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Carver County, MN

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

Case Type: Special Administration
Court File No.: 10-PR-16-46
Judge: Kevin W. Eide

In Re:

Estate of Prince Rogers Nelson,
Decedent,

And

Tyka Nelson,

Petitioner.

OMARR BAKER AND TYKA NELSON'S OBJECTIONS TO FINAL ACCOUNT THROUGH 11/30/16, FINAL ACCOUNT FROM 12/1/16 THROUGH 12/31/16, AND PETITION FOR ORDER APPROVING ACCOUNTING, DISTRIBUTION OF ASSETS, AND DISCHARGE OF SPECIAL ADMINISTRATOR

Omarr Baker and Tyka Nelson ("Objectants") by and through their counsel, state:

1. Objectants are interested persons as defined by Minnesota law because they are heirs of the Decedent.

2. Objectants received a copy of the final account of Bremer Trust, N.A., as Special Administrator (the "Special Administrator") of the Decedent's estate (the "Estate"), through 11-30-16 dated January 3, 2017 (together with the "Stub Account" for the period 12/1/16 through 12/31/16, as that term is hereinafter defined, the "Final Account") and a copy of the Petition for Order Approving Accounting, Distribution of Assets, and Discharge of Special Administrator dated December 16, 2016 (the "Petition").

3. On or about January 5, 2017 Objectants filed a motion (the "Motion") for an order with this Court requesting an extension of 60 days to serve and file objections to the Petition in order to provide adequate time to review and consider the Final Account and to hire an accountant, if necessary, to analyze the Final Account and information related thereto.

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4. On January 9, 2017, three days ago, Objectants received a copy of the final account of Bremer Trust, N.A., as Special Administrator of the Estate, from 12/1/16 through 12/31/16 (the "Stub Account").

5. While Objectants still hope that this Court will grant the Motion for an extension of time to respond, because Objectants need more time to carefully review and consider the Final Account and to conduct discovery to enable them to do so, in the event this Court does not grant the Motion, Objectants want to make the following initial objections to the Final Account and the Petition, while preserving their right to make additional objections if the Court grants the Motion:

    a. The Final Account is dated January 3, 2017, and the Stub Account is dated January 5, 2017, and Objectants have not had sufficient time to (i) review and consider the Final Account and (ii) conduct discovery to be able to review and consider the Final Account.

    b. Several items in the Final Account list the County Assessor's market values for real estate and for all but one Schedule D item indicate "Valuation in process." It is unusual to have the fiduciary of an estate account before the estate tax return has been filed and Objectants can appreciate the impact values of assets in an accounting might have on estate tax liability. That being said, Objectants object to the Final Account because all Schedule A items of real estate indicate County Assessor's Market Value, not an appraised fair market value, and all Schedule D items other than 67 Credit Suisse 10oz Gold Bars show as value "Valuation in process" and, as a result, the Final Account does not adequately state the value of the assets of the Estate. Objectants believe it is a breach of the Special

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Adminstrator's fiduciary duties to seek an adjudication of the Final Account and discharge at this time. It is not proper to seek discharge when valuations of the assets of the Estate are not complete.

c. To the extent that the Special Administrator's compensation is based on the value of the Estate, the Objectants object to any payment of compensation to the Special Administrator because the Final Account does not set forth the appropriate fair market value of the assets of the Estate, so it is not possible to calculate the correct compensation of the Special Administrator.

d. The Objectants object to the Special Adminstrator's failure to properly vet and oversee Stinson Leonard Street as counsel and to the payment of any additional legal fees to Stinson Leonard Street. The Special Administrator did not properly review and consider its retention of Stinson Leonard Street as counsel. Upon information and belief, Traci V. Bransford, a partner at Stinson Leonard Street, was general counsel for the Decedent or one or more of the Decedent's companies when the Decedent's Paisley Park property was transferred into a California entity that was statutorily dissolved and this information was never disclosed to the Court. Upon information and belief, this transfer will require the payment of significant tax liability and this conflict was not properly disclosed to the Special Administrator.

e. The Objectants object to the Special Adminstrator's retention of L. Londell McMillian as an expert advisor for the Estate and to the payment of any additional compensation to the Special Administrator and the Objectants seek to surcharge the Special Administrator for any fees paid to L. Londell McMillian. The Special

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Administrator and Stinson Leonard Street did not properly review and consider its retention of L. Londell McMillian as an expert advisor for the Estate. Upon information and belief, Traci V. Bransford of Stinson Leonard Street, counsel to the Special Administrator, had a relationship with L. Londell McMillian in her capacity as counsel to the Decedent or one or more of his companies which was not disclosed to Stinson Leonard Street, the Special Administrator or the Court. Despite this relationship with L. Londell McMillian, Ms. Bransford participated in the review and consideration of the expert advisors to the Estate, including L. Londell McMillian, who was eventually hired as an expert advisor. In addition, upon information and belief, Stinson Leonard Street and the Special Administrator did not perform a simple background search on L. Londell McMillian. Upon information and belief, David R. Crosby of Stinson Leonard Street was not aware of a judgement against L. Londell McMillian in the United Kingdom. The judgment (attached hereto as Exhibit 1), which found Mr. McMillian to be unreliable, and found an email from him to be disingenuous, is easily found by conducting a simple google search on the internet. Even after Stinson Leonard Street and the Special Administrator were advised of this judgement both Stinson Leonard Street and the Special Administrator took no action to protect the Estate from L. Londell McMillian or to seek his removal as an expert advisor.

f. The Objectants object to the Special Adminstrator's lack of supervision of Stinson Leonard Street and other attorneys it hired and the payment of excessive compensation to its attorneys. Upon information and belief, Traci V. Bransford

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increased her hourly rate before beginning work on this matter. The total amount of legal fees that were excessive and these attorneys were paid excessive fees.

g. The Objectants object to the Special Adminstrator's management of the Tribute concert to the Decedent. The Special Administrator, on the recommendation of Stinson Leonard Street and the expert advisors, agreed to engage Jobu Presents, a company that was formed in March 2016, only months before they were engaged, to promote the Tribute concert, over Live Nation, a longstanding and well respected promoter. Upon information and belief, Jobu Presents provided a $7 million guarantee to the Estate. The deal fell apart and, over the objection of the heirs, L. Londell McMillian took over production of the Tribute concert. Upon information and belief L. Londell McMillian orchestrated the entire arrangement with Jobu Presents with the objective of having the deal fall apart so he could step in and promote the Tribute concert, and himself. The Special Administrator selected an uncapitalized promoter that walked away from the Tribute and cost the Estate at least $7 million in guaranteed payments. The Objectants seek to surcharge the Special Administrator $7 million for the guarantee that it did not receive. The Tribute was completely mismanaged.

h. The Objectants object to the Special Administrator's failure to seek payment from L. Londell McMillian for his illegal appropriation of Estate assets and rights exploited during and after the Tribute concert. Upon information and belief the Special Administrator claimed that the Tribute was not an entertainment deal under the deal made with the expert advisors, and it was not a party to any of the contracts nor was L. Londell McMillian an agent for the Special Administrator with respect

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to the Tribute concert. Nevertheless, L. Londell McMillian financed and promoted the Tribute concert and an after party, which was all about Prince. The Special Administrator failed to seek compensation or damages from L. Londell McMillian for exploiting the Decedent, his image, his music, his legacy, even though upon information and belief L. Londell McMillian profited greatly from the Tribute concert and the after party from the use and exploitation of Estate assets.

i. The Objectants object to the return of $2 million from Prince Tribute, LLC to Jobu Presents. Upon information and belief the arrangement with Jobu Presents required a $7 million guaranteed payment and only $2.1 million was paid to the Estate as an Advance for Prince Tribute. Jobu Presents never met its obligations under the arrangement for the Tribute concert and, as a result, the Special Adminstrator should not have caused $2 million to be returned to Jobu Presents from Prince Tribute, LLC.

j. The Objectants object to the payment of a commission from Jobu Presents to L. Londell McMillian in the amount of $116,500 for the Tribute concert and seek a surcharge of the Special Administrator in that amount (see Exhibit 2 which contains an email from Jill Radloff of Stinson Leonard Street indicating L. Londell McMillian was paid $116,500 directly from Jobu Presents). Upon information and belief Jobu Presents paid L. Londell McMillian $116,500 directly as part of his consideration as an expert advisor for the Tribute concert. Once Jobu Presents backed out of the Tribute concert this commission paid to L. Londell McMillian should have been returned to the Estate.

