Neutral Citation Number: [2021] EWHC 3335 (Comm)

Case No: CL-2019-000250

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

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

Date: 09/12/2021

Before :

SIR MICHAEL BURTON GBE
Sitting as a Judge of the High Court

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Between :

MAD Atelier International BV	**Claimant**
- and -	
Mr Axel Manes	**Defendant**

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Jasbir Dhillon QC, Stewart Chirnside and Robert Ward (instructed by **Mishcon de Reya LLP**) for the **Claimant**
Richard Hill QC, Gregory Denton-Cox and Emma Horner (instructed by **Macfarlanes LLP**) for the **Defendant**

Hearing dates: October 2021, 11- 14, 19- 22, 25 - 26, 28 - 29 and November 2021, 1 – 2,

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Approved Judgment

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Covid-19 Protocol: This judgment was handed down by the judge remotely to the parties' representatives at a hearing and release to Bailii. The date and time for hand-down is deemed to be 9 December 2021 at 2pm

Sir Michael Burton GBE :

1. This has been the hearing of a claim by an international restaurant chain (the Claimant being MAD Atelier International BV, a Dutch company, part of the Dogus Group primarily based in Turkey ("Dogus")), in deceit (alternatively breach of contract) against the Defendant Axel Manes ("Mr Manes"), a renowned French chef, executive chef of L'Atelier de Joel Robuchon ("ADJR") in St. Germain ("the Paris Restaurant"), one of the youngest chefs to obtain a Michelin star. The claim results from the sale by the Claimant to Mr Manes' company MA Developpement S.A.S. ("MADV") of the shareholding in MAD Atelier S.A.S. ("MAD Atelier"), which owns the Paris Restaurant, by a transfer entered into on 3 August 2016.

2. The Claimant's case is that it was tricked by Mr Manes into the transfer of its shares to MADV by Mr Manes, and it claims damages by way of the lost value of the Paris Restaurant and the loss of profit arising out of the consequent unlawful termination of a Joint Venture Agreement between them dated 6 July 2015 ("the JVA"). The parties to the JVA were the Claimant, Dogus' subsidiary Dream International Cooperatief UA ("Dream"), Mr Manes and the company whose shareholding Mr Manes represented (by Recital B and clause 1.4 of the JVA) that he legally and beneficially owned, namely Ragnar Investment Ltd ("Ragnar"); and the aim of the JVA was for the parties together to open, in addition to the Paris Restaurant, other ADJRs in London, Dubai and elsewhere.

3. By the Share Purchase Agreement of 1 July 2015 (the SPA), MADV sold MAD Atelier (and thus the Paris Restaurant) to the Claimant for €7.5 million, for the purposes of the Joint Venture. By the impugned transfer of 3 August 2016 MAD Atelier was purportedly sold back for €3,086,698, signed by Mr Padberg, a director of the Claimant appointed by Dogus. not knowing, the Claimant alleges, that he was executing such a transfer, and induced by Mr Manes' deceit. There are subsidiary claims and defences, to which I will refer, which have been pursued and addressed in argument by Counsel for the Claimant Jasbir Dhillon QC (with Stewart Chirnside and Robert Ward) and for the Defendant Richard Hill QC (with Gregory Denton-Cox, to whom the task of addressing quantum was delegated, and Emma Horner). The Defendant has relied upon an alleged repudiatory breach of the JVA by the Claimant prior to 3 August 2016, which was allegedly accepted by the Defendant in July. That contention seemed to me to become progressively more difficult for the Defendant as the trial proceeded, but the matters said to amount to such repudiatory breach were in any event relied upon by Mr Hill as explaining why the Defendant had complaints, and why the Claimant was, as Mr Hill asserted, willing to sell the Paris Restaurant back to Mr Manes. There is also an issue as to the representation by Mr Manes, both in the JVA and otherwise, that he owned Ragnar being in fact false, in that, unknown to the Claimant, the entire shareholding in Ragnar had been sold by him to a Mr Alcan at par value (€ 1200) on 4 July 2015, 2 days before the JVA; but Mr Dhillon primarily relied upon that to support his case of dishonest conduct by Mr Manes for the purpose of his deceit claim. There are other claims against Mr Manes in respect of alleged breaches of the JVA, but all of those are dependent upon the establishment of the primary question, namely whether, on the balance of probabilities, Mr Manes tricked Mr Padberg of the Claimant into signing over the transfer of the Paris Restaurant, or whether such transfer was voluntarily and knowingly entered into by the Claimant.

4. The witnesses called by the Claimant, Mr Padberg, an experienced businessman, then the Dutch resident director of the Claimant, who signed the transfer in Paris on 3 August (but no longer employed by the Claimant since December 2018), Mr Akdag, CEO of a number of Dogus Group compamies, Mr Sahenk, the Chairman of the Dogus Group, Mr Umur, Mr Patel and Mr Schmidt (and one witness by a Civil Evidence Act statement, Mr Beylik), all supported and explained the Claimant's case that there was no oral agreement in July 2016on the telephone to sell the Paris Restaurant back (such as is asserted by Mr Manes) and that they had no knowledge of the alleged transfer said to have been signed, as part of a number of documents in French, by Mr Padberg on 3 August at a meeting with Mr Manes. All of these witnesses are said by Mr Hill to have been lying, and indeed for the Defendant's case to be true all (save possibly Mr Patel and Mr Schmidt) must indeed have lied. The only witness called for the Defendant (save for M. Rolot, who prepared a Note of valuation of MAD Atelier at the Defendant's instruction) was Mr Manes himself, and on the Claimant's case he has lied and indeed set up the entire scheme to trick the Claimant, who had no intention of selling back the Paris Restaurant to him, into doing so. I must decide which side is lying. There is no halfway house.

5. Both sides have reminded me of the authorities to be borne in mind by a judge who has to take such a course. In this case there has been no dramatic confession and largely both sets of witnesses stuck to the case which they had always put forward, so that I am left with the task of deciding which party's case accords more with the likelihoods and realities, and indeed with common sense, on the one hand, and with the contemporaneous documents on the other. In the latter regard the Claimant has given a very substantial amount of disclosure of documents, none of which undermines their case that they did not know of or agree to the transfer. On the Defendant's side there has not been much disclosure, because the Defendant in various circumstances, to which I shall refer, destroyed and/or disposed of his emails or records for the entire relevant period. However in such disclosure as there has been there is nothing which, save with regard to the content of a number of WhatsApp messages preserved by the Claimant, could be said to be inconsistent with or damaging to the Defendant's case. I turn then to the central dispute.

6. The onus of proof is of course upon the Claimant to establish that, on the balance of probabilities, they were deceived by the Defendant into transferring back to him the Paris Restaurant, and in particular that Mr Padberg signed the documents at his meeting with Mr Manes in the Paris Restaurant without knowing or, given his relative lack of French, at least understanding that they were or included a transfer of the shares in MAD Atelier. However, since it is the Defendant who sets out what on his case happened leading to the Claimant's agreement to sell him back the Paris Restaurant, I propose to analyse his case first. I need briefly to summarise the two conflicting accounts of why Mr Padberg went from Amsterdam to Paris to meet Mr Manes at the Paris Restaurant to sign documents on 3 August 2016. Mr Padberg, supported primarily by Mr Akdag, says that he was asked by Mr Manes to come to Paris to sign the 2015 accounts of MAD Atelier on behalf of the Claimant as its sole shareholder, because, he was told by Mr Manes, as a matter of French law the fact that there had been an AGM of MAD Atelier on 30 June 2016 including a resolution approving those accounts was not sufficient, but the accounts needed to be signed off in the presence of the company auditor, which Mr Padberg was consequently asked to come to Paris to do. Hence Mr Padberghad come to Paris, signed what was placed in front of him, which he understood

to be or include those accounts, not having any understanding of French: and he had no idea that he was signing, and had no intention to sign, a transfer of sale in respect of the shareholding in MAD Atelier or the Paris Restaurant. There had been no prior discussion of such a course, and neither he nor any of those at Dogus, to whom he was responsible, would have agreed, not least after an investment of some €20 by Dogus in the Joint Venture.

7. Mr Manes on the other hand says that he had spoken in mid-July2016 to both Mr Akdag and then Mr Padberg, during a telephone conversation with whom Mr Manes agreed that the Paris Restaurant should be sold back to him at a valuation based upon the same methodology as in the SPA of a year before. They agreed, and Mr Manes said he would produce the paperwork and a valuation on that basis, which Mr Padberg said he had no need to see in advance, and it was agreed that Mr Padberg would come to Paris to sign the transfer. At the meeting on 3 August accordingly, Mr Padberg signed such a transfer, at a price based upon a Note of valuation which Mr Manes had procured Mr Rolot to prepare. Mr Padberg says that he does not speak or read French and signed what he thought were the 2015 accounts as had been explained to him, that he trusted Mr Manes as to what he was signing, and that he did so not appreciating that with the 2015 accounts, of which he signed each page, there was also included a transfer and a Note of valuation. Mr Manes said that the accounts were only provided and signed as an annex to the valuation. Mr Padberg says that he was not given any copies, but that Mr Manes said they would be sent on; Mr Manes says that he did provide such copies to Mr Padberg on the day (though none have been disclosed by the Claimant). At the end of September 2016, Mr Manes sent the sum of €3,086,698 to the Claimant, in accordance with the transfer as calculated in accordance with Mr Rolot's Note of valuation. Each side soon took up their positions, the Claimant denying that there had been any transfer, and in due course proceedings were issued, first in France, where the Paris Commercial Court found that there was no sufficient case of fraud, although with the benefit of little if any oral evidence, and after a contested jurisdiction hearing before Bryan J, the Claimant was permitted to pursue its claim in this Court.

