken following advice from Roffe Swayne/Ms Warner, but as we have seen the advice of the latter given only days previously was to the effect that there were potential difficulties with regard to paying a dividend, which required to be resolved before payment could be effected.

244. In the above circumstances, it is difficult to believe that Mr Glenn can have thought other than that his actions would have an incendiary effect, in particular so far as Mr Walker was concerned. To the extent that this was not the case, then it seems to me that Mr Glenn was blind to the realities of the situation. Further, in the light of the matters referred to in paragraph 241 above, I consider that Mr Glenn must have appreciated that he had no proper basis for trying to extract the monies from the FIDRE Proceeds Account, and then transferring the £75,000 from FAM to himself.

245. As I have said, I found Mr Slater to be essentially a good witness, and a sensible man. However, as I have already explained, I consider the reality of the position to be that by February 2018 he had become remote from events concerning the Business, and his closeness to Mr Glenn was such that he was essentially prepared to go along with the actions being taken by Mr Glenn without knowing the full story and thus appreciating the consequences.

246. It is, to my mind, clear that Mr Glenn's actions did have the incendiary effect that he must have realised, or certainly ought to have appreciated, they would have had. I gained the impression from Mr Walker's evidence that he was genuinely upset by the events of 15 February 2018 and shocked by what had occurred, and the fact that Mr Glenn had thought that he could simply help himself to the monies in question without any formal or proper process. In these circumstances, I consider it quite understandable that, as circumstances developed on 15 February 2018, he should have regarded Mr Glenn as a "crook" or a "thief", and that he had reasonable grounds for believing that that was how Mr Glenn's actions ought properly to be categorised. I

note that whilst Mr Walker certainly described Mr Glenn in such terms to Mr Cunningham, he also describe Mr Glenn in such terms internally to Mr Dyer and Mr Warren, thus demonstrating to my mind that these were in no sense concocted concerns, concocted for the benefit of getting Mr Cunningham on side and poisoning Equitix against Mr Glenn.

247. In short, I consider that whilst Mr Walker and Mr Dyer had gone along to the 15 February Lunch in order to do no more than test the water with Mr Cunningham before seeking to agree a managed exit with Mr Glenn, Mr Glenn, with his surreptitious access to Mr Walker's and Mr Dyer's email accounts, had read more into the situation, saw a conspiracy against himself, and decided to make a pre-emptive strike by, amongst other things, attempting to remove monies from the FIDRE Proceeds Account, removing monies from FAM's account, stopping Mr Walker's and Mr Dyer's access to their email accounts, approaching Mr Cunningham himself, and informing Mr Dyer that he regarded the relationship is at an end, such that it should be wound up.

248. In the circumstances, I am satisfied that it was Mr Glenn who pulled the trigger first.

Determination of any partnership/fiduciary duties?

249. It is not suggested that any partnership that came into existence between Mr Glenn, Mr Slater, Mr Walker and Mr Dyer was anything other than a partnership at will. S. 26(1) of the Partnership Act 1890 provides that where no fixed term has been agreed for the duration of a partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

250. As Mr Stewart KC pointed out in the course of submissions, a dissolution notice must be clear and unambiguous – see *Toogood v Farrell* [1988] 2 EGLR 233. However, the notice need not refer to dissolution in terms. *In McGill v Huang* [2021] EWHC 938 (Ch), for example, an email containing the words "I'm out" and "Anyway this is the end now", was held to be sufficient to dissolve the partnership – see at [85] and [86].

251. If contrary to my primary finding, there was a partnership in the present case, then I am satisfied that it was dissolved on or shortly after 15 February 2018. As I have held, Mr Glenn did, in the course of his conversation with Mr Dyer following the 15 February Lunch, say that he no longer wanted to work with Mr Walker and Mr Dyer, and the contemporaneous WhatsApp messages support the fact that Mr Glenn also said that he wanted the relationship wound up. I consider this to be sufficiently unambiguous, at least so far as notice as between Mr Glenn and Mr Dyer is concerned. However, it is reasonable to suppose that Mr Glenn wished Mr Dyer to communicate his thoughts to Mr Walker, and that Mr Slater was happy to go along with what Mr Glenn had said to Mr Dyer. Further, the meeting arranged for 17 February 2018, that took place at Mr Dyer's house prior to him leaving for South Africa, was arranged on the basis that the parties were going their separate ways, and the question was as to the terms upon which they might do so.