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k. The Objectants object to the Special Administrator's lack of supervision of the expert advisors for the Estate and to the payment of any additional compensation to the Special Administrator or the expert advisors. Upon information and belief, the expert advisors first proposed deal (the Warner Brothers deal on the amendment) recast $9 million of dollars due to the Estate as an advance, which would have entitled them to a $900,000 commission. While this act was stopped by the non-excluded heirs, it demonstrates a clear lack of supervision of the expert advisors by Stinson Leonard Street and the Special Administrator. The Objectants are concerned that more such actions may have been taken by the expert advisors and they have not had proper time to review and consider all of the deals that entitle the expert advisors to a commission to verify whether or not the expert advisors are receiving commissions based on what they are entitled to. The Objectants need more time to hire a forensic accountant to consider all deals to determine whether or not the compensation paid to the expert advisors was properly earned. The Special Administrator similarly failed to supervise and prevent L. Londell McMilliam from personally exploiting assets of the Estate in promoting and profiting from the Tribute concert.

l. The Objectants object to the Special Administrator's failure to exploit the Tribute concert to further promote the Prince brand; by not doing so the Special Administrator is not maximizing the value of the Estate. The Special Administrator lists Prince Concert Tribute Audio Hard Drive and Prince Concert Tribute Official Recording as items in the Final Account under the heading "Increases:". Upon information and belief, the Tribute has not been produced into a television event or

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documentary that could be used to enhance and build the Prince brand. A televised version of the Tribute concert could be very valuable to the Estate and to the best of the knowledge of the Objectants nothing is being done by the Special Administrator to exploit the Tribute concert.

m. Upon information and belief, the Final Account is a cash basis account and the Special Administrator has entered into several deals that obligates the Estate to make payments under those deals. The Objectants object to the Final Account in that it does not identify future obligations and administration expenses of the Estate with respect to these deals and other unpaid but known administration expenses.

n. The Objectants object to the Special Administrator's loss of the property located at 1119 Morgan Avenue N. Upon information and belief this property was an asset of the Estate and was transferred out of the Estate causing the loss of this property (see Exhibit 3 for email correspondence regarding this property). The Special Administrator should be surcharged for the fair market value of the property at 1119 Morgan Avenue N.

o. The Objectants object to the Special Administrator's lack of disclosure of full information to the Objectants. The Objectants are not able to fully review and consider the Final Account without all information related to the Decedent's assets, pre- and post-death deals, etc.

p. For all Schedule A items of Real Estate, it appears that the Final Account lists the County Assessor's Market Value for items of the Decedent's real estate and not the fair market value. The Objectants object to the values of all Schedule A items on the Final Account because the Final Account does not set forth market values.

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q. Schedule D of the Final Account does not itemize all of the Decedent's items of personal property and, as a result, the Objectants object to Schedule D of the Final Account because it is not possible to determine whether the Special Administrator has collected all of the Decedent's assets.

r. For all Schedule D items of Other Personal Property listed other than Schedule D: 67 Credit Suisse 10oz Gold Bars, the Final Account does not list the fair market value of those items, instead listing them as "Valuation in process". The Objectants therefore object to the values of all of such Schedule D items on the Final Account because the Final Account does not set forth market values.

s. For eight Schedule D items of Other Personal Property marked with a double asterisk (i.e., **), these items indicate that the Special Administrator is "In process of confirming ownership." The Objectants object to these Schedule D items because there is insufficient information in the Final Account to determine whether or not these items belonged to the Decedent.

t. The Final Account contains a summary of several categories of items under the heading "Increases:" and does not provide sufficient detail of specific individual transactions within each category to allow Objectants to consider whether the actions of the Special Administrator with respect to these increase items were proper. Objectants object to the following categories of increase items because they do not provide sufficient transaction detail within each category to allow Objectants to fully review and consider the transactions in each category to determine whether these increases are proper: Interest, Licensing Income from Kitty Records, Licensing Income from Saturday Night Live, Royalty Income from Legacy

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Productions, Royalty Income from Warner Music, Royalty Income from BMI Broadcast Music, Royalty Income from Copyright Clearance Center, Royalty Income from Xag-Atra, Royalty Income from Warner Brothers, and Royalty Income from Universal Music.

u. Two items under the heading "Increases:" are listed as Prince Concert Tribute Audio Hard Drive (value unknown) and Prince Concert Tribute Official Recording (value unknown) and the value for these items is listed at $0.00. Objectants object to the value of $0.00 for these items because those values are incorrect and do not properly reflect the true value of those increase items.

v. The Final Account contains a summary of several categories of items under the heading "Decreases in Estate:" and does not provide sufficient detail of specific individual transactions within each category to allow Objectants to consider whether the actions of the Special Administrator with respect to these decrease items were proper. Objectants object to the following categories of decrease items because they do not provide sufficient transaction detail within each category to allow Objectants to fully review and consider the transactions in each category to determine whether these decreases are proper: Loss on Sale of Personal Property and Funds rec'd for tribute transferred to Prince Tribute LLC.

w. The Final Account contains a summary of several categories of items under the heading "Expenses of Administration:" and does not provide sufficient detail of specific individual transactions within each category to allow Objectants to consider whether the actions of the Special Administrator with respect to these expense items were proper. Objectants object to the following categories of

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expense items because they do not provide sufficient transaction detail within each category to allow Objectants to fully review and consider the transactions in each category to determine whether these expenses are proper: Appraiser Fees, Public Relations services, Compensation of Representative, Expenses of Representative, Attorney's Fees – Fox Rothschild LLP, Attorney's Fees – Stinson Leonard Street, Attorney's Fees – Henson Efron, Attorney's Fees – Robert Half, Attorney's Fees – Frazen Law, Attorney's Fees – Gray Plant Mooty Mooty & Bennett, Attorney's Fees – Kaye Scholer LLP, Professional Fees – Waypoint, Accountant's Fees CliftonLarsonAllen, Professional Fees – SRF Consulting Group, Professional Fees – Larson King, Professional Fees – Patrick Mazorol, Independent Contractor Wages, Insurance Premiums – liability & auto, Insurance Premiums – umbrella policy, Insurance Premiums – music coverage, Insurance Premiums – endorsement & fine arts coverage, Real Estate – utility bills, Real Estate – cleaning expenses, Real Estate – roof repairs, Real Estate – lawn care, Real Estate – electrical/HVAC maintenance/repairs, Real Estate – pest control, Real Estate – locksmith, Real Estate – fire equipment, Real Estate – general maintenance and supplies, Real Estate – license fees, Security costs, Vault/safe repairs, Archival Services, Personal property expenses, and Sales expense for gold bars.

x. The Final Account lists Compensation of Representatives at $542,200. Objectants object to the payment of this compensation because it is unclear from this description whether or not this is the compensation of the Special Administrator and whether or not this amount is paid or unpaid.

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y. Uniform Probate Code section 525.48 indicates that any full or final account shall include a statement of attorney's fees and representative fees and this statement shall include the total fees charged to date and estimated future fees to be charged. Objectants object because the Final Account does not identify future attorney's fees or future representative fees.

z. The Objectants object to the payment of any compensation to the Special Administrator because the Final Account does not provide a calculation of the Special Administrator's compensation.

aa. Objectants object because the Final Account does not identify unpaid or estimated administration expenses such as tax liabilities.

bb. Objectants object to the Final Account because it does not identify whether or not any claims were rejected by the Special Administrator.

cc. The Stub Account contains a summary of several categories of items under the heading "Increases:" and does not provide sufficient detail of specific individual transactions within each category to allow Objectants to consider whether the actions of the Special Administrator with respect to these increase items were proper. Objectants object to the following categories of increase items because they do not provide sufficient transaction detail within each category to allow Objectants to fully review and consider the transactions in each category to determine whether these increases are proper: Royalty Income, Royalty Income From Facebook, Roaylty Income from Warner Brothers, Miscellaneous Refunds, and Gain on Sale of Real Estate.

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dd. Objectants object to the Increase item in the Stub Account entitled Gain on Sale of Real Estate because that amount is likely calculated based on the County Assessor's value of the real estate and not the fair market value of the real estate.

ee. The Stub Account contains a summary of several categories of items under the heading "Expenses of Administration:" and does not provide sufficient detail of specific individual transactions within each category to allow Objectants to consider whether the actions of the Special Administrator with respect to these expense items were proper. Objectants object to the following categories of expense items because they do not provide sufficient transaction detail within each category to allow Objectants to fully review and consider the transactions in each category to determine whether these expenses are proper: Appraiser Fees, Compensation of Representative, Expenses of Representative, Accountant's Fees CliftonLarsonAllen, Monitization Advisor Fees, Loan origination Fees, Independent contractor wages, Real Estate – utility bills, Real Estate – cleaning expenses, Real Estate – lawn care/snow removal, Real Estate – electrical/HVAC maintenance/repairs, Real Estate – pest control, Security costs, Personal property expenses, Motor Vehicle Expenses, and real estate expenses.

ff. Exhibit 1 to the Final Account (including the Stub Account) contains an account of Paisley Park Enterprises, Inc. The following objections relate to Exhibit 1 of the Final Account:

    i. Objectants object to the Schedule D items identified in Exhibit 1 because they list the values as "Valulation in process" and do not identify values for the listed items.

ii. Objectants object to all categories of Increase items in Exhibit 1 because they do not provide sufficient detail information to determine whether those increases are correct.

iii. Objectants object to all categories of Expenses of Administration in Exhibit 1 because they do not provide sufficient detail information to determine whether those expenses are appropriate.

iv. Objectants object to Exhibit 1 of the Final Account because it does not identify whether or not any claims were rejected.

v. Objectants object because Exhibit 1 does not identify unpaid or estimated administration expenses.

vi. Objectants object to the Schedule of Exhibit 1 entitled Personal Property on Hand for Distribution for the following reasons:

1. Item Stocks Bonds and other securities indicates "see attached for Schedule of Investments" but nothing is attached.
2. All other property items list values of those items at $0 and do not provide proper fair market values.

gg. Exhibit 2 to the Final Account (including the Stub Account) contains an account of NPG Music Publishing, LLC. The following objections relate to Exhibit 2 of the Final Account:

i. Objectants object to the Schedule D items identified in Exhibit 2 because they list the values as "Valulation in process" and do not identify values for the listed items.