The Defendant's case

8. The Defendant's case is based upon three major bulwarks:

   i) The Claimant's case depends upon persuading the Court that Mr Padberg, 40 years a businessman, would have signed a considerable number of papers without reading or understanding them, at least sufficiently to comprehend that what he was signing was a transfer of shares. Although the Defendant accepts that Mr Padberg is not a French speaker or a reader of French, he does not accept that he speaks only a few words of French and does not understand any written French. In any event he will have known the difference between accounting documents and documents that were apparently contractual. He is bound to have noticed that some of them were similar to those which he had seen a year before when he signed documents on the purchase of the shares by the Claimant. One particular document given to him to sign, and signed, headed Cession de Droits Sociaux, was a distinctive blue colour and he must have recognised it. He is an intelligent man and, in French or not, he must have known what he was signing.

ii) In any event the Defendant cannot have contrived such a scheme to induce Mr Padberg to travel to Paris expecting that he would be successful in inducing Mr Padberg to sign documents without reading or understanding them. The Defendant cannot have expected that he would get away with such a scheme.

iii) Even if successful in inducing Mr Padberg to sign, it was always bound to be revealed and the whole exercise would have been for no purpose.

9. This makes the Claimant's case very unlikely, and Mr Hill further relied on the following:

i) Insofar as the Claimant suggests that Mr Padberg could not have taken it upon himself to transfer the shares, (a) the Defendant asserts that Mr Padberg was sufficiently senior, the only director resident in the Netherlands, and certainly not a nominee director, as the Claimant suggests, because that would have put the Defendant in breach of Dutch tax law (b) in any event the Defendant gave evidence of having the meeting on 19 July with Mr Akdag, who agreed to the transfer and left him to deal with Mr Padberg, with whom he had subsequent telephone conversations (c) Mr Hill put to Mr Akdag (but not to Mr Sahenk, who was accepted by the Defendant to have the ultimate say) that he must have discussed this with Mr Sahenk. Mr Hill points to a WhatsApp message dated 7 August 2016 which (as translated) records Mr Akdag as saying to the Defendant "*I emailed Richard last night. I answered him. Mr Sahenk knows everything….I was with Mr Sahenk in Istanbul. I discussed all the points with him"*, and relies on this for the suggestion that the agreement to sell the shares (which by now had gone through, in Paris on 3 August) was raised with Mr Sahenk.

ii) If there was a scheme to dupe Mr Padberg, Mr Hill submits that it would be too risky for the Defendant to have involved Mr Akdag and Mr Beylik in knowledge of the proposed trip to Paris.

iii) The reason why the Claimant, as Mr Hill asserts, agreed to this transfer was because Mr Akdag knew that the Defendant had a number of justified grievances:

a) He had been unhappy about the purchase of the ADJR in London, by buying the company which ran it, Bahia (UK) Ltd, and complained about its subsequent performance, which was costing money, most of which was being drawn down by way of dividends from the Paris Restaurant.

b) He was concerned at the amount of dividends which were being drawn down from MAD Atelier.

c) He felt he was being sidelined and possibly excluded from the negotiations which were being carried on by Dogus with SIFHR, which owns the intellectual property rights in respect of the ADJRs.

It was his raising of these complaints with Mr Akdag which led to Mr Akdag agreeing to the transfer which Mr Padberg was to effect. This and the fact that Mr Padberg told the Defendant that, as a result of a recent coup in Turkey, Dogus was in "*dire straits*" and consequently in need of money.

iv) In order to support the Claimant's case as to the reason why Mr Padberg had been asked to attend the meeting in Paris, namely to have the 2015 accounts signed in the presence of the company's auditor, Mr Padberg, as Mr Hill alleged, has invented the presence of a third man, shabbily dressed, at the meeting at the Paris Restaurant, who handed him the documents to sign and showed him where to sign, and left, saying he had a train to catch for Marseilles, putting on (in August) a raincoat over his jacket as he left. This, Mr Hill submits, is a wholly incredible account, as is the reference to there having been a doorman. In any event, as to the alleged explanation that the accounts had to be signed again, this was not in fact required by French law, as Mr Padberg suggests he was told by the Defendant, and would have been a wholly unnecessary exercise, given that the accounts had been approved by a resolution at the AGM of MAD Atelier, which the Defendant had held on 30th June.

v) Mr Hill relies upon a number of alleged inconsistencies in the evidence of the Claimant's witnesses, as to Mr Padberg's account of his approval of the minutes of the 30 June AGM, of the discussion between Mr Akdag and Mr Padberg as to whether Mr Padberg should go to Paris, and whether the in-house legal counsel of Dogus, Ozlem Kavasoglu, had, whether after discussion with Mr Beylik or otherwise, known that Mr Padberg was going to Paris, and as to precisely what documents he thought he was signing in Paris.

10. As to what happened after 3 August, by the terms of Article 5 of the share transfer signed by Mr Padberg on 3 August 2016, the Defendant had up to 3 months to pay the purchase price. There was no material further correspondence after this, until late at night on 29 September (effectively Friday 30 September) an email was sent by the Defendant to Mr Padberg, ("the first 29 September email") which read:

> *"According to the share transfer agreement, I have transferred today the amount of 4,963,572€.*
>
> *This amount represents 3,086,698€ for the share price, 1,989,674€ for the payback of Mad International BV dividends not yet paid less 112,800€ as expenses incurred."*

Separately at the same time an email was sent by the Defendant to Mr Akdag, not copied to, nor at that stage seen by, Mr Padberg, ("the second 29 September email"), which made a number of complaints about the Joint Venture, relating primarily to Bahia and the SIFHR negotiations, which included "*Finally, we found a solution to save Paris at the cost of a very significant financial effort and entrepreneurial risk on my part*" and concluded *"In summary, you are not fulfilling any of your obligations and you have caused me considerable harm. We cannot continue a partnership under these conditions and I am waiting for concrete proposals from you."*

Mr Padberg was about to leave for a holiday in the USA. On the Friday he called Mr Schmidt, the Controller of the Dogus Group, and they agreed that he should ask the Dutch lawyer acting for Dogus for his assistance, which he did on the Monday, emailing "*I received this email* [the first 29 September email] *from* [the Defendant] *last week, but I can't figure out how to interpret it. Can you help me?".* On the Tuesday, Mr Padberg emailed Mr Schmidt copying to him the email he had sent to the lawyers,

asking him to call their attention to the matter again, and on the Wednesday, Mr Schmidt responded to Mr Padberg by saying that he had checked the documents evidencing the receipt of the money but did not have the complete documents or the share transfer agreement referred to, and suggested that the quickest way was to ask the Defendant. This he did, shortly afterwards, asking the Defendant to provide him with a breakdown or calculation of the sums. Mr Padberg flew off to the US on that day. He recalls having a conversation at the airport with Mr Umar, which Mr Umur did not recall. Mr Hill submits that this reaction does not suggest the kind of surprise that on the Claimant's case would have been likely on the receipt of the first 29 September email if they had not known what it related to. The correspondence which then followed, before and after a Dogus meeting attended by Mr Padberg in Antalya, was described by Mr Hill as a "paper trail", designed to support a case that the transfer never occurred.

11. Mr Hill submits that Mr Padberg and Mr Akdag (and Mr Beylik) as to the events of July and August are giving false evidence: and there was subsequently an unexplained change of mind by the Claimant about going ahead with the transfer, which required a dishonest case that the transfer had not been agreed, in which lies Mr Umur and Mr Sahenk were also participating.

The Claimant's case

12. The Claimant's case also can be said to rely upon three such bulwarks. The first can be described as the total unlikelihood that the Claimant would have agreed or did agree to such a transfer of shares (at the price alleged or at all):

    i) The Joint Venture had only been going for a year and, so far as the Claimant was concerned, was going well, and with what was a good relationship with the Defendant, particularly between the Defendant and Mr Akdag, whose friendship is apparent from the Claimant's WhatsApp records of the conversations between them. In that fruitful year they had invested some €20 million into the Joint Venture. They were in the process of negotiations with SIFHR to buy the rights for the ADJR brand, and, as Mr Sahenk said in evidence, the Defendant was "the centre reason for us to go into this brand". There was nothing in the Defendant's complaints, insofar as articulated, which, even if justified in the Defendant's eyes, would have caused the Claimant to want to break up, and, as Mr Akdag said in a WhatsApp message to the Defendant (as translated) on 12 September 2016 "*the future is brilliant with you*". On the Claimant's evidence, the Defendant was certainly not being excluded from the SIFHR negotiations and the Defendant was being kept in touch (as again appears from the WhatsApp records) even though, as the Defendant himself accepted (paragraph 26 of his third witness statement) there were sensitivities because M. Robuchon may not have been comfortable with the Defendant's being involved in the negotiations since "*he might not want to think of me as replacing him or being in charge of him*". On the Claimant's case, supported by emails, it was the Defendant who was pressing for the making of dividends by MAD Atelier, for French tax reasons which he mentioned, which were declared at the 30 June AGM of the company presided over by him, and, if anything, Mr Padberg was discouraging that course. In any event there is no sign that the Defendant was unhappy, but rather "full of happiness" (1 July WhatsApp). In the WhatsApp records leading up to the meeting between him and Mr Akdag of 19 July, when the Defendant

says that he was angry, and that this led to the agreement that he could buy back the shares, there is no sign of this, nor in the numerous WhatsApp records between the Defendant and Mr Akdag of 18-20 July , but rather the discussion is "*to take stock of the London restaurant's activity*", and there is no sign of anger or unhappiness, but only of ongoing plans for the Joint Venture. On 1 September Mr Akdag in an email to Mr Patel is expressing his wish for the Defendant to be a director of Bahia. There was no reason for the Claimant to agree to terminate the Joint Venture or allow the Defendant to buy back the shares of the Paris Restaurant. There was no question of the Claimant's being in "*dire straits*", or short of money, and they have exhibited very substantial and profitable accounts for the relevant period.