252. In the above circumstances, if there was ever a partnership between Mr Glenn, Mr Slater, Mr Walker and Mr Dyer, I am satisfied that it was dissolved either on 15 February 2018, or at least between then and the holding of the meeting a couple of days later on 17 February 2018.

253. Alternatively, if, again contrary to my primary finding, there was as at 15 February 2018 a fiduciary relationship between Mr Glenn, Mr Slater, Mr Walker and Mr Dyer giving rise to fiduciary duties and obligations incidental to a joint venture between them, then I consider that Mr Walker and Mr Dyer were, after the events of 15 February 2018, entitled to treat that relationship as at an end. Not only had Mr Glenn stated that he considered the relationship should be wound up, but his actions were entirely consistent therewith. So far as Mr Slater is concerned, having gone along with Mr Glenn's actions, albeit not on a fully informed basis, I do not consider that he can be in any different position than that as between the other individuals. Certainly, it seems to me that all the parties acted on the basis that the relationship had been to brought to an end by the events of 15 February 2018 given that, on 17 February 2018, they met at Mr Dyer's house with a view to attempting to reach agreement as to how they should go their separate ways.

254. Fiduciary duties will come to an end with the ending of the relationship which led to their imposition – see *Walsh v Shanahan* [2013] EWCA Civ 411 at [34], and *Tigris International NV v China Southern Airlines* [2014] EWCA Civ 1649 at [156]-[163] (a breakdown of relationship case).

255. Thus, I consider that, either on 15 February 2018, or in the immediate aftermath thereof, any fiduciary relationship is between Mr Glenn, Mr Slater, Mr Walker and Mr Dyer, to the extent that such a relationship ever existed, would have come to an end.

256. The determination of the fiduciary relationship would not have freed and discharged the parties from any past breaches of duty committed whilst the fiduciary relationship continued or from an obligation to account for any opportunities gained in anticipation of the determination of the relationship, but it would, as I see it, have freed up the parties so far as any duties of good faith, and to avoid conflicts of interest or to account were concerned going forward.

Events following 15 February 2018

Introduction

257. I will consider below the consequences of the events of 15 February 2018, but before doing so it is necessary to consider the events in the days and weeks following 15 February 2018. These events were very fully canvassed in the course of submissions, and there is extensive evidence and documentation relating thereto. However, given my finding as to who pulled the trigger first, I do not consider it necessary to go into the detail of the events after 15 February 2018 as fully I otherwise might have done.

258. I consider the events following 15 February 2018 having regard to the Claimants' contentions that following 15 February 2018:

i) Mr Walker and Mr Dyer, with the assistance of Mr Warren, mounted a sustained campaign against Mr Glenn, making false allegations to Equitix with regard to Mr Glenn with a view to poisoning Equitix against him in order to persuade Equitix to remove him as a director of FIDRE, FIDRE 2, Wind Co 1 and Wind Co 2 as part of a more general campaign to exclude Mr Glenn from the Business;

ii) Mr Walker and Mr Dyer further interfered with Equitix's dealings by suggesting terms upon which Equitix might enter into a settlement with Mr Glenn, and by their actions more generally, forced Mr Glenn into an unfavourable settlement with Equitix.

iii) Mr Walker and Mr Dyer incorporated CRL on 22 February 2018 to compete with the Business, and otherwise took steps to appropriate the Business for themselves; and

iv) Mr Walker and Mr Dyer engineered the termination of FAM's MSA to the detriment of FAM, and unlawfully attempted to remove Mr Glenn as a director of FAM at a shareholders' meeting in respect of which proper notice was not given to Mr Glenn.

Poisoning Equitix?

259. I am satisfied that following the events of 15 February 2018, Mr Walker and Mr Dyer did have genuine concerns with regard to what Mr Glenn might do next so far as seeking to gain access to bank accounts was concerned, a concern exacerbated by the fact that Mr Glenn had said that he was in need of money. I certainly do not consider that their concern was something confected in order to poison Equitix against Mr Glenn.