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ii. Objectants object to all categories of Increase items in Exhibit 2 because they do not provide sufficient detail information to determine whether those increases are correct.

iii. Objectants object to all categories of Expenses of Administration in Exhibit 2 because they do not provide sufficient detail information to determine whether those expenses are appropriate.

iv. Objectants object to Exhibit 2 of the Final Account because it does not identify whether or not any claims were rejected.

v. Objectants object because Exhibit 2 does not identify unpaid or estimated administration expenses.

hh. Exhibit 3 to the Final Account (including the Stub Account) contains an account of NPG Records, Inc. The following objections relate to Exhibit 3 of the Final Account:

i. Objectants object to the Schedule D items identified in Exhibit 3 as "Trademarks" and "Copyrights" because they list the values as "Valulation in process" and do not identify values for the listed items.

ii. Objectants object to all categories of Increase items in Exhibit 3 because they do not provide sufficient detail information to determine whether those increases are correct.

iii. Objectants object to all categories of Expenses of Administration in Exhibit 3 because they do not provide sufficient detail information to determine whether those expenses are appropriate.

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iv. Objectants object to Exhibit 3 of the Final Account because it does not identify whether or not any claims were rejected.

v. Objectants object because Exhibit 3 does not identify unpaid or estimated administration expenses.

ii. Exhibit 5 to the Final Account (including the Stub Account) contains an account of Prince Tribute, LLC. The following objections relate to Exhibit 5 of the Final Account:

i. Objectants object to the return of $2,000,000 to listed under Expenses of Administration as "Partial Return of Tribute Funds" because this amount should not have been returned. The Special Administrator and the expert advisors advised the Objectants that there was a $7 million guarantee and when Jobu Presents walked away from the Tribute the Special Administrator should not have returned that amount.

ii. Objectants object to Exhibit 5 of the Final Account because it does not identify whether or not any claims were rejected.

iii. Objectants object because Exhibit 5 does not identify unpaid or estimated administration expenses.

WHEREFORE, the Objectants request the Court issue an Order:

1. Fixing a time and place for hearing these objections;
2. Confirming these objections; and
3. Granting such other and further relief as may be proper.

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Dated: January 11, 2017

COZEN O'CONNOR

By /s/Thomas P. Kane

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EXHIBIT 1

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Case No: 2012-1619

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
09/06/2015

B e f o r e :

THE HON. MR JUSTICE POPPLEWELL

Between:

Barclays Bank PLC	**Claimant**
- and -	
L. Londell McMillan	**Defendant**

Guy Philipps QC and Adam Zellick (instructed by Addleshaw Goddard LLP) for the Claimant

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L. Londell McMillan appeared in person with written submissions from John Brisby QC and Alexander Cook, and from John Wardell QC (instructed by CANDEY Limited)
Hearing dates: 6, 11, 12, 13 & 18 May 2015

HTML VERSION OF JUDGMENT

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The Hon. Mr Justice Popplewell :

Introduction

1. This is a claim by Barclays Bank Plc ("the Bank") against a US lawyer, Mr McMillan, for repayment of a loan of US$540,000 together with interest.

2. In the 1990s, the Bank developed a programme in its New York office for making loans available to partners of firms providing professional services, including law firms, to enable the partners to provide their capital contributions to the firm. The requirement to make capital contributions is a typical feature of such partnerships, designed to provide the firm with working capital for its day to day operation. The capital contribution required of any given partner may fall to be increased or decreased year by year and will be repayable by the firm to the partner in accordance with the partnership agreement, usually after he or she has left the firm. The capital contribution will be reflected in the partner's capital account with the firm; this is an accounting entry, not a separate bank account or segregated holding of funds, because the whole point of the contribution is that together with other sources of finance available to the firm, such as revenue, bank borrowing and other partner contributions, it is intended to form a fungible mixed fund which the firm can use to pay the outgoings of its business, including, if necessary, the payment of distributions as and when owed to partners.

3. Loans by the Bank to a partner to fund his or her capital contribution to a firm were known as partner capital subscription loans ("PCSLs"). Typically the terms of PCSL programmes were negotiated and agreed with the Bank by the firm, on behalf of the partners, and the agreed terms were made available to all partners. The loan proceeds would be paid to the firm, and the partner credited with the amount in his or her capital account with the firm. The Bank was not the only lending institution offering PCSLs, and a firm might have such loans available for its partners to take out from several different banks on different terms. Such lending to partners is a common method of funding their capital contributions: see *Lindley & Banks on Partnership* 19th edn. para 10-66.

4. In late 2005 or early 2006, the Bank negotiated and agreed such a PCSL scheme with Dewey

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Ballantine LLP, a major and well regarded US law firm. The first partner drawdown under the scheme was on 24 April 2006. On 1 October 2007 Dewey Ballantine LLP merged with another major US law firm, LeBoeuf, Lamb, Greene & McRae ("LeBoeuf") to form Dewey & LeBoeuf LLP ("the Firm"). Earlier that year Mr McMillan had joined LeBoeuf as a partner. Upon the merger he became a partner of the Firm.

5. On 30 June 2010 Mr McMillan signed an agreement with the Bank for a PCSL in the amount of US$540,000, which was paid by the Bank to the Firm on 6 July 2010.

6. On 28 May 2012 the Firm filed for Chapter 11 bankruptcy and was found to be insolvent. The Bank had some US$56 million of outstanding loans to 220 partners of the Firm. One of them was Mr McMillan.

7. The trial took an unusual course. It was listed to be heard together with three other claims by the Bank against former partners of the Firm under loan agreements on the same terms, save as to amounts. Mr McMillan and two of those other former partners were represented by Mr Brisby QC and Mr Cook who prepared a full written skeleton argument on their behalf which was served shortly prior to the hearing. By the morning of the trial the Bank had settled with two of the former partners and Mr McMillan and the other remaining defendant appeared unrepresented, submitting that they had been unable in the time available to fund legal representation on their own. Their solicitors came off the record. The case was opened on behalf of the Bank and then adjourned to allow the two remaining defendants to seek to arrange funding. When the matter resumed in order to hear the evidence of the Bank's witness, Mr Johnman, on the last day he was available, the Bank had settled with the other former partner leaving Mr McMillan as the sole remaining defendant. He remained unrepresented and conducted the trial in person, with the assistance of a McKenzie friend. After conclusion of the Bank's oral closing submissions, the trial was again adjourned for a few days at Mr McMillan's request to enable him to seek to arrange for a legal representative to make the oral final submissions on his behalf, or to assist in preparation of final submissions in writing. His solicitors came back on the record and written submissions were served on his behalf prepared by Mr Wardell QC, to which the Bank responded orally.

8. I heard evidence from Mr Johnman and Mr McMillan. Mr Johnman was the Bank's Relationship Director in New York with responsibility for its PCSLs from about mid 2006 until 2014. Day to day responsibility rested with a relationship manager for most of the period, although between March 2009 and early 2010 Mr Johnman also had day to day management responsibilities for the Bank's relationship with the Firm. He was a careful and straightforward witness whose evidence I felt able to treat as reliable.

9. The same cannot be said for Mr McMillan. He was at times unwilling to accept what was plain on the face of documents and seemed to me to have convinced himself of a version of events which was inconsistent with the contemporaneous record. I did not feel able to rely on his

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evidence where it was in dispute and not supported by a document.

The Issues

10. The contractual documents comprise:

    (1) A letter dated 24 June 2010 addressed by the Bank to Mr McMillan and signed by him on 30 June 2010 (together with the Schedules "the Loan Agreement");

    (2) Schedule A to the Loan Agreement comprising a letter of instruction signed by Mr McMillan on 30 June 2010 addressed to the Firm ("the Instruction"); and

    (3) Schedule B to the Loan Agreement comprising a letter of undertaking addressed to the Bank signed on behalf of the Firm ("the Undertaking").

11. The Loan Agreement was addressed to Mr McMillan at the New York head office address of the Firm. It provided as follows:

    "Dear Mr McMillan

    We are pleased to advise you that Barclays Bank PLC (the "Bank") has agreed to provide a Loan (the "Loan" which expression, where the context so admits, means the outstanding amount thereof for the time being) of US$540,000.00 (Five hundred and forty thousand) to L. Londell McMillan (the "Borrower") subject to the following terms and conditions.

    The Schedules attached hereto form part of the terms and conditions of this letter.

    1. Purpose

        The Loan is to be used to assist the Borrower with a partnership capital subscription to Dewey & LeBoeuf LLP (the "Firm").

    2. Offer Period

        This offer will be available to the Borrower for acceptance for a period of two calendar months from the date of this letter, after which date the offer will lapse. Acceptance will be signified by completion of the formalities in clause 13.

    3. Drawdown

    3.1 Following completion of the matters detailed in clause 8 and the acceptance formalities detailed in clause 13, the Loan will be available for drawing in a single

amount within three calendar months of the date of this letter (at which date the Bank's commitment to provide the Loan shall lapse).