ii) The Defendant however may have had a motive for wishing to be out of the Joint Venture, but this would not have been shared by the Claimant, given that, as Mr Sahenk said in evidence, it was "most important for us that [the Defendant] was involved". He might well have wanted to take back the Paris Restaurant and set up other ADJRs on his own, as he shortly afterwards did in Dubai, one of the places where the Joint Venture had already been trying to find a site. As referred to below, there has been no disclosure given by the Defendant in respect of this period, and the Claimant suggests that there may well have been communications by him at the time with M. Job, the representative of SIFHR, close to M. Robuchon, who was indeed listed as a proposed witness for the Defendant but did not in the event give any evidence, or even M. Robuchon himself. The Claimant alleges that the Defendant, to whom in September they gave a power of attorney to act for the Joint Venture in relation to the agreement with SIFHR for the hoped-for new ADJR in London, signed an agreement on the Joint Venture's behalf which excluded Mayfair, which he well knew was where the Joint Venture wanted to open. Further the Claimant obtained a copy of a mandate given by the Defendant in November 2016, of which the Defendant gave no discovery, to a M. Lucien Cohen, to market the Paris Restaurant (including the hotel) for a sum of more than 10 times the amount the Defendant had paid in the impugned share transfer in August 2016, and he admitted in cross-examination that he had been so marketing the Paris Restaurant for such or similar sums. In the circumstances the Claimant submits that it had no possible motive for the transfer of the shares in the Paris Restaurant back to the Defendant, but the Defendant did.

13. The second bulwark was that if there had been any such sale, it would and could not possibly have taken place in the way suggested:

i) The Claimant had teams of professionals, who had been involved in the purchase the year before and would again have been involved in negotiations for a sale. Mr Dhillon submits it to be inconceivable that the sale would have taken place through the agency of Mr Padberg, on the basis that the shares would be sold on the same basis as in 2015 and that there was no need for the Defendant to supply a copy of either the valuation or the contractual documentation in advance. The "Note sur la valorisation" (Note on the valuation), which was produced for the Defendant by M. Rolot, in 2–4 hours and not separately charged for, as M. Rolot explained in evidence, was clearly not a valuation but, as he described it three times in evidence, a "*basis for discussion*". It made

assumptions as to the 2015 purchase that there had been a valuation (when there had not), and as to "*Projected EBITDA*", which he used, the Note recorded that "*an adjustment to the valuation may be envisaged based on the actual EBITDA 2016*". As to the contract, put together according to the Defendant by another lawyer, Pascal Wilhelm, not the lawyer, M. Kassimy, whom the Defendant had used for the 2015 transaction, this did not contain an English law or English jurisdiction clause, as the JVA had, and which on the Claimant's evidence is used in all Dogus transactions. The Defendant allegedly told Mr Padberg in their July conversation that the transfer should be on the basis of "credit vendeur", but he does not suggest that this French expression was explained by him to Mr Padberg, and it became (in French) Article 4 of the transfer, providing for the transfer to take effect only on date of payment, with three months to pay (notwithstanding the alleged "*dire straits*"). The Defendant's case is that, although the contractual documentation and the valuation were not supplied in advance, they were given to Mr Padberg to read after their lunch, prior to their meeting up at 5 pm. Leaving aside what use such opportunity would have been to Mr Padberg, given that they were all in French, in any event this is denied by Mr Padberg.

ii) Mr Dhillon submits that, if there had been such an agreement to sell back the shares, it would be bound to have been discussed at senior management level, and there is no way in which it could have been left to Mr Padberg, whether or not Mr Akdag had given prior support to a sale back on the same basis as the 2015 purchase, as is alleged by the Defendant at the meeting on July 19. Such discussions would have been evidenced by emails, WhatsApps, texts or minutes of meetings, and none such have been disclosed: there has been no suggestion by the Defendant that the Claimant, who disclosed more than 9000 documents, has failed in its disclosure obligation. Had there been such discussions, Mr Sahenk, as the Defendant himself accepted in an email he sent to him in December 2015, and again in evidence, was the *"critical figure and no significant transaction ... could be approved unless Mr Sahenk approved".* Mr Sahenk's evidence is clear that he would not have approved. The Defendant's suggested explanation of the passage in the WhatsApp message of 7 August 2016 (referred to in paragraph 9(i) above) is completely wide of the mark, as he knows. It was, as Mr Akdag explained, a reference to an email to Richard (Doboin) dated 6 August, relating to a hiccup in the SIFHR negotiations, on which the Defendant was fully informed, and in relation to which he was being brought up to date, and in which email Mr Akdag had told M. Doboin that "we have discussed the below content with Mr Sahenk". Mr Padberg is indeed, the Claimant submits, a nominee director, in the sense that, as he himself explained in evidence, for Dogus, as with all his Dutch holding companies, approval for any large transaction had to be referred to his superiors in Turkey, i.e., as the Defendant has accepted, to Mr Sahenk; and his responsibility was "*to safeguard the Dutch legal and fiscal requirement*s."

iii) Had there been such an agreement as alleged, it would not have left everything so uncertain. The Defendant says that there was an oral agreement that he would be left with the Paris Restaurant and the Claimant with London, but that is not what happened, as the Defendant continued to be involved in the negotiations for the new London restaurant right up to the end of September,

when he signed the agreement on behalf of the Joint Venture (excluding Mayfair), and in the second 29 September email he was treating the Joint Venture as still continuing and (as appears in paragraph 10 above) requiring *concrete proposals* to resolve it. Any agreement if made would have sorted out the effect on the Joint Venture.

iv) Finally had there been an agreement it would not have been effected by sending Mr Padberg to Paris (without prior sight of any documents). The 2015 purchase agreement had been signed by email (and after exchange of drafts). Although Mr Wilhelm had put together the draft resolution contained in the 3 August papers including a reference to Article 12.3 of MAD Atelier's Articles, such Article did not require such a purported transfer of shares to be resolved at a general meeting. The trip to Paris by Mr Padberg (with his wife) was however of much less importance if it was indeed required, as the Defendant told him, simply to have the signing of the MAD Atelier accounts carried out in the presence of the auditor. Mr Padberg explained that he had previously signed 6 copies of the accounts when they were sent to him, after the Defendant had held the 30 June AGM, and he now understood from the Defendant that he had to sign them at a meeting in the presence of the auditor. At the AGM, which Mr Padberghad not attended, there had simply been a resolution approving the accounts. Although the Defendant said in his witness statement that he had held the AGM "*on my own*", he now said in evidence that Mr Padberg had attended it, by telephone, but this was not put to Mr Padberg.

14. The third bulwark of the Claimant's case is the absence of any documentation whatever which supports the Defendant's case. Mr Dhillon submits that, if there had been any discussion of a proposed sale to the Defendant there would have been emails, drafts etc. It has not been suggested to any of the Claimant's witnesses that there has been any failure to disclose such documents. On the other hand, the Defendant has not disclosed any emails or communications at all from the relevant period (save a few which he produced in the French investigation), apart from the documents which Mr Padberg signed on 3 August, including M. Rolot's "Note of valuation". The Defendant has given evidence that in various circumstances he destroyed first the emails on the Paris Restaurant computer and also all those on his own phone, as a result of the infection by a virus of the computer, and then, notwithstanding his knowledge of the renewed existence of the French proceedings, all other emails, by way of a practice of regular disposal or deletion. Had there been any such documents, they might have given support for the Defendant's case, alternatively they may have disclosed, as per paragraph 12(ii) above, discussions with others of his plans for his scheme, or for the split, whether in respect of Paris or Dubai or otherwise, including any negotiations with M. Cohen or others in relation to his proposed steps to dispose of the Paris Restaurant. Conversely, again in the absence of any suggestion of failure to disclose by the Claimant, there is no evidence whatsoever of what would plainly have been disclosable, if such documents had existed, which they would be bound to have done, namely as to the alleged change of mind on the part of the Claimant. First the Claimant agreed to send Mr Padberg to sign a transfer in Paris and then, in unexplained circumstances, they subsequently changed their mind, after receipt of the two 29th September emails, presumably before or at the time when Mr Umur wrote to the Defendant (without any reply) his email of 4 October 2016, when he said "*I have seen the email exchanges and I am quite surprised. I am absolutely sure there is a misunderstanding. We believe in*

our great partnership and joint, bright future. I will be very happy if we can speak on the phone or get together." Despite numerous calls (many of them WhatsApp calls by Mr Akdag) there was no response from the Defendant. Mr Hill asserted the construction by the Claimant of a 'paper trail', but that suggests there was something to cover.