260. On the other hand, I have little doubt but that Mr Walker and Mr Dyer did use the situation, and how they might present the position so far as Mr Glenn was concerned, in order to seek to improve their own position vis-à-vis Equitix. However, given the circumstances of the split with Mr Glenn and Mr Slater with Mr Glenn pulling the trigger first, and given the potential effect that this might have on the relationship with Equitix as a whole, I consider that Mr Walker and Mr Dyer had perfectly legitimate commercial reasons for wanting to keep in with Equitix and to get it onto their side in the dispute with Mr Glenn that had come to a head with Mr Glenn pulling the trigger.

261. Whilst one cannot say that Equitix was not influenced in some way by what it was being told by Mr Walker and Mr Dyer, and the concerns that they were expressing as regards Mr Glenn, I am satisfied that Equitix, having itself discussed the position with Mr Glenn, and having considered what he had to say in response to what was being said by Mr Walker and Mr Dyer and being dissatisfied by his explanations, reached its own independent view as to the way forward, which involved Mr Glenn being asked to resign as a director of the relevant companies, and being removed if he refused to do so.

262. So far as Mr Walker's and Mr Dyer's own concerns are concerned, there are a number of internal WhatsApp messages as between Mr Walker, Mr Dyer and Mr Warren that

provide contemporaneous insight as to thinking of, in particular, Mr Walker at the time. These include, in particular:

i) Message from Mr Warren dated 18 February 2018 (16:21): "Will speak to you both before taking action tomorrow. Given pg breached his directors duties and is most likely guilty of a criminal offence it will get serious. If we formally whistleblower on him will Eqtx still Back is (sic) on deals?". At 17:14, Mr Warren responded to say: "Equitix might struggle to support the business of (sic) you whistleblower. That can't be seen to be ignoring stuff like this." Once the issue had been raised with Mr Cunningham by this point, it had not been escalated further, and this message plainly indicates a concern that it might be damaging to do so.

ii) Message dated 19 February 2018 (08:25): "given his erratic and potentially unlawful removal of monies. And he clearly tried to remove funds from the Proceeds Account in the names of FIDRE and 99% owned by Equitix - should we inform Equitix and having removed as a director and tell the bank … I do not want to be liable for his actions." Later in response to a message from Mr Warren, at 08:32, Mr Walker said: "I will present them with the facts - they can decide what they make of it … I am worried te (sic) the money ." Mr Walker followed up this message by saying at 08:42: "Let's chat thro the scenario of us whistleblowing, they remove him as a director, terminate fam contract, tell him they were looking at their options but will work with j and me." I read this as Mr Walker considering how whistleblowing might act in his and Mr Dyer's favour, a point that I shall return to.

iii) Message dated 21 February 2018 (12:05) in which Mr Walker said:

> "Spoke to bank. They are sending something re accounts
>
> He could have access to the proceeds account via FIDRE account generally. He just did not realise. He did not try and get pushback. The system shows he goes on and swipes the75k
>
> Mi grid (sic) - he can access and there's c£162k there
>
> Proceeds account has £738k
>
> It is agreed I formally request a meeting with Tom and their GC."

iv) Mr Warren responded to the last message at 12:06, saying that he suspected that the situation was getting more precarious by the day. At 12:07, Mr Dyer responded to say: "I agree. If I'm honest I feel slightly sick he has access to that money!"

263. On behalf of the Claimants, Mr Stewart KC challenged that there was an obligation under terms of the Investment Agreement to disclose to Equitix the matters that Mr Walker and Mr Dyer were proposing to disclose, and did subsequently disclose to Equitix. Further, Mr Stewart KC submitted that Equitix had no real interest in the

disclosure of these matters, reliance being placed upon Mr Cooper's "I guess it's too late now" email of 2 January 2018.

264. As to these points, whether or not there was any obligation under the Investment Agreement, to disclose the circumstances giving rise to their concerns with regard to what Mr Glenn might seek to do with FIDRE's Proceeds Account, and other accounts, I consider that Mr Walker and Mr Dyer must have been under some duty or obligation as directors of FIDRE and its holding company, Wind Co 1, to inform their co-directors, and in particular the directors representing the interests of Equitix with regard to their concerns. It seems to me that Mr Walker quite properly raised his concerns as to being liable for the actions of Mr Glenn in the WhatsApp exchanges that I have referred to above, if this was not brought to the attention of the appropriate representatives of Equitix.