3.2 The Borrower agrees that any amount drawn will be credited to an account in the name of the Firm.

4. Interest

a. Interest on the loan will consist of the aggregate of the Bank's margin of 2.25% per annum and the Bank's Base Rate for US dollars current from time to time and will be calculated on the basis of actual days elapsed over a 360 day year and will be payable quarterly in arrears on behalf of the Borrower (without any deduction, set-off or counterclaim) on the Bank's usual charging dates in March, June, September and December each year.

b. If the sterling equivalent of the Loan exceeds £25,000, the Bank reserves the right to increase the margin over Base Rate in the event that the cost to the Bank of maintaining the Loan is increased as a result of changes in law or regulations by the Bank of England or other Governmental authorities (whether having the force of law or otherwise) to cover such increased costs.

c. Interest shall, unless otherwise mutually agreed, be debited to a designated current account maintained by the Firm with the Bank (account number 54083200, sort code 20-00-00).

d. Interest which is not paid on the due date will be compounded and interest will be charged both before and after any demand."

5. Repayment

a. Subject to Clause 5 (b) and Clause 5 (c), the Loan shall be repaid in full no later than the second anniversary of drawdown (the "Repayment Date").

b. Shortly before the first anniversary of the acceptance of this offer and annually thereafter: (i) the Borrower shall be deemed to request that the Repayment Date be extended by a year, unless the Borrower notifies the Bank in writing otherwise, and (ii) the Bank shall, at its absolute discretion, either extend the Repayment Date by a year or notify the Borrower in writing of any decision not so to extend.

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c. In the event of: (a) the Borrower ceasing to practice as a partner with the Firm including by reason of the death of the Borrower: and (b) the provisions of Article X of the Firm's Partnership Agreement preventing immediate repayment of the Borrower's partnership capital, the Loan shall become due and payable at the times and in such amounts as the Borrowers capital account is repaid in accordance with the Firm's Partnership Agreement (as in effect at date of this Agreement) and in any event no later than the date falling 120 months after the date upon which the Borrower ceases to practice as a partner with the Firm.

.....

7. Agency

By its acceptance of this letter, the Borrower appoints as its agent, and grants power of attorney to, Frank Canellas from time to time of the Firm (the "Agent") to sign all documents and do all acts on the Borrower's behalf in connection with drawing the Loan, paying interest on the Loan and repaying the Loan.

8. Collateral

The Loan will be collateralised by the Borrower executing the letter of instruction that forms Schedule A, (the "Instruction Letter") and the Firm executing the undertaking that forms Schedule B, (the 'Undertaking")

9. Undertakings

The Borrower undertakes that whilst any part of the Loan is outstanding:

a. The Borrower will inform the Bank, promptly on becoming aware of it, of (i) any breach by the Borrower in the performance of any terms or conditions of this agreement or (ii) the occurrence of any of the circumstances referred to in clause 10.1.

.....

10. Events of Default

10.1 In the event of:

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a. The failure by the Borrower, or the Agent, to make any repayment of principal, or payment of interest or other monies, in respect of the Loan on its due date unless the Borrower demonstrates that the failure to pay is solely due to a technical or administrative failure and the relevant amount is duly paid within 3 business days after the due date; or

b. a breach in the performance of any other term or condition of the Loan; or

c. the presentation of a bankruptcy petition against, or the application for an order in respect of, or the insolvency, or the mental disorder, of the Borrower and in any such event such process is not discharged, stayed, withdrawn or vacated before the 30th day after receipt by the Borrower of such process; or

d. the Borrower entering into a composition with the Borrower's creditors: or

e. a distress, execution or other legal process being levied against any of the assets of the Borrower, either jointly or alone and in any such event such process is not discharged, stayed, withdrawn or vacated before the 30th day after receipt by the Borrower of such process; or

f. any indebtedness in excess of US$25,000 of the Borrower becoming immediately due and payable, or capable of being declared so due and payable, prior to its stated maturity, by reason of default on the part of any person; or

g. the Borrower failing to discharge any indebtedness in excess of US$25,000 on its due date; or

h. the balance standing to the credit of the Borrower's capital account with the Firm reducing to a sum below the amount of the Loan; or

i. the statement made in paragraph (ix) of the Undertaking being untrue in any respect; or

j in the event of any indebtedness of the Firm in excess of US$250,000 becoming immediately due and payable, or capable of being declared so due and payable, prior to its stated maturity, by reason of default on the part of any person

then the Bank may, at any time while any such event continues

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unremedied or unwaived, serve written notice on the Borrower declaring that the Bank's commitment to advance the Loan or any balance thereof shall cease and/or demand repayment of the whole amount of the outstanding Loan and all accrued interest and other amounts owing hereunder will become repayable forthwith on demand in writing made by the Bank at any time and/or place the Loan on demand.

......

10.4 The Borrower shall indemnify the Bank on demand against any loss, liability, cost or expense that the Bank may reasonably sustain or incur as a consequence of making such demand or as a consequence of non-performance by the Borrower of any obligation under this letter.

.....

13. Acceptance

Acceptance by the Borrower of the Loan on the terms and conditions stated herein will be signified by the Borrower signing the attached copy of this letter and returning it, together with the Instruction Letter, duly executed, and the Undertaking, duly signed by authorised partners of the Firm, to the Bank."

12. The Loan Agreement was governed by English law and had an entire agreement clause.

13. The Instruction Letter provided:

"To: Dewey & LeBoeuf LLP (the "Firm")

FAO: Frank Canellas

Dear Sirs,

I confirm that have I applied to Barclays Bank PLC (the "Bank") to borrow for the purpose of injecting capital into the Firm and that I may in future make further such applications.

In order for the Bank to authorise such borrowings the Bank requires that the Firm issue a Letter of Undertaking under which, *inter alia*, the Firm will undertake to pay any funds withdrawn at anytime (and from time to time) on or after the date hereof from my partnership capital account with the Firm (the "Capital Account")

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directly to the Bank for application in or towards repayment of such borrowings to the extent necessary to repay such borrowings and to ensure that the outstanding balance of such borrowings shall not at any time exceed the balance of the Capital Account.

I hereby request the Firm to issue the Letter of Undertaking in such form as may be required by the Bank and agreed by the Firm, and I confirm that I instruct the Firm irrevocably (unless the Bank should consent in writing to the cancellation of such instruction) to apply any funds withdrawn from time to time from the Capital Account in payment directly to the Bank to the extent required by the terms of such Letter of Undertaking.

I submit to the jurisdiction of the courts of England. This Letter shall be governed by the laws of England."

14. The Undertaking was signed by a partner on behalf of the Firm and addressed to the Bank. It provided as follows:

"We confirm that on receipt of any amount provided by Barclays Bank PLC (the "Bank") to the Partner by means of a partnership capital subscription (each a "Loan") pursuant to a partnership capital subscription loan facility letter from the Bank to the Partner (the "Facility Letter"), such amount will be placed to the credit of the Partner's partnership capital account (the "Capital Account") in the Firm's books.

.....

In connection with each Loan:

i. we confirm that under the partnership agreement between all the partners in the firm (the "Partnership Agreement"), the sums standing to the credit of the Partner's Capital Account with the Firm shall be repayable within 3 years (subject to Article X of the Partnership Agreement) following the Partner ceasing to be a partner in the Firm, whether by reason of death, retirement or otherwise;

ii. provided that the Instruction Letter remains in force, we irrevocably undertake that upon the earliest of: (a) the Partner ceasing to be a Partner in the firm, (b) the occurrence of any event of default under the Facility Letter, and (c) the making or docketing of judgment in England or New York against the Partner in respect of amounts due under the Facility Letter, we will apply the balance of the Partner's Capital Account in satisfying (so far as is possible) any indebtedness remaining outstanding under the Loan with the Bank, before paying any residue to the Partner

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or to the Partner's legal personal representatives; ......"

The Issues

15. The Bank contends that upon the plain wording of the written agreement it is Mr McMillan who is the borrower personally liable for repayment of the loan when due, and that the Bank's recourse against the Firm is by way of collateral for that obligation.

16. The arguments on behalf of Mr McMillan have not always been advanced consistently or coherently, but I understand there to be seven legal grounds of defence, with substantial factual overlap.

17. The first is that the background is such that as a matter of construction Mr McMillan undertook no obligation to repay the loan, which was a loan to the Firm, not to him; or alternatively that his obligation was that of a guarantor of the liability to the Bank of the Firm as primary obligor, and that such liability as a guarantor has been discharged by forbearance or agreement between the Bank and the Firm and/or due to non disclosure. The principal aspects of the background which are relied upon for this purpose are the following allegations:

(1) Mr McMillan did not want or need to fund his capital account.

(2) The purpose of the loan was not to fund his capital account; it was to provide working capital for the Firm which was in financial difficulties.

(3) The loan was part of a programme whose terms were negotiated by the Bank with the Firm, not the individual partners, and which was intended to be administered by the Firm rather than the partner. There was not intended to be any direct contact between the Bank and the partners, and there was none between the Bank and Mr McMillan. The Firm was to receive the loan proceeds, pay the interest, and keep an account of the amounts outstanding. The substance of the scheme was that the loan was intended and expected to be repaid not by the partner but by the Firm. The Bank was looking to the Firm rather than any individual partner in assessing the credit risk.

(4) The Firm, as agent for the Bank, represented to Mr McMillan that he would receive the benefit of the loan, whereas he did not, and the loan was solely for the benefit of the Firm.