15. As to the Paris trip, where the evidence is simply word against word, Mr Dhillon submits as follows:

    i) It is plain that Mr Padberg expected an accountant to be present at the meeting: "*Please let me know where I have to meet you and the accountant"* he says in his email to the Defendant of 21 July. Mr Dhillon submits that it is much more likely that that would be for the purpose expected by Mr Padberg, namely the signature of the accounts in front of an auditor, which he understood from the Defendant was required by French law, rather than, as suggested by the Defendant, that the accountant would be the person who had prepared the valuation (as to whose presence it is not suggested by the Defendant that there had been any discussions, and as to whom the Defendant says he made a subsequent call to say that he could not attend after all). In the Defendant's email of 21 July, he stated that Mr Padberg was "*coming for MAD Atelier Paris"*. This was understood by Mr Padberg to refer to the company whose accounts were to be signed. The purpose according to the Defendant was to sign the share transfer on behalf of the Claimant, which was on any basis the significant fact from his point of view, but Mr Hill submits that the reference is to the fact that there was to be (again not discussed) an EGM of MAD Atelier (which was not in fact required, as set out in paragraph 13(iv) above).

    ii) Mr Padberg says that he brought with him a copy of the MAD Atelier accounts to remind himself, and as appropriate to ask questions about, and he made some scribbles on those accounts on his journey (disclosed, and not challenged by the Defendant) and he says he raised the questions with the Defendant, one of which related to a drop in takeaway sales, which the Defendant explained to him referred to a Venezuelan customer, which was indeed the case, although not, as Mr Padberg recalled being mentioned, necessarily in respect of foie gras or similar products. This conversation is denied by the Defendant, but the significant fact is that Mr Padberg expected to sign accounts, and, of the papers he signed, a considerable number were those very accounts, which had been pre-signed by the Defendant "*Certifié Conforme*", with the date, and which Mr Padberg (as he says, at the instance of the third man) also signed and dated in such form. The Defendant explains these accounts as being part of the papers signed because they were an annex to the Note of valuation. However there is no reference to an annex anywhere in the bundle of papers and no reference to the accounts in the Note of valuation. On the Claimant's case, much the most likely explanation for the inclusion of pages of accounts in the bundle of documents which Mr Padberg was being asked to sign, each page to be separately signed, is that it was leading Mr Padberg to believe that he was indeed signing those accounts, and this was intended to divert his attention from the rest of the documents (in French). It is obviously not possible now to know in which order the documents were produced for signature, but it is possible that the accounts or some of them were produced first. What is however clear is that this was not an ordinary exchange of signatures (as might be expected with a

contract of sale), with each party sitting down and each signing together each page, because the Defendant had pre-signed all the documents, and Mr Padberg was now being asked to do so also.

iii) The Defendant says he handed Mr Padberg copies of all the documents afterwards, and that he took them with him. Mr Padberg says that he was told that they would be supplied later, which was not a problem, as he already had copies of the accounts. The Claimant's case is that the copies were not supplied. They have not disclosed any, as they say they never had them. When the 29 September emails were received, they had no documents to enlighten them. Despite requests for the documents by the Claimant in the correspondence which ensued through October and November, the Defendant did not provide, and indeed his solicitors by letter of 24 November refused to provide, them and it was only on 12 December that the response was given, when he finally supplied the documents, that the Claimant already had "*the originals*".

16. Mr Dhillon relied substantially on what happened subsequently to 3 August:

i) As for the Defendant, he said nothing at all about the share transfer from 3 August until the 29 September emails. This is consistent with his case on Article 4 - credit vendeur - in that by virtue of that Article he was entitled to wait until he had the money (which he was borrowing) to treat the deal as complete. However if there was no secret about it, one would have expected communications between the parties, as to whether and when the money was to be obtained and what arrangements were to be made, in the light of the contract for the sale back of the Paris Restaurant, so far as concerned the split of London from Paris and the breaking up the Joint Venture. There was none of this. The Defendant allowed all to continue as before. Then he said in his email to Mr Akdag of October 4 (and despite complying with requests for daily reports of the Paris restaurant in September (see (ii) below)): "*Since the transfer agreements signed last August your reporting requests are not applicable*" and then adding the words "*a fortiori since the price was paid"*.

ii) On the other hand, the Claimant acted as if they knew nothing of the transfer (as is their case). There was a number of communications from Mr Akdag, fixing up a business review meeting for London (30 August: "*September 5 is perfect for me"* responded the Defendant), wanting to make the Defendant a director of Bahia (1 September), asking for daily reports for the Paris restaurant (7 September: such being provided by the Defendant on 9 September: approved by Mr Akdag on 11 September: chased up by Mr Akdag, with copy to the Defendant, 30 September): and there was the continued exercise of giving the Defendant a Power of Attorney to sign the agreement with SIFHR for a new ADJR in London, culminating in the Defendant signing (with a map which excluded Mayfair) on or about 27 September 2016. It seems clear that at any rate Mr Akdag was acting as if the alleged transfer of 3 August did not exist, until after the two emails of 29 September 2016, and even then all that was said by the Defendant in his long second September 29 email was, as set out in paragraph 10 above, "*finally we found a solution to save Paris at the cost of a very significant financial effort and entrepreneurial risk on my part*", which are fairly strange and unclear words. As for the WhatsApp, in which Mr Akdag and the Defendant continue to communicate throughout September, Mr Akdag

wrote on 12 September, as set out in paragraph 12(i) above, "*the future is brilliant with you*", and communications continued about Paris and the new London agreement, and then from 26 September there was failure by the Defendant to take calls. Even after the 29 September emails Mr Akdag wrote on 11 October that:

> *"We would like to mention that, as the majority shareholder holding 60% of the shares in the St Germain and London operations, we believe in the potential growth of the partnership under your supervision and have solid faith in the business."*

The Claimant's case is that the Defendant was keeping quiet about the share transfer (and acting as if it did not exist and as if all his obligations under the JVA were still in force, including reporting as to Paris and playing a full role in London), for as long as he could, knowing that the Claimant did not know about it, to make it more likely that he could get away with it.

17. Mr Dhillon contends that the Defendant is giving false and dishonest evidence. He relies as evidence of dishonesty upon the admitted fact that on 4 July 2015, two days before the JVA, the Defendant transferred the shares in Ragnar to a Mr Alcan at par value, €1200, at a time when Ragnar was about to receive €6.8 million. This was said to be for tax reasons, and then the Defendant made continuing false representations, in the JVA and SPA and subsequently, that he was the owner of Ragnar, when he was not, and he sought to justify this in evidence by saying that he did not know when or whether the share register of Ragnar in Malta had been brought up to date. The Defendant described Mr Alcan, who has been the subject of serious allegations of fraud in current civil proceedings, as his brother-in-law to the accountants in the course of due diligence in 2015, and in the pleadings in this case as the partner of his sister-in-law, both of which descriptions he now denies, describing him only as a close friend, but plainly the dealings with Mr Alcan were dishonest. In addition Mr Dhillon sought to ascribe guilt by association, because the lawyers, whom the Defendant consulted and continued to consult, both M. Lantourne, who advised him about the Ragnar transfer and subsequently, and M.Wilhelm, who prepared the documents for the impugned share transfer of August 3, have been found by the French courts to have been corrupt in relation to other matters.

Responses

18. Mr Hill's response to the Claimant's bulwarks depends upon my conclusions as to the honesty of the Claimant's witnesses:

    i) Mr Padberg and Mr Akdag agreed to sell the shares back because they knew that the Defendant had justified grievances and one way or the other would not pursue the Joint Venture.

    ii) The Claimant changed its mind.

    iii) The destruction and loss of documents on the Defendant's side was unfortunate but not dishonest and in any event does not affect the evidence.

19. As to the Defendant's bulwarks, Mr Dhillon responds:

i) As to Mr Padberg , the Defendant knew his man. Mr Padberg was obviously not on top of his game, as the Defendant knew from the fact that in an email exchange in June 2016 about whether dividends could be paid out by MAD Atelier he had shown that he was "*confused*" about the company structure. He knew that he would be able to dupe Mr Padberg. As Mr Hill submitted, calling it inconsistency, he was easily muddled about which documents he had signed in June 2015, and he went to Paris thinking that he was going to sign accounts and that was what he was prepared to do, not knowing French (certainly legal and commercial French, as is apparent from an unconnected email he sent on 26 August 2016) and completely trusting his colleague. There was a third man present, but in any event he was handed each document, pre-signed by the Defendant, and signed them. Mr Akdag also trusted the Defendant when he said that Mr Padberg needed to come to Paris and sign the accounts. If Mr Padberg was not duped, it was extraordinary that he did not question what he signed, the valueless Rolot Note of valuation, which Mr Umur described as being, when he first saw it, a "*bad joke*", and the contract without the usual provisions for English law and jurisdiction etc.

ii) The Defendant very nearly did succeed in 'getting away' with it, because the French courts, after proceedings in which there was no or limited disclosure and no or limited oral evidence and no cross-examination, did not take any action, and it was only the fortuitous fact of the English jurisdiction clause in the JVA which allowed a second look, after the heavily contested hearing before Bryan J. A significant factor in the French court appears to have been the apparent delay or at any rate passage of time before the Claimant challenged the 3 August contract, which was facilitated by the period which the Defendant left before sending the 29 September emails, referred to in paragraph 16 above.

Conclusion on liability

20. I accept and am persuaded by the submissions of Mr Dhillon. I accept the evidence of the main witnesses for the Claimant, Mr Padberg, who was obviously embarrassed by having been the unwitting agent of the contract, and Messrs Umur, Akdag and Sahenk, by all of whom, notwithstanding minor inconsistencies, I was impressed, though I was not impressed by the evidence of Mr Patel, who I suspect was rather jealous of the Defendant, then the golden boy of the Joint Venture.