265. As to Equitix having an interest in what happened to the relevant monies in the FIDRE Proceeds Account, the position was, as I have identified above, that there required to be some formality on the part of Equitix before Mr Glenn, Mr Slater, Mr Walker or Mr Dyer could have been entitled to receive any part thereof given that:

i) If a dividend could lawfully have been paid, then a special resolution was required by Article 5.1 of Wind Co. 1's Articles of Association, and this would require Equitix to join in passing such a resolution; and

ii) If a dividend could not lawfully be paid, then payment could only have been achieved in return for a transfer of A Shares in Wind Co 1, and Equitix would have needed to be a party to that transaction.

266. I consider that it is likely that it is for those reasons that Mr Cooper (of Equitix) indicated in a subsequent telephone call with Mr Glenn that Mr Glenn recorded that there had been a need for a proper process in respect of the payments that Mr Glenn sought to make on 15 February 2018. It is, no doubt, for these reasons that Equitix was not impressed with the explanations given by Mr Glenn for his actions to Equitix when the latter considered the position with him a telephone call on 1 March 2018, and in correspondence up to 6 March 2018, when Mr Glenn had sought to justify his actions by reference to Article 5.1 of Wind Co 1's Articles of Association and entitlement to a "Base Case Dividend" being payable.

267. I have, in paragraph 22(i) above when dealing with the credibility and reliability of Mr Walker as a witness, dealt with Mr Walker's email dated 23 February 2018 to Equitix with regard to having received a call from "the bank" with regard to blocking a couple of transfers that Mr Glenn had sought to make, by which, so the Claimants' maintain, Mr Walker had attempted to create a false impression that Mr Glenn was attempting to use Equitix's funds, or at least those of FIDRE or its SPV subsidiaries to pay for unconnected liabilities. I am satisfied that Mr Walker did receive a call from the relevant bank advising that Mr Glenn had attempted to effect payments, and that in his somewhat febrile state of mind regarding what Mr Glenn might be seeking to do with regard to the relevant bank accounts, thought it appropriate to advise Equitix in respect thereof. Whilst I do not consider that Mr Walker then deliberately presented a false picture in relation to the payments in question, I do consider that in his febrile

state of mind he failed properly to consider what the payments related to before reporting matters to Equitix. Further, I am satisfied that Mr Walker at least had in mind that it would assist him in Mr Dyer in their position vis-à-vis Equitix in drawing these matters to the attention of the latter, mindful also that it could have been disastrous to the relationship if Mr Glenn has successfully raided the FIDRE Proceeds Account or accounts of the SPV subsidiaries.

268. I have already identified Mr Walker's message of 19 February 2018 (08:42) regarding chatting through "the scenario of us whistleblowing", leading to the removal of Mr Glenn as a director etc... It is, as I see it, in the context of trying, at this point, to get onside with Equitix in preference to Mr Glenn (and Mr Slater), that there were generated a number of highly unfortunate internal messages including ones in which Mr Walker spoke on 22 February 2018 in terms of "burying a hatchet between [Mr Glenn's shoulder] blades", and on 20 23 February 2018 in terms of Mr Glenn "sleeping with the fishes", and of a "masterclass" in undertaking "a palace coup", having appeared to have got Equitix on their side. I consider these, and references to engaging a hit man to get rid of Mr Glenn, to be largely hyperbolic expressions of bravado reflecting that they had been seriously troubled and upset by Mr Glenn's actions on 15 February 2018, but believed that they had got the upper hand in their dispute with him.

269. However, whilst Mr Walker and Mr Dyer might have made the most of Mr Glenn's conduct on 15 February 2018 and thereafter in order to seek to get Equitix onside, as I have already said, I am satisfied that they had genuine concerns in respect thereof, and indeed were deeply troubled by what Mr Glenn had done and what he might do, particularly when added to their concerns as they existed prior to the events of 15 February 2018.