(5) The Firm, as agent for the Bank, represented to Mr McMillan that the loan was without recourse to him, alternatively that his liability was only as guarantor.

(6) At the time of signing the Loan Agreement there was an unremedied event of default in existence under clause 10.1(j) such that Mr McMillan's liability, if

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personal, had already arisen. The argument was that at the time of Mr McMillan's Loan Agreement the Firm's liability to the Bank on its undertaking in PCSLs which had been extended to other partners exceeded $250,000, which amounted to an existing event of default under clause 10.1(j) resulting in the borrower being personally liable to repay the loan at the moment it was entered into.

18. Save for the last, the representations are not relied on as grounds for setting aside the agreement or under the Misrepresentation Act 1967. They are said to be relevant factual matrix or to give rise to estoppels preventing the contrary being asserted by the Bank.

19. The second defence advanced is that the Loan Agreement is unenforceable as a sham: Mr McMillan did not want or need to fund his capital account and the documents were a "fig leaf" for the true purpose of the loan which was to provide working capital for the Firm which was in financial difficulties.

20. The third defence advanced is that Mr McMillan never received the loan proceeds from the Firm. Insofar as this is relied on as a separate defence from that of sham, I understood the argument to be that the Firm was the agent of the Bank for the purpose of transmission of the loan proceeds, with the result that the loan was never advanced to Mr McMillan and so is not repayable by him.

21. The fourth defence advanced is that the Bank impliedly represented that at the time the Loan Agreement was entered into there was no unremedied event of default, which it is said was untrue because of the Firm's liability to the Bank (in excess of $250,000) on its undertaking in PCSLs which had been extended to other partners.

22. The fifth defence is that the Loan Agreement gave rise to an unfair debtor creditor relationship and should not be enforced pursuant to the Court's powers under section 140B of the Consumer Credit Act 1974.

23. The sixth defence is by way of setting off a counterclaim to the effect that the Bank was negligently in breach of a duty of care to advise Mr McMillan that:

(a) the purpose of the loan was not to fund his capital account; and/or

(b) the loan involved his personal liability as primary obligor; and/or

(c) the Firm was in poor financial health so as to render the borrowing imprudent; and/or

(d) at the time of signing the Loan Agreement there was an unremedied event of default in existence under clause 10.1(j); and/or

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(e) (after he had entered into the loan) that the Firm was in poor financial health such that Mr McMillan was deprived of the opportunity to take steps to ensure that the loan was repaid by the Firm.

24. In the final alternative Mr McMillan seeks an account to determine what sums the Firm has repaid to the Bank in respect of the loan.

25. All relevant dealings by Mr McMillan and the Bank were with the Firm rather than directly with each other. It is therefore convenient to consider the background to the Loan Agreement first by reference to the Bank's dealings with the Firm and secondly by reference to Mr McMillan's dealings with the Firm.

The Bank's dealings with the Firm

26. The Dewey Ballantine scheme was negotiated and put in place in late 2005 and early 2006. The way in which it operated remained the same up to and after the time when Mr McMillan took out his loan in 2010 so far as material to this dispute. The financial officers of the Firm negotiated the terms of the scheme and the document templates with the Bank. The Firm would arrange for partners who wished to take out a loan to sign the agreed loan agreement template, and the Firm would add its own undertaking and forward the executed documents to the Bank in New York. For administrative reasons, the Bank booked the transactions in London. The Firm received the loan proceeds, as provided for in the loan documentation, and serviced the interest payments, which the Bank understood were to be deducted from the drawings by the partners. The Firm was provided by the Bank with annual certificates in relation to payment of interest which would enable the individual partners to deduct the interest payments for tax purposes. Mr McMillan says that he never received any such certificates. The Bank relied on the Firm to advise it when partners left, and to make the repayments to the Bank when the capital repayments would have been due to such partners under the term of the partnership agreement, which was in three annual instalments following departure, commencing on the first 31 December falling at least six months after they left. In this respect the Bank relied on schedules provided by the Firm as to which partners had left and what capital repayments fell due when.

27. The Bank did not conduct any inquiry into the credit rating or suitability of the partner as a customer. It perceived partners in a major international law firm to be a good credit risk, and its regulatory KYC requirements to be fulfilled by the partner being introduced by a named and vetted individual at the Firm, Mr Canellas, who was the Firm's financial controller and the Bank's regular contact. As far as the Bank was concerned, the purpose of the loan was that stated on the face of the loan documentation, namely to enable the partner to make a capital subscription to the Firm. The Bank did not inquire into or distinguish between initial capital subscriptions or increases in capital subscriptions.

28. The Bank was not responsible over the life of the scheme for authorising or supervising what

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the Firm told its partners about the terms. From time to time it provided summary sheets which described the product in general terms. An example from December 2007 contains nothing misleading or inaccurate and invites the reader to contact Mr Worsley at the Bank for further information or detail (Mr Worsley was then the day to day relationship manager). Apart from such summaries, the Bank simply made available the prospective terms in accordance with the agreed templates. There was no delegation to Dewey Ballantine or the Firm with regard to any explanation of the purpose or terms of the loan to individual partners. Mr Johnman's evidence, which I accept, was that he regarded the terms of the documentation as making clear that the repayment obligation was ultimately that of the partner, albeit that the expected method of repayment was by the Firm out of the capital which would otherwise have been returned to the partner, and that he expected lawyers in a major firm at partner level to understand what was not very complicated contractual documentation to that effect.

29. When the Dewey Ballantine scheme was first implemented there was no other lending by the Bank to the firm, and the scheme was profitable for the Bank in its own right. Nevertheless the Bank was keen to undertake a wider range of business for Dewey Balantine, as well as for LeBoeuf, and in due course the Firm. In the first half of 2007, prior to the merger, the Bank participated in other lending to both firms. It took a $10m participation in a $60m revolving credit facility ("RCF") extended to Dewey Ballantine led by Wachovia, and a $5 million and interest swap participation in a syndicated lending of about $101 million to LeBoeuf. Following announcement of the merger on 28 August 2007, Mr Johnman continued to negotiate with Mr Canellas and Mr Sanders, the Firm's chief financial officer, seeking to participate in other lending to the Firm. On 11 March 2008 the Bank entered into its own bilateral RCF of $30 million with the Firm. In the light of the global economic downturn, in 2008 the Bank negotiated amendments to the terms of the RCF and of future PCSLs with Mr Sanders and Mr Canellas. The main changes in respect of PCSLs were to the rates; there was also an amendment to the Firm's Undertaking, so as to allow the Firm to set off from the partnership capital due to be returned to the partner, and so repayable directly to the Bank, sums otherwise due to the partner, such as outstanding distributions or expenses. This set off was capped at 25% of the value of the loan.

30. In December 2009, the Firm approached the Bank for a waiver in relation to an anticipated breach of the cash flow covenant which existed under the legacy Dewey Ballantine RCF led by Wachovia. The Bank used this as an opportunity to negotiate better rates for future PCSLs, and because the existing rates were now unprofitable, it proposed to give notices of non extension on some partner loans so that they ceased to be evergreen. In January 2010 the Bank agreed such waiver, subject to agreement with the other lenders and there being no acceleration of the loan. In February 2010 the Bank sought to gain the support of the Firm to amend the period and rates on the existing partner loans which were unprofitable for the Bank; in the event only one of the existing partners with loans agreed to such a variation of the terms. In April 2010, the Firm renegotiated its credit facilities with institutions which did not include the Bank, whose

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participation in the Wachovia led RCF and its own RCF ceased. Accordingly at the time of Mr McMillan's Loan Agreement the only financial relationship the Bank had with the Firm was the partners' capital loan programme.

31. So far as concerns the Bank's perception of the financial state of the Firm:

(1) Mr Johnman assumed that the partners would have access to information about the financial state of the Firm. This was a reasonable assumption on his part. Mr McMillan relied on evidence in recent criminal proceedings to the effect that the Firm's financial officers, including Mr Sanders and Mr Canellas, had been guilty of financial fraud and manipulation of the Firm's books and in relation to partner distributions, so as to deceive partners about the financial health of the Firm, conduct of which he and other partners had been unaware at the time. There is no basis for suggesting that Mr Johnman or anyone else at Barclays had grounds to know of or suspect such behaviour.

(2) There had been a number of points in the relationship between the Bank and the Firm where the Bank had information which raised questions about the credit quality of the Firm. This was in the context of many firms suffering reduced income from 2008 in the economic downturn, with their results for 2009 and into the first quarter 2010 reflecting this marketwide downturn. As Mr Johnman said, generally firms weathered this downturn. In December 2009 when the Firm indicated that it would breach its cash flow covenant in the RCF and sought a waiver, this raised what Mr Johnman described as a red flag which prompted the Bank internally to recommend that the Firm should reduce partner distributions, which the Bank was told by Mr Sanders the Firm was doing independently of its own recommendation. Mr Johnman explained that when this and a subsequent concern raised "red flags", they were met with a plausible explanation and coherent response from Mr Sanders or Mr Canellas and so the red flag went down again.