21. I conclude that the Defendant is lying. I found influential his own words in his letter of 12 December to Mr Padberg where he addresses what he did:

> *"I saved "Atelier Robuchon" in Paris by preventing you from continuing to abusively increase its liquid assets in order to prevent Joel Robuchon from criticizing our management of the restaurant, I had to acquire it again under better financial conditions considering evolution of the high end restaurant business in Paris within the international climate that we know".*

There is no reference here to the Claimant having agreed to transfer the shares. It is clear to me that the Defendant took unilateral action, in order, as he saw it, to get ADJR back. My conclusion as to what happened is that the Defendant, with or without the involvement and advice of third parties, as to whose role if any the Court is left in

ignorance because of the absence of any disclosed documents by the Defendant, decided that he wanted to go back on his own with Paris (and perhaps consider selling it on at a profit, via M. Cohen or otherwise), and very shortly afterwards Dubai, and he knew that the Claimant, particularly Mr Akdag and Mr Sahenk, would never agree to let him go, so that he needed to take unilateral action without reference to them. The Claimant did not agree that the Defendant could buy back his shares, whether on the basis alleged or at all, and was not, as he falsely alleged, in "*dire straits*". I am satisfied that the Defendant did set up this scheme, with the help of his lawyer, of persuading Mr Padberg to come to Paris to sign accounts, and then producing a large bundle of documents, most of which were accounts, in French, which he knew that Mr Padberg would have great difficulty in understanding. He cannot have believed in the Rolot Note of Valuation, which he well knew had been obtained as a *basis for discussion*. I am quite satisfied that Mr Padberg to his knowledge had poor or no French and had he known and understood what was being put in front of him, and in particular the content of the Rolot Note of valuation, he would never have signed them. Mr Padberg trusted the Defendant, and the Defendant knew that. I note that in the course of his evidence Mr Padberg used the word 'trust' as to how he regarded his colleagues such as the Defendant, 20 times. There may well have been a third man present who handed the documents, pre-signed by the Defendant, for Mr Padberg to sign, but in any event he had no time or ability to understand what he was signing, nor did he feel the need to do so, because of his trust in the Defendant. The signature of the contract was disguised by Mr Padberg's having to sign every page of a long set of accounts, which is what he had been expecting. The Defendant then kept quiet after 3 August for as long as he could, in the hope or expectation that he would be able to have it treated as a fait accompli. The reaction of Mr Padberg and Mr Akdag to the emails of 29 September was exactly one of bewilderment, as one would expect. There was no change of mind by the Claimant, and no paper trail to create. Whether there was an undervalue is now for my consideration, but I am quite satisfied that (irrespective of whether there was an undervalue) the Claimant did not know about the share transfer, and did not agree to it and would not have agreed to it and is entitled to be compensated for the loss caused to it by the deceit which induced Mr Padberg to sign documents he did not appreciate and the Claimant to enter into a contract to which it did not agree.

22. The parties are in agreement as to the requirements of the tort of deceit. Fraud must be proved. I must be satisfied that the Defendant made false representations to the Claimant, that he knew that they were false (recklessness does not arise in this case), that he intended that the Claimant should rely upon the false representations, that they did in fact so rely and that they suffered loss and damage. The representations have been comprehensively pleaded by the Claimant, as being knowingly false representations made by the Defendant in July on the telephone to Mr Padberg and Mr Akdag, and again in person and continuing at the Paris Restaurant on 3 August, that he was to come to Paris to sign, and then was in Paris to sign, accounts, and not to sign what he was in fact signing, namely a contract for the sale of shares for €3 million. I find them proved and as is clear from my conclusions, inducement and reliance also. There is no doubt about causation: the Claimant would not have sold and the Joint Venture would not have ended but for the deceit. I shall deal below with loss.

23. I must first deal with the Defendant's case as to repudiation and acceptance of repudiation. There is however no need for me to deal with the Claimant's subsidiary

arguments of breach of the JVA, which all follow, given my finding of the Defendant's dishonesty.

24. The Defendant alleges that the Claimant repudiated the JVA prior to 3 August, and by behaving in the way as described in paragraph 9 (iii) above:

i) They bought the London ADJR by acquiring Bahia, which was a bad purchase, and without giving him an adequate opportunity to consider or criticise it. The WhatsApp reports do not support any question of the Defendant's being sidelined – he expressed the view on 5 October 2015 that "*The ideal price would be £4 million*", which was in fact the price subsequently paid, and on 27 November 2015 he said to Mr Akdag "*You're the best!!! The price you negotiated is great!!! You're incredible*". But he was not given any detailed documentation until 23 January 2016, only four days before completion, and these disclosed that Bahia had been loss-making. The complaint that the Defendant made in his second 29th September email was "*You bought the London L'Atelier by negotiating the price on your own directly. The price seems a lot too high and the location is not suitable. I informed you of this as soon as I learned about the acquisition plan. You never consulted me and presented me with a "fait accompli"*. There were problems with the new London ADJR which the Defendant set out in his email of 14 July to Mr Akdag, Mr Patel and others, but the Claimant and Mr Patel and the Defendant were working through them, and the meeting of 19 July was, according to the Defendant's WhatsApp message, to "*take stock of the London restaurant activity*".

ii) The Defendant says he was not happy at the declaration of dividends by MAD Atelier, as set out in paragraph 9(iii)(b)) above, but he himself said that there were good French tax reasons for increasing the dividend to "*the highest amount possible"* in his email of 24 February 2016. He was enthusiastic to proceed with the dividend, notwithstanding Mr Padberg's *confusion* and consequent discouragement in the email exchange of 22 June 2016 referred to in paragraph 19 (i) above, and he presented and passed the resolution for the dividend at the AGM of 30 June.

iii) He complained in the second September 29 email that "*you negotiated alone without keeping me informed. You sent official purchase proposals by Dogus directly on which I have not been consulted or even copied in your emails…. You deliberately violated your commitments to cooperate by forgetting that I was a partner and shareholder and by violating all contractual provisions as in London*". This is effectively an allegation of breach of the non-circumvent provision in clause 17 of the JVA. This allegation is denied by the Claimant, who referred to emails and the WhatsApp messages, in particular to a discussion between Mr Akdag and the Defendant recorded on 10 February 2016. They have disclosed a report of a meeting contained in an email of 30 June by Mr Akdag to Mr Umur and Mr Sahenk, in which it appears as though they were proposing to seek to reduce the Defendant's share in the rights from the 40% provided by the JVA to 10%, but this inference is denied by the Claimant, and was not in any event known to the Claimant at the time. On any basis it required further discussion, and Mr Sahenk made quite clear in evidence that such was the importance which he placed upon the continued involvement of the Defendant that any dispute would have been resolved.

25. Such were the complaints, but the significant point is that if they amounted to repudiatory conduct by the Claimant (which I do not consider they did) such repudiation was not accepted by the Defendant, so as to terminate the JVA before 3 August, when on any basis it terminated (as is common ground) by virtue of the transfer of the Paris Restaurant shares and the consequent exit from the JVA. The only case pleaded by the Defendant is in paragraph 2(4)(a) of his Defence that the repudiation was accepted by the Defendant's (alleged) offer in a telephone conversation in July to buy back the shares, which I have in any event found did not occur. But it is plain that, whatever else happened on 19 July or in the July conversations with Mr Padberg, it was not an acceptance of the Claimant's repudiation of the Joint Venture. It is wholly plain that both parties treated the Joint Venture as continuing, as appears in paragraph 16 above, and even in the second 29 September email the Defendant was saying "*We cannot continue a partnership under these conditions and I am waiting for concrete proposals from you"*.

26. If there was repudiation, which I am satisfied there was not, it was not accepted prior to August 3 (or at all). Hence the JVA was still in existence on August 3, when, by the deceit of the Defendant, as I have found, it was brought to an end.

27. Before turning to deal with the quantum of loss recoverable by the Claimant in respect of the deceit, I must address shortly the issue of Ragnar. I refer to paragraph 17 above. It is clear that the Defendant transferred legal title in the shares, worth at least €7.5 million, to Mr Alcan for €1200 on 4 July 2015, rendering him in breach of his warranty and causing his representations to be misrepresentations. However, he treated himself then and thereafter as if he was the owner of Ragnar, most notably when he wrote on 14 July 2016 of "*my personal company Ragnar*". He floundered in cross-examination as to whether he thought he owned the shareholding of Ragnar until the Maltese Registry was updated, or whether he thought so despite its update. Perhaps the most overt exemplar of his dishonesty were his attempts to deny the obvious, namely that he was and remained, I am satisfied, the beneficial owner of the shares in Ragnar.

Quantum

28. Just as there was a total divide between the Claimant and Defendant on the issue of liability – deceit or no deceit – so on quantum there has been an unbridgeable gap. The Claimant calculates its loss as in excess of €60 million, the Defendant submits that the loss is either nil or €355,000.

29. There was however agreement as to the basis of the claim:

    i) The first head (Head 1) is the calculation of the difference (if any) in value of the shares as between the amount paid pursuant to the 3 August share transfer and the estimated value at that time. There is agreement between the two experts, Mr Ilett for the Claimant and Mr Caldwell for the Defendant, that there are two methods of calculating the value of 100% of the shares in a trading company. The first is the market approach, which is to apply a multiple, drawn from the best and most reliable comparables, to the company's EBITDA. The second is the income approach. I shall return to this below.

ii) The second head (Head 2) is the calculation of the loss (if any) suffered by the Claimant by virtue of the loss to the Joint Venture due to its unlawful termination on 3 August, ignoring, to avoid double recovery, the impact of the loss of the Paris Restaurant (which would have been recovered under Head 1), i.e. the loss of the future prospects of the Joint Venture from London (the ADJR owned by Bahia in Covent Garden and a new restaurant in Mayfair) and Dubai.