270. The relationship with Mr Glenn was plainly at an end, as Mr Glenn himself had, so I have found, made clear, and Mr Walker's and Mr Dyer's approaches to Mr Slater had simply confirmed that he was happy to go along with Mr Glenn, albeit probably not on a fully informed basis. In the circumstances, I can see nothing inherently wrong in Mr Walker and Mr Dyer, so long as they did not say anything that was untrue, protecting their own commercial interests by seeking to get and keep Equitix on side. That was, as I see it, what Mr Glenn was also seeking to do as from when Mr Glenn approached Mr Cunningham with regard to a business proposition on 15 February 2018 itself, and then sought to follow this up thereafter.

271. Further, whilst Mr Walker and Mr Dyer might have sought to influence Equitix with regard to what they considered to be Mr Glenn's reprehensible behaviour, I consider that they had grounds for doing so in the light of Mr Glenn's own actions. Whilst this may have had some influence on Equitix, I am satisfied that Equitix had its own commercial interests to consider, and, as I have already said, I consider that it came to its own independent view, at a level higher than that of Mr Cunningham, that it was appropriate that Mr Glenn be removed from the bank mandates and asked to resign, and if necessary, removed, as a director of the relevant companies. In this respect, I repeat that Equitix made its own enquiries of Mr Glenn, speaking to him on 1 March and listening to what he had to say in correspondence, but not being impressed thereby.

272. In short, I do not consider that Mr Walker and Mr Dyer did, in any improper or inappropriate way poison Equitix against Mr Glenn, and I consider that Mr Glenn essentially brought his dismissal as a director of the relevant companies upon himself by his own actions, and in particular his inability to justify the attempts that he had made to remove monies from the FIDRE Proceeds Account, and his actions in actually removing monies from FAM's account without any proper basis for doing so.

The position after Mr Glenn ceased to be a director of the relevant companies.

273. I consider that, by this stage, if not considerably earlier, both Mr Walker and Mr Dyer on the one hand, and Mr Glenn and Mr Slater on the other hand, were entitled to and did look after their own commercial interests in the circumstances in which they found themselves given the sequence of events that had followed Mr Glenn pulling the trigger.

274. I note that, so far as Project Eva is concerned, Equitix did not cause FIDRE 2 to extend the exclusivity period in respect of the relevant assets. In respect thereof, in the course of giving evidence, Mr Glenn did not deny that Project Eva belonged to FIDRE 2, and that once it had gone on the market after the end of the exclusivity period, he thought it was open to him to deal freely in respect of it, and that he attempted to treat with the sellers in competition with the parties and Equitix. In addition, he accepted that he had removed Mr Walker's and Mr Dyer's access to the Box account relating to Project Eva, although he says he did not remove the access of Equitix and Osborne Clarke. See Day 3/57:9-63:5, 73:15-75:12.

275. I accept the submission made on behalf of Mr Walker and Mr Dyer that is difficult to see on what basis, in these circumstances, Mr Glenn can properly say that Mr Walker and Mr Dyer should have caused the opportunity provided by Project Eva to be pursued for the benefit of Mr Glenn or the Alleged Partnership/Alleged Joint Venture. As I see it, even if there had initially been a partnership or joint venture giving rise to fiduciary obligations, by this stage it had been determined as referred to in paragraph 249 et seq above, and Mr Glenn's only interest was as a minority shareholder in Wind Co 2.

276. So far as FAM and the MSA is concerned, in giving evidence Mr Glenn accepted that:

i) FAM was deadlocked, and that that made it difficult to service the MSA at all – see Day 3/35:13-36:5.

ii) He could have caused FAM, which he had historically played the leading part in operating, to comply with its obligations, volunteering that he did not do so because he thought it was against his personal interests to hand over the tools needed to provide the services – see Day 3/69:9-68:23.

iii) He asked Mr Cunningham to allow him to take over the asset management function personally - Day 3/69:3-70:1.

277. The MSA was ultimately terminated at board meetings held on 24 July 2018, with Mr Walker and Mr Dyer recusing themselves from voting.