(3) At the date of Mr McMillan's Loan Agreement, the Bank's perception was that the Firm had suffered the same financial distress as many other firms in the economic downturn, but there was no expectation that it would not be able to weather the circumstances by the reduction in partner distributions which it said it was undertaking. Mr Johnman's evidence, which I accept, was that there were good reasons for the Bank not to be concerned from a credit perspective; that the Bank believed that the capital available to the Firm had not reduced below the value of the PCSLs; and that if the Bank had issued letters of non extension to prevent the loans being evergreen so that they gradually fell due for repayment in the coming years, the Firm would have been able to pay them. In short, the Bank did not anticipate an event of default under the loans.

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(4) At some point between April 2010 and 15 July 2010 the Bank received the Firm's management accounts with results for the first quarter of 2010. Mr Johnman explained that these reflected what he would expect to see with the market problems working through. Mr McMillan relied upon an internal credit paper in which the Bank expressed concerns over the results. It appears that the relevant part was prepared on 15 July 2010 and so postdates Mr McMillan entering into his Loan Agreement. There were further discussions in which by the end of July 2010 Mr Sanders was telling the Bank that the Firm's financial position was secure on the basis that it had refinanced its RCF facilities, raised $150 million by loan notes and was following a strategy of de-equitising by managing out some partners. Although Mr Johnman described the strategy put forward by Mr Sanders as compelling and persuasive, in the end the absence of underlying financial information led the Bank to lose confidence in what it was being told by Mr Sanders. A further "nail in the coffin" in the loss of confidence in Mr Sanders was his attempt to persuade the Bank to release the Firm from its undertaking in the PCSLs with the promise of some sort of payment to the Bank or increase in the rates on partner loans future business, a negotiating tactic described internally as "a bribe", not in the sense of anything improper but in the sense of a crude bargaining tactic. The Bank decided to consider strategies to reduce its exposure, which by this time was confined to the PCSL programme. The strategy adopted involved giving notices of non extension of the loans in July or August 2010 so that they ceased to be evergreen. This marked a greater level of concern over the Firm's finances than existed on 30 June 2010 when Mr McMillan signed his Loan Agreement, but still fell far short of any perception that the Firm was insolvent or likely to cease business as a going concern or commit an event of default. At this stage the Bank still had no reason to doubt the ability of the Firm to make repayments from the capital accounts of partners. The exit strategy was driven by the fact that the terms of the loans were unprofitable to Barclays. As Mr Johnman put it: "we only exited because the economics didn't make sense, not because we didn't think we would be repaid".

(5) The information about the Firm's financial health which the Bank received thereafter did not cause it to suspect that the Firm was insolvent or likely to cease business as a going concern or commit an event of default until very shortly before the bankruptcy in 2012. Prior to that point the Bank reasonably believed that repayment of the loans would be made by the Firm in the normal course as a going concern.

Mr McMillan's dealings with the Firm

32. Mr McMillan graduated from law school in 1990 and was admitted to practise as an attorney in New York. After starting his career at LeBoeuf he left in 1993, and in 1996 set up his own firm

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specialising in entertainment and media law. He developed an entertainment law practice in both litigation and transactional contract work and came to represent a number of well known musical superstars. In 2007 he rejoined LeBoeuf as a partner and head of the firm's entertainment media and sports department based in New York, bringing with him a number of members of his former firm.

33. Mr McMillan's engagement was on the terms of an amended offer letter signed by him on 11 April 2007 whose material parts provided as follows.

    (1) His admission as a partner was on the terms of the Firm's partnership agreement.

    (2) His target compensation would be at the annual rate of US$1.5 million per annum for 2007, 2008 and 2009, with the figure prorated for 2007 for the period between his start date and the end of the calendar year.

    (3) The target compensation would be paid by way of monthly "draws" of US$25,000 and the balance as "distribution" payable from time to time if and as warranted by the firm's cash flow. In his evidence to me Mr McMillan sought to portray this as an absolute entitlement to US$1.5 million per year. That was not what the offer letter said and was not in accordance with the partnership agreement at least from the time of the merger onwards (the partnership agreement before the Court was that of the Firm which I was told followed closely that of LeBoeuf prior to the merger; there is nothing to suggest that Dewey Ballantine's partnership agreement was in this respect different, but it is in any event common ground that from the time of the merger Mr McMillan was engaged on the terms of the Firm's partnership agreement to which he subscribed). The partnership agreement in essence provided that the Firm's profits were to be shared prorata in accordance with the target compensations decided upon by the Compensation Committee for each partner, subject to an ability to make special discretionary payments to individual partners up to a cap of 10% of distributable profits. Mr McMillan's perceived worth to the partnership was reflected in his target compensation, but his entitlement to that sum depended on the firm making sufficient profits to pay all the partners their target compensations (in the absence of the exercise of discretion in particular cases), failing which he would only be entitled to a prorata proportion of his US$1.5 million per annum. I have no doubt that Mr McMillan understood this. He told me that on occasions whilst at the Firm that he was assured that he was doing well and that he would be paid his target compensation. Even if that be so, I have no doubt that he understood that such compensation was discretionary, not a matter of entitlement, in circumstances where the profits of the Firm were insufficient to meet all partners' target compensations.

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(4) In relation to capital contributions the offer letter provided:

"Capital Contributions

As a Partner you will be required to contribute capital to the Firm. The Capital requirement is 36 percent of your Target Compensation. Your initial Capital obligation is $540,000 payable over two years commencing in 2008 and shall be deducted proportionately from your distributions. Capital funds required or due you as a result of any change in Target Compensation in years subsequent to 2007 shall be paid each year accordingly by you.

To assist you with meeting the Firm's capital contribution requirement, the Firm has negotiated an optional loan program. If you are interested in exploring this option, please contact David Rodriguez, Partner Relations Specialist, in the New York office at (212) 424-8036."

34. Mr McMillan's witness statement stated that it was in May 2007 that he was told orally by Mr Sanders, the firm's chief financial officer, that he was required to make a capital contribution of 36% and of the availability of the partner capital loan programme, whilst making no mention of the offer letter or the fact that these matters were clearly set out in that letter. His statement suggests that the programme he was told about by Mr Sanders was with Citibank. It goes on to suggest that Mr Sanders told him that there was "no risk" to him in participating in the loan programme because "when you leave the firm will repay the loan to the bank." I am unable to conclude that there was any such conversation. If there had been, it would have no material bearing on the issues in the case because it is apparent from later documents that the Firm also had a partner capital loan programme with Citibank as well as the Bank, although the Citibank loan terms are not before the Court. Anything said about such a programme could not on any view have been known to the Bank or said on its behalf so as to form any part of the relevant factual matrix. What is common ground is that Mr McMillan did not seek to take out a loan to fund his capital contribution at that stage.

35. The merger between LeBoeuf and Dewey Ballantine to form the Firm was announced on 28 August 2007 and took effect on 1 October 2007. There was nothing in the evidence before me to suggest that there were any discussions at the time about Mr McMillan's remuneration or capital contribution, and it was common ground that his engagement continued with the Firm on the terms of his offer letter and the Firm's partnership agreement which was before the Court.

36. On 6 March 2008 Mr McMillan received a memo from Mr Sanders in the following terms:

"To: McMillan, L. Londell

From: The Executive Committee

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Re: Capital Account Balance

In order to fund the Firm's working capital needs the Executive Committee has approved a capital loan program sponsored by Barclay's Bank. Barclay's has agreed to finance all partners' outstanding unpaid capital balances as of 12/31/2007 thereby satisfying all such obligations (this will not address any changes in capital attributable to 2008 partner compensation adjustments). The firm would like to close this loan by the end of March 2008.

There will be no financial impact to you with respect to this loan, until such time as your capital is actually due to the firm. At that time you may elect to continue to participate in the loan program or just pay your capital directly to the firm thereby satisfying your loan obligation. This will not impact the timing of when your capital is actually due to the firm.

Please sign the attached form and return it to Joel Sanders in the NY office no later than March 12, 2008 to facilitate this process.

Further details of the loan program are available by request.

Thank you in advance for your help with this.

Note: Based on 2007 Participation Target of $1,500,000.00, your 2007 capital obligation is $540,000.00, of which $0.00 has already been paid, leaving you an unpaid capital balance of $540,000.00."

37. The memo attached an application form filled out in Mr McMillan's name for him to sign. On 18 March 2008, Mr Rodriguez, who reported to Mr Canellas, updated Mr Sanders on the status of various partners' capital obligations. Mr Rodriguez's email recorded that Mr McMillan wanted to discuss the position with Mr Sanders "as he doesn't do business with Barclay's". Mr McMillan denied he had said that. I see no reason why Mr Rodriguez should have invented it (and none was suggested) and the subsequent email correspondence demonstrates that it was not a misunderstanding on Mr Rodriguez's part. On 18 March 2008 Mr Rodriguez had a conversation with Mr McMillan, following which he sent him further copies of his offer letter and the 6 March 2008 memo. On 20 March 2008 he followed up in an email to Mr McMillan asking whether Mr McMillan was interested in obtaining a loan through a different bank and enclosing details of the terms available from four different banks, one of which was the Bank.

38. A week later on 27 March 2008 Mr Sanders emailed Mr McMillan in these terms:

"………. I would like to speak to you about your capital

I understand that you will not be participating in the Barclays loan program for

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personal reasons which is fine. However if you don't participate in any loan program your 2008 capital will be due at the end of this month which means absent a check from you we will have to deduct your 2008 capital obligation from your draws and distributions until your obligation is satisfied which I know you won't like. So I am recommending you choose one of our other participating banks quickly to avoid this result. I can set this up for you tomorrow if you give me a call in the morning.