30. There was also agreement as to the law relating to the recoverability of damages for deceit, which can be summarised as follows:

i) The Claimant is entitled to recover all losses flowing directly from the transaction induced by the wrongdoer: **Smith New Court Securities Ltd v Citibank N.A.** [1997] AC 254 esp per Lord Steyn at 279F-280C: "*..it is a rational and defensible strategy to impose wider liability on an intentional wrongdoer… Such a policy of imposing more stringent remedies on an intentional wrongdoer serves two purposes. First it serves a deterrent purpose in discouraging fraud… Secondly as between the fraudster and the innocent party, moral considerations militate in favour of requiring the fraudster to bear the risk of misfortunes directly caused by his fraud*." See also **Rookes v Barnard** [1964] AC 1129 at 1221 per Lord Devlin: "*the award is not limited to the pecuniary loss that can be specifically proved".*

ii) The fact that damages cannot be assessed with certainty does not relieve the wrongdoer of the necessity of paying damages, so that "*I think that in such a situation the court is bound to do the best that it can*" per Devlin J in **Biggin & Co Ltd v Permanite Ltd** [1951] 1 KB 422 at 438. The assessment of damages often involves what Lord Reed in **One Step (Support) Ltd v Morris-Garner** [2019] AC 649 at [36-37] described: "*Once the loss has been identified, the court then has to quantify it in monetary terms...There are cases in which its precise measurement is inherently impossible*" and such circumstances he quotes from Lord Shaw in the **Watson, Laidlaw** case 1914 SC (HL) 18, 29–30 as requiring "*the exercise of a sound imagination and the practice of the broad axe*".

iii) Toulson LJ in **Parabola Investments Ltd v Browallia Cal Ltd** [2011] QB 477 at [22-23] addressed in particular the hypothetical or counterfactual situation: "*Some claims for consequential loss are capable of being established with precision (for example, expenses incurred prior to the date of trial). Other forms of consequential loss are not capable of similarly precise calculation because they involve the attempted measurement of things which would or might have happened (or might not have happened) but for the defendant's wrongful conduct, as distinct from things which have happened. In such a situation the law does not require a claimant to perform the impossible, nor does it apply the balance of probability test to the measurement of the loss… Where that involves a hypothetical exercise, the court does not apply the same balance of probability approach as it would to the proof of past facts. Rather, it estimates the loss by making the best attempt it can to evaluate the chances, great or small (unless those chances amount to no more than remote speculation) taking all significant factors into account."*

iv) Leggatt J addressed what is called the "fair wind" principle in **Yam Seng PTE Ltd v International Trade Corporation Ltd** [2013) I Lloyd's Rep 526 at [188] "*Accordingly the court will attempt so far is it reasonably can to assess the Claimant's loss even where precise calculation is impossible. The court is aided in this task by what may be called the principle of reasonable assumptions – namely. that it is fair to resolve uncertainties about what would have happened but for the defendant's wrongdoing by making reasonable assumptions which err if anything on the side of generosity to the claimant where it is the defendant's wrongdoing which has created those uncertainties."*

Clearly it is important in the interests of a defendant to emphasise that it is not the existence of a loss which is to be assumed, but, in the case of a loss whose existence has been proved, the Court will err on the side of generosity in the calculation of it if its exact calculation is difficult if not impossible to arrive at.

31. There were three background matters which I shall draw out:

i) The Rolot Note of valuation (see paragraph 13(i) above). Mr Caldwell, the Defendant's expert, placed some reliance upon this. I regard the 2–4 hour exercise, without any research and without access to documents, in particular to the documents relating to the 2015 transaction which M. Rolot was supposed to be addressing, as valueless.

ii) Mr Hill has relied upon the fact that in the French criminal and civil proceedings the Claimant assessed the claim by valuing the shares as €7.5 million (hence net of receipts €3.1 million) by reference to a then expert's report, which has not been the subject of consideration before me, and began the proceedings in this Court by particularising the loss as at least that sum. That is obviously an attractive advocate's point and could have been the subject of useful cross-examination if the Defendant was seeking to rely on that expert report, but neither party before me has relied on it in any detail or on that figure. I must now decide the value by reference to the two expert's reports before me.

iii) Neither party's expert has sought to rely on the €30 million or more for which the Defendant was marketing the shares through M. Cohen in November, three months after the share transfer.

32. As for the experts, Mr Dhillon cross-examined Mr Caldwell very vigorously (on Head 1: he barely cross-examined on Head 2). Mr Denton-Cox on behalf of the Defendant cross-examined Mr Ilett more gently. I had benefit from both of them, who were each able to develop their reports before me, and I do not accept much of the criticisms, vigorous or gentle, that were made of them. As to the right approach to what I shall call the "8 previous transactions" relating to Head 1, as will appear, I felt it lay somewhere between the two of them. Subject to that, I found in general terms Mr Ilett more persuasive on Head 1, though he did seem to me to ignore aspects of some of the 8 previous transactions when he might have been prepared to have drawn more information from them, and perhaps paid too much attention to companies which were not entirely comparable, either drawn from the Claimant's evidence or from his own experience, and I find his characterisation of the 6 July transaction less persuasive than Mr Caldwell's, as will be seen. Mr Caldwell, on the other hand, ignored the obvious inference as to the impact of Mr Alcan on a number of the 8 previous transactions, and

the evidence that the Defendant's tax considerations may have been influential. Also, as I have said above, I was not persuaded by his reliance in some degree on the Rolot Note of valuation. As to Head 2, however I found his (largely uncross-examined) evidence the more persuasive, as will be seen.

Head 1

33. On the market approach, Mr Ilett says that the Enterprise Value (EV) of MAD Atelier was €24.4 million, based upon maintainable EBITDA of €2.7 million and a multiple of nine. After adjustments for net debt and working capital and the September 2016 receipts (i.e. "net") that makes an undervaluation of €17.04 million. Mr Caldwell calculates the EV as €8.2 million, based on maintainable EBITDA of €2.04 million and a multiple of four, and this nets out at €355,316. Subject to his support for the Rolot Note of valuation, which I reject, that is his calculation of the loss on Head 1.

34. The 8 Previous Transactions

Transaction 1: in December 2011, MAD Atelier purchased the business of the Paris Restaurant from M. Robuchon's company CFR for €4.5 million. At the time of the transaction MAD Atelier was owned as to 50.1% by the Defendant (via MADV), 10% by CFR and 39.9% by JC Darmon Conseil ("Darmon").

Transaction 2: in summer 2012 Darmon purchased CFR's 10% shareholding in MAD Atelier in accordance with a shareholders agreement and sold its 39.9% shareholding to Food Five (another of M. Darmon's companies).

Transaction 3: in September 2013, Mr Alcan purchased 44.44% of the shares in MADV for €2 million through a capital increase, implying an equity value of €5 million for MAD Atelier and an EV of €8.8–9.0 million.

Transaction 4: in October 2014 MADV purchased 49.9% of the share capital of MAD Atelier from Darmon and Food Five for €3.75 million, implying an equity value of €7.5 million and an EV of €9.7–10 .8 million.

Transaction 5: in June 2015, MADV bought back Mr Alcan's shares through a capital reduction.

Transaction 6: on 1 July 2015 MADV sold 100% of the share capital of MAD Atelier to the Claimant for €7.5 million, implying an EV for MAD Atelier of €11.1 million.

Transaction 7: on 4 July 2015, Mr Alcan purchased 100% of the shares in Ragnar from the Defendant for €1,200.

Transaction 8: on 6 July 2015, Dream purchased a 60% shareholding in the Claimant from Ragnar for €9.8 million. Dream and Ragnar subscribed for additional shares in the Claimant for a combined total of €7.5 million, giving the Claimant a total equity value of €23.9 million, based on an implied EV of €27 million.

35. There is, as I have said above, a distinct difference of approach between Mr Ilett and Mr Caldwell to the relevance of these transactions. Mr Ilett requires to be satisfied that the transactions were at arm's length and at market value before he is prepared to take them into account: he accepts that some of them may be at "fair value", but that does

not amount to market value; though he accepts that independent valuation and due diligence are not a requirement, there must, where there is sufficient evidence of there being related parties or the deal not being at arm's length, be some exposure to or testing by reference to the market. Mr Caldwell however said that a transaction should be taken into account as being at market value, "*unless the contrary is proved"*. It seems to me that the answer must be in the middle, namely that in each case the question of arm's length/market price must be looked at, and if there are grounds for doubt, then the transaction may be of less or possibly no weight.

36. I have looked carefully at the contentions On both sides with regard to the eight previous transactions, and the following seems clear:

i) Transactions 1 and 2 were more than two years earlier, and hence not normally considered comparables. The Claimant suggests that there is ground to doubt that they were at market value where (i) the Defendant was buying from his patron M. Robuchon and (ii) M. Darmon was, on the Defendant's evidence, an acquaintance who has "*always said he would help me financially if I wanted to open my own restaurant"*, though the Defendant was not cross-examined about this: although there was a provision for the exercise of an option to buy 10% of the shares back from Darmon at a price to be fixed by expert appraisal, it does not appear that this option was ever exercised.

ii) Transactions 3, 5 and 7 were all wholly affected by the role of Mr Alcan, to whom I have referred in paragraph 17 and 27 above. Transaction 7 was plainly a charade, but its existence, and the continuing and unexplained relationship with Mr Alcan, casts doubt on the other transactions and indeed on the Defendant's role.

iii) Transaction 4 is not supported by an independent valuation and it involves M. Darmon, whose help to acquire the restaurant the Defendant has recognised: although the Defendant was not cross-examined on this basis.

iv) Transaction 6 is the transaction which was said by the Defendant to form the template for the 3 August 2016 share transfer. It was not supported by any valuation and was to be followed by Transaction 8 (and indeed in the event the questionable Transaction 7). The Claimant played no part in the calculation, and there was evidence from Mr Umur that it was the Defendant who decided the price (though again this was not put to the Defendant). This may have been arrived at by reference to Transaction 4, and the Claimant relies upon evidence, which Mr Caldwell did not appear to have considered, as to how the figure of €7.5 million was arrived at. There was evidence from Mr Umur as to his belief that the figure was arrived at by the Defendant for his (French capital gains) tax purposes, on which he was cross examined by Mr Hill: but there was also some contemporaneous documentation which supported this contention, in an email dated 19 February 2015 from the Claimant's lawyer Mr Bresnick to Mr Akdag and in the February 2015 term sheet (though this was not put in cross-examination to the Defendant). The parties to the transaction were plainly related, the Claimant at that stage being wholly owned by Ragnar (prior to its purported transfer to Mr Alcan). This is the transaction on which Mr Caldwell primarily relies.

v) Transaction 8. This transaction was the only one which was supported by due diligence and involved a wholly independent purchaser, and it is the only transaction to which Mr Ilett attaches any weight. It is common ground that it was based on a multiple of 9 X EBITDA, the latter being €3 million drawn from the Paris Restaurant. However, the company in question was not MAD Atelier but the Claimant; and the Claimant was effectively the Joint Venture, in which there was vested all the possibility of expansion from Paris to London (two new restaurants, in due course Bahia and hopefully Mayfair, in London, Dubai and possibly others). MAD Atelier itself had no prospect of expansion: it was simply the Paris Restaurant. It appears therefore inevitable, as Mr Caldwell believes, that it would be of a greater value than MAD Atelier. On the other hand, Mr Ilett disagrees, and there is contemporary correspondence from the Defendant and his lawyer M. Kassimy appearing to apply the whole EV of €27m to MAD Atelier.