278. In his witness statement, Mr Glenn said, at paragraph 76 thereof, that he first learnt about the MSA being terminated when he saw a clause saying that he should not object thereto in a draft settlement proposal which he said that he had no choice but to accept, albeit saying at paragraph 84 of his witness statement that he tried to convince Equitix not to terminate the MSA. However, I accept the submission on behalf of Mr Walker and Mr Dyer that the contemporaneous documents demonstrate that Mr Glenn himself assisted in bringing about the termination of the MSA by failing to perform services, if not also actively agitating for and agreeing to it. In this respect, I would refer to the fact that a transcript of a call between Mr Glenn and Mr Cunningham on 4 May 2018 records Mr Glenn asking Mr Cunningham what his intentions were with respect to future asset management, and to Mr Cunningham telling Mr Glenn in no uncertain terms that he intended to move the function to Equitix's in-house management service, because the information vacuum created by Mr Glenn was a persistent and "appalling" breach of the MSA.

279. Mr Glenn entered into a Deed of Settlement with EI4L and Wind Co 1 and Wind Co 2 on 12 July 2018. This involved a settlement, without admission of liability, of all "Disputed Claims" which Mr Glenn and the other parties had against one another, and also the simultaneous execution and completion of a Wind Co SPA pursuant to which Mr Glenn was to sell his shares in Wind Co 1 and Wind Co 2 to EEI4L.

280. Mr Glenn received £166,788 for his shares in the Wind Co's, comprised of: (i) £121,788 in respect of his Wind Co 1 A2 Shares; (ii) £15,000 in respect of his Wind Co 2 A2 shares; (iii) £15,000 in respect of his Wind Co 1 B2 shares; and (iv) £15,000 in respect of his Wind Co 2 B2 shares. Mr Glenn was also entitled (on certain conditions) to a one-off payment of £30,000 in respect of any Tranche 2 refinancing, and a lump sum of £113,212 in respect of all other Disputed Claims which included Project Eva.

281. Mr Glenn may have felt himself under considerable pressure to settle, but any such pressure was, as I see it, primarily brought about by Mr Glenn's own conduct, and the circumstances in which he had been the catalyst to the termination of the relationship between the Four Individuals. It may be that Equitix was in some way influenced by the approach taken by Mr Walker and Mr Dyer in the settlement terms that it concluded with Mr Glenn, but ultimately, Equitix acted wholly independently, and with a view to its own commercial interests. I conclude that the Deed of Settlement dated 12 July 2018 was concluded on an open arm's length basis in circumstances in which Mr Glenn can have no proper cause for complaint against Mr Walker or Mr Dyer.

Determination of the Claims

Liability as fiduciaries

282. If, as I have found, Mr Walker and Mr Dyer did not owe fiduciary duties to Mr Glenn and Mr Slater, whether as partners or as joint venturers, then there can be no question of them being liable for breach of any such duties, or liable to account to Mr Glenn and Mr Slater as fiduciaries. In these circumstances, if there had been any basis for a claim, then it could only have been through some remedy that Mr Glenn and Mr Slater

might have been able to pursue in their capacity as shareholders of FID, Wind Co 1 or Wind Co 2. This, therefore, on the basis of my primary finding, is the end of Mr Glenn and Mr Slater's case as against Mr Walker and Mr Dyer as fiduciaries owing duties to them.

283. Should I be wrong as to my primary finding that Mr Walker and Mr Dyer did not owe fiduciary duties to Mr Glenn and Mr Slater as either partners or joint venturers, and Mr Walker and Mr Dyer did owe such duties, then on the basis of my findings above, I do not consider that they acted in breach thereof, or that they are liable to account to Mr Glenn and Mr Slater as such fiduciaries.

284. The premise of the Claimants' case is, as I have identified in paragraph 164 et seq above, that Mr Walker and Mr Dyer hatched a plot to exclude Mr Glenn, if not also Mr Slater, and then carried such plot into execution by contriving, or at least exaggerating concerns regarding Mr Glenn's conduct, getting Equitix on side by disparaging Mr Glenn and perpetrating falsehoods about him, and thereby gaining for themselves business that ought to have been exploited for the benefit of the Alleged Partnership or Alleged Joint Venture and forcing Mr Glenn into a poor settlement with EI4L and Wind Co 1 and Wind Co 2.