Please don't shoot the messenger on this one - I'm just trying to help."

39. Mr McMillan responded: "Thanks Joel, I am well aware of my obligation here and I would like to discuss other loan sources you have in place…" Mr Sanders replied: "……I'll let David Rodriguez know that you're interested in a capital loan with a bank other than Barclays and he'll start working on a package for you." Mr McMillan responded: "I appreciate that and we can talk about the Barclays situation over lunch soon. Let me know when you are available in April."

40. As a result on 28 March 2008, Mr Sanders emailed Mr Rodriguez, copying in Mr McMillan, instructing: "Please do not have Londell's capital deducted from his draw or distribution and set him up ASAP with a capital loan from a bank of his choosing other than Barclays." Mr McMillan received this and responded asking Mr Rodriguez: "please have someone provide me with a list of banks, rates and options so that I can make an informed decision promptly." Mr Rodriguez replied setting out the terms available from the three banks other than Barclays.

41. Matters seem to have rested there. Mr McMillan did not take out a loan. His evidence to me was that at that time he did not need a loan because he believed that his capital contribution was being deducted from his distributions. It is difficult to see how that could have been his state of mind in the light of this correspondence, including the clear terms of the memo of 6 March 2008 (which he received twice) and after receiving a copy of Mr Sanders' email of 28 March 2008 which instructed that it was not to be deducted. I am afraid I am unable to accept his evidence that he did not notice, on either occasion, the words at the end of the 6 March memo or his evidence that he was not aware that the Firm did not consider that he had made any capital contribution. His evidence to me was that he was exceptionally busy, but it is clear from the email correspondence that he focussed on the specific issue concerning a loan and his capital account.

42. Mr McMillan's evidence was that he was only paid US$810,000 of his target compensation of US$1.5 million in 2008 and assumed that the shortfall was in part explicable by deduction of his capital contribution to the Firm. The evidence before me of what sums Mr McMillan received during his time at the Firm was not complete or satisfactory. From the Firm's side, there was a schedule of what was asserted by the Bankruptcy Trustee to have been paid from 2009 onwards, with no supporting documents. Mr McMillan asserted that it was inaccurate. Mr McMillan gave disclosure of bank statements for some but not all of the relevant period, but with redactions, at

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least one of which may have been a payment from the Firm. The figures were difficult to reconcile. Nevertheless, assuming that Mr McMillan's evidence of what he received in 2008 is correct, I cannot accept that he thought it was because he should have been paid his full US$1.5 million and that the shortfall was at least in part explained by his capital contribution having been deducted. His offer letter made clear that his entitlement was to a share of the partnership profits, not to a minimum of US$1.5 million. On 16 October 2008 Mr Davis, the Firm's Chairman, sent a memo to all partners about the difficult economic circumstances affecting the Firm's ability to make partner distributions, with only 40% of target compensations having been distributed and little cash reserves available for further distributions that year. The memo and emails in March 2008 to which I have referred can have left Mr McMillan in little doubt that the Firm was not making deductions for his capital contribution and was expecting him to fund it by taking out a loan. His refusal to accept this in evidence was unrealistic.

43. I conclude that in March 2008 and throughout 2008 Mr McMillan knew that his capital contribution was not being deducted from his draw or distributions and that the Firm were expecting him to fund it by way of a loan.

44. In September 2009 it came to the attention of Mr Sanders and Mr Canellas that Mr McMillan had still not paid his capital contribution. By that time Mr McMillan had not been receiving even his draw for at least three months because he was behind with his time sheets and billings ("delinquent" in the language of the Firm). Mr DiCarmine, the Firm's chief executive officer, told Mr Sanders that it was absurd that the capital had not been provided and that he would speak to Mr McMillan. Mr McMillan's evidence to me was that he didn't think that Mr Di Carmine did so.

45. On 4 December 2009 Mr Sanders emailed Mr McMillan attaching a reconciliation of the compensation said to be owed to him as of that day. It purported to show that some US$80,000 was owed to Mr McMillan but that this was far outweighed by the US$540,000 which Mr McMillan owed by way of capital contribution. The email said:

> "I have attached a reconciliation of the compensation owed to you as of today. Please note that you have not paid any of your capital into the firm and you have not executed any capital loan documents. In order to receive any compensation payments you must get current on your capital account. You can easily do so by executing the Barclay's loan form today."

46. Mr McMillan responded by email the same day saying that he could not review the attachment on his blackberry but would be back in the office later that day. The email continued:

> "Further it was my understanding that the loan documentation had been signed for my contribution to the capital account and payments were being deducted from my draw. If not, I should sit with someone and go over my payment history for

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accuracy. Thanks again."

47. This was disingenuous. Mr McMillan knew he had not signed any loan agreement in relation to his capital account. He told me that he was referring to loan documentation he was regularly required to sign as a partner for capital borrowing by the Firm generally. This is impossible to reconcile with the context or terms of the email in question.

48. Mr Sanders immediately responded by email:

> "You did not sign the loan docs because you said it was a diversity issue. I did not know you didn't sign the loan docs when I spoke to you. David Rodriguez is emailing you the loan docs from every one of our partner banks. Pick one - sign it - return it to me and I will process your wire immediately."

49.

50.

51. Mr McMillan replied:

> "So let me understand, do we now have this type of relationship on everything? I just want to understand how you and Steve are coming at me."

52. Mr Sanders responded:

> "No. On everything else we love you and we're pretty flexible. It's just the financial stuff that's a pain in the ass this year. I have to close our books in less that a month and the auditors are pretty picky about the numbers which is no surprise so I need to button us up for the audit. Right now I'm over distributed and under capitalized because we've been really lenient in the past so I'm just doing my job and tightening things up for the year end audit. I'm kicking everybody's ass so please don't take it personally. When the money starts rolling in again we'll go back to our normal easy going style of fiscal management."

53. Mr McMillan replied:

> "Understood but I have not been compensated much this year (and fully for 08) and it is killing me. I made a few tough investments based on my firm agreement with expectations of payment. What also really disturbed me was my little daughters Child Support was cut off by the firm. We discussed it and you promised to fix it but it is not corrected so I have paid all my expenses with no income. I was and remain dealing with much, missed a few timely diary submissions and a [high profile client] died. We are now up to speed and I am still jammed up. The

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conditional accomodations to everything lately and the way you initially was handling me and the situation was a bit unfair under the circumstances. For some reason, the firm directed my client matters to another partner and not discuss it for some matters that have nothing to do with him. That is improper. When we went over billing, collections and everything, I showed you proof that I did send outstanding sums owed to our firm regarding [the high profile client] and we did the best we could do on collections at the time since no Executor was put in place and our billing entries were not proper and final. Nonetheless, my relationship with the client and now that the Estate has just been settled, we will get paid.

Finally, I love you too but fair is fair. Let's move on please... Thanks.

54. Mr Sanders emailed back:

> "So does this mean you're not going to pay your capital by signing a loan form? Right now that's the only thing standing between you and a check unless Steve or Steve waives it."

55. Mr McMillan responded:

> "I will sign but you are holding my income for me and my family because we found out that was yet to be done and that doesn't feel right to me. One has nothing to do with the other. I have worked hard, generated income and earned my right to receive my compensation. Your approach with me based on this issue and the ones I raised earlier indicates there is a problem. I want no problems. Just want to be productive."

56. In the meantime on the same day Mr Rodriguez again sent Mr McMillan details of the loans available from the Bank and Citibank. On 23 December 2009 Mr Rodriguez sent an email to Mr McMillan attaching the application form for a loan from the Bank and stating that he had filled in as much of it as he could. Mr McMillan responded thanking him and saying that he would get back to him.

57. This correspondence is quite inconsistent with Mr McMillan's assertion that he thought his capital contribution had been deducted from what he was owed in distributions. He was at pains to make clear to me that he did not trust Mr Sanders and his finance team, found their figures confusing, and was convinced that he was entitled to be paid more than they said. He also said that he was very busy at this time and mostly out of the office. But however that may be, it was clear to him that the Firm was not treating the capital contribution as having been deducted from what it contended he was owed in draw and distribution. Mr McMillan knew at this stage that the Firm had not purported to deduct his capital contribution from his distributions and it was expecting him to fund it in full by way of a loan.

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58. On 4 January 2010 Mr McMillan emailed Mr Sanders to say that his billings were up to date and asking for release of his "funds". Mr Sanders gave instructions that his capital contribution was to be deducted. Mr Rodriguez calculated that he was owed gross US$102,796.85, which after netting off the US$540,000 capital contribution which remained unpaid resulted in a nil entitlement. There is no record of this being reported to Mr McMillan but I conclude that it probably was in the light of the fact that he had been chasing for payment and of the terms of an email of 16 February 2010 in which he talked of his "payments" having been withheld. Again I conclude that Mr McMillan was aware that the capital contribution had not been fully deducted from what the Firm regarded as his outstanding entitlement to distribution, and that he appreciated that so far as the Firm was concerned it was regarded as remaining unfunded in an amount of some US$430,000.