37. The comparables to which Mr Ilett refers, drawn from his own experience and that of Dogus derived from the evidence of the Claimant's witnesses, are in Mr Caldwell's opinion not in fact comparables, but relate to the valuation of groups or chains, not a single restaurant. In any event both experts in their Joint Statement confirmed that neither of them "*places significant weight on the multiples sourced from comparable listed companies*."

38. There is a very live dispute between the experts as to the EBITDA to be adopted for the purpose of their calculations. Mr Ilett arrives at €2.7 million, by reconstructing or assessing a calculation by way of discounting or ignoring the impact of the Paris terrorist activities in November 2015. M. Rolot accepted that there had been a dramatic impact on the trading of the Paris Restaurant (he estimated a 30% fall in the first 6 months of 2016) and he concluded, as referred to in paragraph 13(i) above that "*an adjustment to the valuation may be envisaged*". But in the meanwhile he simply doubled the actual takings for the first six months of 2016 to arrive at a total figure for the year, which not only took no account of the impact on the first half but positively doubled it over the year. The Defendant himself accepted that the takings of the restaurant had "*suffered markedly*" in the first half of 2016. Mr Caldwell arrived at his EBITDA of €2.04 million by taking the actual figures to 31st July 2016 (which of course included the 30% reduction) and then a forecast for the remainder of the year 2016. This approach seems to me clearly to make no allowance for the powerful case that the appropriate way of valuing the November 2015 terrorist activities at the time was to regard them as a non-recurring event, albeit that Mr Ilett's assessment may not have the right answer (though the Claimant points out that the €2.7m figure is close to the EBITDA which Mr Caldwell calculated was implied by Transaction 6).

39. There is then a dispute between the experts as to the multiple to be applied to the EBITDA. Mr Caldwell has selected a multiple of 4, which the Defendant says, on the basis of a case (with which Mr Ilett disagrees) as to profit being half of EBITDA, arrives at eight years profit. This is said by the Claimant to be substantially too low in respect of a successful and fashionable restaurant, based both upon the experience of Mr Ilett and in particular that of the Claimant's witnesses in acquiring and running restaurants. Mr Ilett's figure is 9x, alternatively 8x. Leaving aside an issue as to whether a multiple of 9 or more could be inferred from the Claimant's purchase of Bahia, the multiple of 9 is drawn by Mr Ilett from Transaction 8, the valuation of the Claimant company, i.e.

the Joint Venture. Mr Denton-Cox submits that he thereby takes too much into account the prospect of expansion, which would not be applicable to the single Paris Restaurant and, as indeed was the case by virtue of the use of the multiple of 9 (the Defendant suggested 10 in the course of negotiations) in Transaction 8, thus applying a multiple which might well be apt to a chain or a group with potential for expansion, but not to a single restaurant. There are however contemporaneous emails from the Claimant referring to a multiple of 8 or 9 for the Paris Restaurant.

40. It is quite clear that there are difficult and perplexing questions in relation to the market approach, relating to (i) which transactions (if any) are comparables (ii) the EBITDA to adopt (iii) the multiple to use, 4, 8 or 9 or somewhere in between. This leaves me in a real quandary as to my own judicial conclusions as to the market approach. It is common ground that there is another approach to valuation, namely the income approach. Both these approaches were adopted by both experts.

41. They are explained in the 2020 International Valuation Standards (IVS) (produced by the International Valuation Standards Council). The market approach "*should be applied and afforded significant weight*" when:

> *" a) The subject asset has recently been sold in a transaction appropriate for consideration under the basis of value,*
>
> *b) the subject asset or substantially similar assets are actively publicly traded, and or*
>
> *c) there are frequent and/or recent observable transactions in substantially similar assets".*

The income approach, according to IVS, "*should be applied and afforded significant weight when:*

> *a) the income-producing ability of the asset is the critical element affecting value from a participant perspective, and or*
>
> *b) reasonable projections of the amount and timing of future income are available for the subject asset, but there are few, if any, relevant market comparables".*

Neither expert used the income approach as his primary valuation method, but Mr Ilett said at paragraphs 3.4.10 and 6.1.1 of his first report that "*the income approach is generally considered the most conceptually correct method of valuing a well-established and profitable business which has reliable forecasts".* It was agreed in the Joint Statement that: "*A market approach and an income approach should be used*". Mr Caldwell calls the income approach a "*cross-check*", but he does not address it as such, though he said that he felt that he did not have reliable enough information to do so.

42. The undervalue on the income approach as calculated by Mr Ilett was €22.8 million (net €15.48 million) and by Mr Caldwell €11.8 million (net approximately €4 million).

43. There are five differences between the experts, which I have carefully considered. They are as to (i) utilisation of the restaurant (ii) gross profit margins (iii) takeaway sales (iv) inflation and (v) discount rates. As to these, I do not accept the Claimant's submission that the authorities on measure of damages in deceit (referred to in paragraph 30 above) compel me, where there are two rival views by experts, to choose that of the Claimant. I prefer the evidence of Mr Caldwell as to (i), (ii) and (iii) for the reasons he gives in the Joint Statement, but prefer the evidence as to (iv) and (v) given by Mr Ilett in paragraphs 3.2 and 3.3 of his 6 August Supplemental Report. After the hearing I invited the parties, with the help of their experts to calculate the consequent effect on their respective figures. I considered the parties' written submissions. The experts agreed that the EV based upon my conclusions set out in this paragraph was €15,658,433, but they were in disagreement as to what deductions to make in order to arrive at the net undervalue. The difference beteem them was €525,102. Particularly as I place no value upon M. Rolot's Note of valuation, which was the starting point for Mr Caldwell's calculations, as is clear from the Joint Statement, I prefer the calculations of Mr Ilett, and am satisfied that the correct assessment of the undervalue on the income approach so as to accord with my conclusions is €8,383,359,

44. I find it impossible but unnecessary to resolve the numerous disputes between the experts in relation to the market approach. I am left in a quandary as to the answer to the very considerable differences between them. I am left uncertain as to what if any comparisons to make by reference to any of the 8 transactions (save obviously that the Alcan transactions must be ignored) and there are wide divergences as to both EBITDA and the multiple. I note that both approaches have been approved by the IVS, but that the experts have each regarded the income approach as their secondary valuation. On the other hand, I have set out the circumstances in which the market approach is favoured by the IVS, and neither (b) nor (c) apply and (a) is in very substantial doubt. I have no doubt that the answer in this case is to adopt the income approach, and, in the light of the further calculations referred to above, I award €8,383,359 in respect of Head 1.

Head 2

45. I turn to Head 2, which constitutes the Claimant's claim for loss of profits arising out of the further restaurants which would have been opened by the Joint Venture but for its unlawful and premature termination. In principle this follows straightforwardly, as losses flowing directly from the deceit. But there are, as will be seen, complexities, which mean that, if pecuniary loss is to be recovered, the authorities referred to in paragraph 30 above come into play. It is necessary for me to identify the loss, which needs a hypothetical exercise, and then I must do my best to quantify the loss if I can, applying *the exercise of a sound imagination and the practice of the broad axe*.

46. It became clear, and was common ground by the end of the hearing, not only that the claim for lost profits in respect of the Paris Restaurant itself was not to be pursued if Head 1 were successful, in order to avoid double recovery, but that the Claimant could not mount a case by reference to any loss of profits derived from the Bahia ADJR in Covent Garden. There remained two heads of loss of profit sought, in respect of the two restaurants which the Claimant contends would have been opened by the Joint Venture in early course but for the exit of the Defendant, the second ADJR in London, in Mayfair, ("the Mayfair Restaurant") and an ADJR in Dubai. Both were expressly within

Phase 1 of Schedule 5 of the JVA, and both were in active consideration in the course of the year or so of the duration of the Joint Venture.

47. The joint venturers had tried to acquire a property in Bruton Street between November 2015 and January 2016, but the purchase fell through, and steps were being taken to find a new site (in Dover Street, Clarges Street, Conduit Street and Carlos Place) while negotiations were carried out with SIFHR, intended to obtain a licence for it, as referred to in paragraph 16(ii) above. They were also actively looking for a site in Dubai between July 2015 and June 2016 (and a private jet was being provided for M. Robuchon's use in respect of the proposed restaurant). There was a licence from SIFHR in respect of a Dubai restaurant, which the Defendant had agreed with SIFHR and was assigned to the Claimant, which was due to expire in January 2017.