285. However, on the basis of my findings above, this is not what happened. There was no plot, but rather Mr Walker and Mr Dyer developed genuine concerns with regard to Mr Glenn as a participant in business with them in relation to the various matters referred to above. They wished to seek to agree an orderly exit with Mr Glenn, but before arranging to meet with him to this end, quite legitimately, as I see it, wanted to test the water with Mr Cunningham as to the position, which they arranged to do at the 15 February Lunch. In the event, there was only limited discussion with regard to Mr Glenn at the lunch as referred to in paragraph 233 above. However, before Mr Walker and Mr Dyer could consider the position further following the lunch, Mr Glenn pulled the trigger first in the way that I have considered above. I do not consider that, in these circumstances, Mr Walker or Mr Dyer did act in breach of any fiduciary duty, whether not to benefit themselves or any third party at the expense of Mr Glenn and/or Mr Slater, or to put themselves in a position of conflict of interest in respect of anything said or done up to and including 15 February 2018.

286. I have, for the reasons set out in paragraphs 249 to 256 above, concluded that any partnership or joint venture, if it ever existed, came to an end on 15 February 2018, or shortly thereafter, after Mr Glenn had made it clear to Mr Dyer over the telephone that he did not want to remain in business with Mr Dyer and Mr Walker, and wanted the arrangements between them all to be wound up. Again, for the reasons explained in those paragraphs, I consider that that this will have brought to an end any existing fiduciary relationship between the parties, and the duties and obligations that went therewith. In these circumstances, I do not consider that there can have been any continuing obligation on the part of Mr Walker and Mr Dyer not to benefit themselves at the expense of Mr Glenn and Mr Slater, or to avoid a conflict of interests going forward.

287. Consequently, I do not consider that Mr Glenn and Mr Slater can have any legitimate claim for breach of fiduciary duty in respect of the actions of Mr Walker and Mr Dyer,

either on or prior to 15 February 2018, or thereafter. They were, I consider, after the events of 15 February 2018, entitled to look after their own interests, as indeed was Mr Glenn who put his own business proposition to Mr Cunningham.

288. Further, I do not consider that Mr Walker and Mr Dyer are liable to account for any profits, whether in respect of Projects Eva or any other projects, even if they were opportunities that had been identified prior to the determination of the Alleged Partnership/Alleged Joint Venture. The position would, I consider, be different if Mr Walker and Mr Dyer had, themselves, brought about the determination of any partnership/joint venture in order to take the benefit of such opportunities, but that was not the case. They were, as I see it, reacting to events.

289. Although expert evidence was adduced at trial in relation to the loss alleged to have been suffered as a result of the alleged breach of fiduciary duty, the submissions thereon were, due to constraints of time, extremely limited. Had I found that Mr Walker and Mr Dyer were liable for breach of fiduciary duty, then I would have taken up Mr Higgo's suggestion of inviting further submissions in relation to remedy. However, what I would say is that I have at least very great considerable doubt at least that it would have been open to the Claimants to seek equitable compensation or damages on the footing that the Project Coral model would have been pursued for a number of years at significant profit. On any view, the relationship between the parties was extremely fragile, at best, and it is difficult to see that it could or would have lasted for any significant period beyond dealing with the opportunities that were identified as at the time that Mr Glenn ceased to have an involvement. Thus, I consider that any profits are likely to have been limited to any profits that might been made by Mr Glenn out of the opportunities that had been identified at the time that he ceased to be involved.

Unlawful means conspiracy

290. The essential ingredients of the tort of unlawful means conspiracy were helpfully summarised by Leggatt LJ in *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29 at [18]. In short, there must be:

i) An unlawful act by a defendant;

ii) Which was done with the intention of injuring the claimant;

iii) Pursuant to an agreement or combination (whether express or tacit) with one or more other persons; and

iv) Which actually injures the claimant.

291. Plainly, if, as I have found, there was no breach of fiduciary duty, this cannot be relied upon as the unlawful act to support an unlawful means conspiracy. In closing, Mr Stewart KC clarified that the other unlawful acts relied upon were defamation and fraudulent misrepresentation based upon what Mr Walker, in particular, had said to Mr Cunningham and to other representatives of Equitix with regard to Mr Glenn being a thief, crook etc.

292. Of course, theft, in the strict sense, requires an intention to permanently deprive – see s. 1 of the Theft Act 1968. Mr Glenn says that he did not intend to permanently deprive FAM of the £75,000 that he caused to be paid to himself because the intention expressed in his email dated 15 February 2018 was that the £75,000 be repaid to FAM out of what Mr Glenn claimed to be his entitlement as against the FIDRE Proceeds Account.