48. There were imponderables in relation to the opening and success of both these restaurants, which I shall set out below. It is also now common ground between the parties, as a result of the point being taken by Mr Hill in his skeleton argument in opening, by reference to **Gerber Garment Technology Inc v Lectra Systems** [1997] RPC 443, that, since both restaurants would have been owned and run by wholly owned subsidiaries, the only claim capable of being made by the Claimant would be by reference to dividends to be received from those subsidiaries resulting from the profits, not the profits themselves. The methodology for payment of such dividends was helpfully addressed by Mr Caldwell in his further report of 25 October 2021. There was a generous dividend policy provided in clause 11 of the JVA for distribution of dividends after the shareholder loan by Dream had been repaid in full.

49. The claim by the Claimant, based upon Mr Ilett's figures, to which I will return, is for €42,278,276, as to €14,407,546 in respect of the Mayfair restaurant and €27,870,730 for Dubai. The Defendant submits that no loss is proved.

50. The imponderables are as follows:

    i) The Defendant submits that the Joint Venture would not in any event have continued. Mr Hill contends that the Defendant was unhappy (for the reasons set out in paragraph 9(iii) above) and that one way or another the venture would not have continued. He points to evidence given by Mr Sahenk that a partnership is like a marriage and that a divorce may follow. On the other hand, as set out in paragraphs 12(i) and (ii) and 24(iii) above, it is quite clear that Mr Sahenk and the Claimant valued the Defendant greatly and regarded his involvement in the Joint Venture as central, and Mr Sahenk was satisfied that any dispute would have been resolved, indeed that they would have done anything necessary to keep him onside; and that the substantial profit which the Defendant had foreseen when he joined in the Joint Venture, as it fructified, would have resolved any concerns he had. It is clear from the authorities and from common sense that, in a case where a party has by deceit unlawfully terminated a contract, I should not easily conclude in his favour that he would have extricated himself from the contract, which he had unlawfully terminated, in some other way, such that his deceit would have worked or no loss would have been caused by it.

    ii) The licence. The negotiations with SIFHR for the brand rights appear to have stalled, and Mr Hill submits that there is no reason to conclude that in the 'counterfactual' they would have been any more successful, not least because it

is clear that the Defendant's involvement in the Joint Venture of itself may not have helped, because of M. Robuchon's sensibilities referred to in paragraph 12(i) above. But there was no need for the Joint Venture to have acquired the rights in order to obtain the licences from SIFHR, and Mr Dhillon submits that SIFHR would have had no reason to refuse to grant a profitable licence. So far as Dubai is concerned, this was, as stated above, to expire in January 2017. Mr Caldwell himself is of the opinion that it is reasonable to assume that it would have been renewed, and it is significant that the Defendant has been able to open in Dubai on his own, obviously with the benefit of a licence from SIFHR. So far as concerns the Mayfair Restaurant, that is more complex. The Claimant believes that the fact that the agreement for a renewal of the Bahia licence (referred to in paragraph 16(ii) above) was seemingly signed by the Defendant with a map attached which excluded Mayfair was in some way the fault of the Defendant, although Mr Hill points out that Mr Dhillon's cross-examination of the Defendant was on the basis that there was some sharp practice by SIFHR. The Claimant points to emails leading up to the signing of the agreement which suggest that SIFHR had agreed in general terms to grant a licence without any reservation about where the restaurant should be, but the fact remains that in the event Mayfair was not included. The new agreement did include a provision for a possible further licence, and the Claimant contends that there would have needed to be negotiations for a new restaurant in Mayfair and there was no reason for SIFHR in its own interest not to have granted one if the Defendant had still been part of the Joint Venture. Mr Hill submits that the acrimony from the alleged sharp practice might well have prevented such agreement.

iii) A site. Setting up in both Dubai and Mayfair would have depended upon finding a site. This should not have been a problem in Dubai, as the Defendant was able to find a site, albeit not until 2020. However, Mr Caldwell accepted that it is a reasonable assumption that the Claimant would have been able to open a Dubai restaurant by June 2019.

iv) Funding. This would have been required, and Mr Hill points out that the likelihood is that the amount provided for in the JVA would have been exceeded, and it is common ground that Bahia Covent Garden would not have been making any profit, at any rate sufficient to justify the payment of dividends. The Claimant however contends that the Joint Venture would have continued to be successful, particularly the Paris Restaurant, and there would have been no problem with funding Dubai and a Mayfair Restaurant.

v) Profitability. This obviously depends upon the future, and Mr Ilett carried out some detailed calculations, to which I shall refer and upon which he was cross-examined, although Mr Caldwell did not, restricting himself to running issues of mitigation and causation, which were not in the event pursued, by virtue of the Defendant’s abandonment of the former and my refusal by my Ruling of 20 October of amendment in respect of the latter.

vi) Timescale. At least in respect of the Mayfair Restaurant, there was inevitably dispute in the hypothetical exercise of deciding when it was likely to open. This was addressed by the Claimant by the way in which, as will be seen, it arrived at its claim by the end of the hearing: Mr Dhillon conceded that, particularly once the Claimant's claim was limited to recovery of dividends, and dividends

only after the repayment of the shareholder loan, as provided for in clause 11 of the JVA, there would, in respect of both such restaurants, have been no recovery until a date which Mr Ilett settled on of April 2021.

51. I am clear that the way to value the loss of profit for the two potential restaurants, Mayfair and Dubai, neither of which were in the event opened due to the termination of the Joint Venture, is by reference to the loss of a chance of dividends being received by the Claimant from the relevant subsidiaries, after the assessment of the above imponderables.

52. The Claimant's claims, set out at paragraph 49 above, are arrived at by the following calculation. Once Mr Dhillon and Mr Ilett accepted that there could be no dividends received until April 2021, i.e. a period of approximately five years from the termination of the Joint Venture, to allow for obtaining the licence, finding a site, setting up costs, establishment of the successful venture and repayment of the shareholder loan, no claim is therefore made in respect of that period. Mr Ilett then puts forward what he calls his "*proxy for the lost profits*". He calculates a claim for the Claimant by reference to a valuation of the two businesses as at April 2021, in each case taking an assumed EBITDA by reference to the hypothetical figures for the restaurants up to 2021 and maintainable beyond, and a multiple of 9, for the reasons explained in detail in his first report.

53. Mr Caldwell is quite clear that this is a wholly inappropriate method to calculate the alleged loss, and I agree, for at least the following reasons:

i) This calculation is of the value of a business, not a loss of profit calculation. EBITDA is inappropriate to use, and the multiple is a commercial view, normal in the valuation of a business but of no particular value in estimating forward a loss. The nearest analogy would seem to me to be a claim for personal injury, where a number of years' purchase may be estimated, but this was not the exercise he carried out.

ii) EBITDA is not a calculation of net profits, by definition, and is in any event not apt in this case because it is dividends that must be calculated.

iii) The valuation as at April 2021 is inappropriate. It is of course a purely fortuitous date, except that Mr Ilett estimates that by then the Claimant would have been be able to declare dividends, but to take a five year period as fallow and then claim loss at 100% ignores all the risks and imponderables that I have set out above.

The right way to value the loss is to assess it as at the date of breach i.e. the unlawful termination of the Joint Venture, and then to assess the loss of a chance at that date, allowing for the imponderables so far as possible.

54. My conclusions are as follows. As to Dubai, in the light of the imponderables, I would arrive at a 75% chance of the Claimant's receiving dividends for the future starting as at April 2021. In his calculations to arrive at EBITDA, Mr Ilett carried out very detailed considerations based on the evidence before him of likely profits from Dubai. Mr Caldwell considered, with certain reservations, that a Dubai restaurant would have operated profitably. Mr Ilett reduced his figures substantially from the Dubai forecast

produced by the Claimant at the time. I derive a figure from Mr Ilett's workings of €1.5M profit per year. Assessing the probabilities that that would have given rise to a dividend, I would assess 50% of that sum as dividend, i.e. €750 K per year. With no dividends until April 2021, I would assess thereafter five years purchase, at €3.75 million. Given that April 2021 is now past, there is no reason to discount that figure. It is that figure of which I take 75% as the loss of a chance, which I round to €3 million. Mayfair is more problematic. I have arrived at a 40% chance that there would have been a Mayfair Restaurant. However, in the light of Mr Ilett's answers in cross-examination, I am not persuaded that there is any figure on which I can rely in this hypothetical exercise. The figures he used were derived from the possible Bruton Street site, which had a very low rent, very much less than market, and, unlike Dubai, there is no comfort that there is at least an ADJR in place, and the worked figures in Mr Ilett's first report, which include substantial likely losses (presumably due to Covid) in 2020–1, give me no assistance, and I have had none from the Claimant. Mr Ilett, in cross-examination, accepted that he was not able to make a forecast for a Mayfair restaurant, but was seeking to "*read it across*" from what he accepted was an unrealistic forecast for the Covent Garden restaurant, (not in the event pursued by the Claimant, as above). Any figure would then need to be reduced from profit to dividend, and then by the percentage for loss of a chance. I am unable to arrive at any figure, notwithstanding the use of the broadest of axes.

55. I am therefore only able to assess the Claimant's loss of profits claim at €3 million, by reference to Dubai only. I do note that in cross-examination Mr Ilett was asked about the value of the opportunity of Dubai as at August 2016, and he valued it at nil. That has given me pause, but I consider that this was an accountant's valuation and not a legal assessment of the loss of a chance which I have carried out, albeit on his figures. I agree with him that the value of the Mayfair opportunity was, as he says, nil.

56. I placed no value on the (in any event, if pleaded, largely unexplained) alternative claim of loss of net present value of the Defendant's contribution to the Joint Venture.

Conclusion

57. I have awarded €8,383,359 in respect of Head 1, to which falls to be added the sum of €3 million in respect of Head 2. That is the basis of my judgment for €11,383,359 in favour of the Claimant.