293. However, as I have already held, Mr Glenn must have known, and certainly ought to have known that the monies in FIDRE's Proceeds Account could not simply be paid out to Mr Glenn, Mr Slater, Mr Walker and Mr Dyer without the concurrence of Equitix, and without some formal process, given the need for a special resolution if, which appeared unlikely, there were profits available for distribution, alternatively for the monies to be paid in return for a transfer of shares to Equitix. Further, as we have seen, Mr Walker had sought to insist that there would be no further withdrawals on bank accounts prior to a satisfactory reconciliation exercise in respect of earlier payments.

294. In the circumstances, I do not consider that it can be reasonably suggested that Mr Walker, in describing Mr Glenn to Equitix as a crook or thief, can properly be said to have done so fraudulently, having no reasonable belief in the truth of what he was saying. I am satisfied, on the evidence, that Mr Walker did certainly regard Mr Glenn as having acted like a thief in taking the actions that he did. Consequently, I do not consider that an unlawful means conspiracy case based on the making of fraudulent misrepresentations has been made out.

295. So far as defamation is concerned, irrespective of any other ingredients of the relevant tort, it is a defence if the words spoken are substantially true, albeit not completely so. Even if Mr Glenn did not commit a crime under the Theft Act 1968, taking monies from a company's bank account without due authority could, I consider, properly be described as theft in a broader sense so as to render the description of Mr Glenn as a thief or crook as substantially true.

296. A further difficulty with a case of unlawful means conspiracy based on defamation is that it is difficult to see that any defamatory words were uttered pursuant to an agreement or combination. Rather, it seems to me that they were one off comments by Mr Walker in WhatsApp messages that were not uttered pursuant to any agreement or combination, but out of personal concern and frustration.

297. In the circumstances, I do not consider that the unlawful means conspiracy claim can properly be based upon Mr Glenn having been defamed.

298. In the circumstances, I am satisfied that, if there was no breach of fiduciary duty, then the unlawful means conspiracy claim must fail because there was simply no unlawful act to support it.

299. I consider that there are further difficulties in relation to the other ingredients of the tort of unlawful means conspiracy, and in relation to an absence of evidence that any such conspiracy based simply upon defamation and/or fraudulent misrepresentation, was causative of loss.

300. I consider therefore that the unlawful means conspiracy claim must also fail.

FAM's derivative claim

301. I consider that the derivative claim brought on behalf of FAM must also fail.

302. The claim is based upon the proposition that Mr Walker and Mr Dyer caused, or at least encouraged Equitix to determine the MSA, thereby depriving FAM of a valuable income stream.

303. However, as considered in paragraphs 276 to 278 above, I consider the position to be very much more complicated than this, and that if anybody contributed to the demise of the MSA, it was Mr Glenn rather than Mr Walker or Mr Dyer. In addition to this, it is clear that by the time that the MSA was determined, FAM was deadlocked given the fallout between Mr Walker and Mr Dyer on the one hand, and Mr Glenn and Mr Slater on the other hand. The contemporaneous documentary evidence points to the fact that it was this, and concern in relation to this deadlock, which caused Equitix to act in terminating the MSA.

304. In the circumstances, I am not persuaded that the case that Mr Walker or Mr Dyer acted in breach of their statutory fiduciary duties to FAM as alleged has been made out.

305. I would add a postscript in relation to FAM. The evidence does suggest that proper notice was not given to Mr Glenn and Mr Slater of the meeting of the shareholders of FAM on 26 May 2020 held to consider a resolution to remove Mr Glenn and Mr Slater as directors. Consequently, it would appear that their removal as directors may not have been valid and effective, and that they are entitled to a declaration to that effect. However, this issue has become somewhat buried by the other issues that have arisen in the case and it was not dealt with to any depth in submissions. If, given my findings in relation to other matters, such a declaration is still sought, then I will consider the position further in the light of any further submissions that the parties may wish to make, when I deal with consequential matters.

Overall conclusion

306. For the reasons set out above, I consider that each of the claim sought to be advanced by the Claimants must fail, and therefore that the claim as a whole should be dismissed, subject to the point identified in paragraph 305 above.