59. An exchange of emails on 16 and 17 February 2010 about getting his time sheets in confirmed to Mr McMillan that he was not being paid draw because he needed to make his capital contribution to the Firm.

60. Mr McMillan's evidence was that by March 2010 he wanted to leave the Firm because his three year term was coming to an end and he had not received a large amount of his compensation. He said that he had a meeting on 4 March 2010 with Mr DiCarmine and Mr Kessler, the Firm's Global Litigation Chair and a member of its Executive Committee, at which it was agreed that he would withdraw from the Firm but continue to maintain an office and to wind down his various business matters. He told me that he ceased to be an equity partner in May 2010 and that it was "official" in December 2010. I am afraid I do not feel able to rely on this evidence. There is no contemporaneous support for it in the documents and it is not easy to reconcile with the discussions in June 2010 which led to him signing the Loan Agreement: see below. It is also not easy to reconcile with the payments Mr McMillan received from the Firm in 2011, whether on the Trustee's figures or Mr McMilllan's own. He was challenged to provide any document to support his account which referred to this meeting or his leaving the Firm. Only one was identified, which was produced as an attachment to the written final submissions. It was a letter written in US litigation by lawyers on behalf of Mr DiCarmine and Mr Sanders which amongst other things stated that Mr McMillan had not met on 4 March 2010 to advise the Firm of his plans to wind down and withdraw from the Firm, but rather that he had been summoned to the meeting at which he was fired from the Firm. This too is difficult to reconcile with the documents, but it does little to corroborate Mr McMillan's evidence, which it contradicts. I am unable to conclude that in March 2010 or at any time before he signed the Loan Agreement on 30 June 2010 Mr McMillan had agreed with the Firm that he would cease to be a partner.

61. In an email of 12 March 2010 Mr Sanders told Mr McMillan that his pay was on hold because he was "on the delinquent list for his diaries", but that even if he got up to date on that he would not receive anything from the Firm because he owed capital to the Firm and had still not signed any of the capital loan forms. Mr McMillan responded that he would sign the loan document.

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He signed an application for a loan of US$540,000 from the Bank on 16 March 2010. In the light of the correspondence, I have little doubt that he fully understood that this was an application to the Bank for a loan to fund his obligation to provide capital to the Firm which remained outstanding. As a result Mr Sanders emailed on 23 March 2010 to say that he would need to sign the final loan forms when received from the Bank, but in the meantime despite his delinquent status he would be paid his entitlements which were US$112,458.32 at that time, US$498,750 on 1 May 2010 and US$600,000 on each of 1 January and 1 April 2011.

62. Mr McMillan was sent the Bank's loan agreement to sign on 13 April 2010, but he failed to do so. In his evidence to me he spoke of "dodging" signing the loan agreement because he wanted to sit down and sort out what he was owed, which he regarded as more than Mr Sanders was contending.

63. On 22 June 2010 Mr Sanders sent an email stating that all the monies then owed had been paid, but that an amount would be due at the end of June. The calculation in the email showed a gross amount owing of US$823,708.31 which left a net amount to be paid of US$283,708.31 after deduction of the US$540,000 capital contribution due. Mr Sanders said that "your capital has already been deducted and processed as it was way overdue and you never processed the loan documents. You are free to borrow the capital from any of our partner banks at your convenience." On 23 June 2010 Mr Rodriguez updated the figures saying that there was an additional US$145,791.69 gross due in checks that were not released and that the net sum due was US$304,346.29. Again this made clear that this net sum involved deducting US$540,000 for the capital contribution. Mr Rodriguez sent a further email on 24 June explaining how the gross sum was made up. On 24 June 2010 Mr McMillan emailed Mr Sanders saying that he had "signed the loan documents months ago" so that there was no entitlement to "deduct any such sums". This was clearly a reference to deduction of the US$540,000. Mr Sanders responded that it was not true that he had signed the loan agreement, which he referred to as "the note": he had only signed the application form. His email concluded: "when you sign the note and we receive the money from Barclay's we will remit it to you." Mr McMillan replied that he had never received the loan note (which was untrue) and that he was not prepared to wait until the Firm received the money from the Bank.

64. There followed a slightly bad tempered exchange between Mr McMillan and Mr Sanders in which Mr Sanders reiterated that Mr McMillan had to sign the loan agreement to fund the capital he owed to the Firm before an equivalent amount of distribution could be made to him. By the evening of 24 June 2010 Mr McMillan accepted that he might previously have been sent the loan agreement to sign, and that he would sort it out with David Rodriguez. The original draft loan agreement had expired and a new one was procured, which Mr McMillan signed on 30 June 2010 when it was sent to him.

65. Mr McMillan maintained that he was confused by this exchange and did not understand that what he was signing was a loan which was necessary in order to fund his capital contribution.

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This is untenable in the light of the clear terms of the correspondence. I have little hesitation in concluding that when Mr McMillan signed the Loan Agreement it was on the understanding that it was to fund his capital contribution and that the Firm was promising that upon receipt of the funds by the Firm from Barclays, an equivalent amount of his distribution entitlement which was being withheld would be released.

66. The signing of the Loan Agreement did not come in time for Mr McMillan to be paid his gross entitlement at the end of the month. According to the bankruptcy Trustee he was paid on 29 June 2010 (before execution of the Loan Agreement) two payments totalling US$308,708.31. According to his bank statements he was paid two quite differently quantified payments on 30 June totalling US$320,898.54.

67. The Firm received the US$540,000 into its account on 6 July 2010. It does not appear that that sum was paid to Mr McMillan, although there were a number of further payments over the course of 2010 and 2011. Mr McMillan relies upon that fact to support his case that he was confused and did not understand that the loan was being made to him rather than the Firm. But I cannot accept that that was his state of mind in the light of the background of his pressing for release of the gross amount of his distributions and the clear terms of the correspondence which gave rise to his recognition that such release required him to sign the agreement to fund his capital contribution. The documents before the Court are incomplete and in the absence of any supplementary evidence from anyone else from the Firm I am simply unable to reach any conclusions as to why the US$540,000 was not paid on promptly to Mr McMillan, as Mr Sanders had clearly promised in his email of 24 June 2010. It may be that for whatever reason Mr McMillan did not press for it, or that the Firm provided some reason why it refused or failed to transmit it.

68. In the light of these findings I turn to consider the defences advanced by Mr McMillan.

Construction

69. The principles of construction are well established. It is sufficient to cite the summary given by Lord Clarke in ***Rainy Sky SA v Kookmin Bank*** [*Diagram or picture not reproduced in HTML version - see original .rtf file to view diagram or picture*][*Diagram or picture not reproduced in HTML version - see original .rtf file to view diagram or picture*][2011] 1 WLR 2900 at paragraph [21]:

> "the exercise of construction is essentially one unitary exercise in which the court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so, the court must have regard to all the relevant surrounding circumstances. If there are two

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possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other."

70. The contractual documents make clear that it is Mr McMillan who is the borrower, that it is he who is personally liable for repayment of the loan when due, and that the Bank's recourse against the Firm is by way of collateral for that obligation, effected by what is in law an assignment by Mr McMillan to the Bank of his right against the Firm to repayment of his capital contribution. This follows from the clear wording of the Loan Agreement including in particular the following aspects.

(1) The Loan Agreement is addressed to Mr McMillan personally and is signed by him in a personal capacity.

(2) The opening paragraph defines Mr McMillan as the Borrower and states that the loan is to be provided to him.

(3) Clause 1 identifies the purpose of the loan as being to assist Mr McMillan with his partnership capital subscription, i.e. to assist him in fulfilling his personal obligation towards the Firm.

(4) Clause 2 identifies that acceptance of the letter is to be signified by completion of the formalities in clause 13 which dictate, amongst other things, that Mr McMillan's signing of the copy of the letter will amount to an acceptance by Mr McMillan of the loan.

(5) Clause 7 provides that Mr Canellas of the Firm is to act on Mr McMillan's behalf in relation to drawdown of the loan, payment of interest on the loan and repayment of the loan.

(6) Paragraph 8 refers to the Undertaking given by the Firm as collateral, that is to say as a secondary and security obligation.

(7) Clause 9(a) imposes an obligation on Mr McMillan to inform the Bank on becoming aware of any breach *by him* in the performance of any terms or conditions of the agreement.

(8) Clause 10.1(a) makes it an Event of Default for Mr McMillan to fail to make any repayment of principal or interest.

(9) Clause 10.1 provides that when there is an Event of Default, the Bank may demand repayment of the whole amount of the outstanding loan by serving a written notice on Mr McMillan.

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(10) Clause 10.4 imposes on Mr McMillan an obligation to indemnify the Bank against the consequences of making such a demand or as a consequence of non-performance by Mr McMillan of any of the obligations under the Loan Agreement.

(11) Clause 11.2 provides for Mr McMillan to submit to the personal jurisdiction of the English Court in the event that the Bank sues here to enforce repayment of the loan.

(12) The Loan Agreement contains no obligation on the part of the Firm, whose obligations are identified and defined in the Undertaking.

71. This construction is supported by the language in the Instruction Letter and Undertaking which are scheduled to the Loan Agreement. In particular:

(1) In the Instruction Letter Mr McMillan confirms that it is he who has applied to the Bank to borrow and that it is for the purpose of his injecting capital into the Firm.

(2) The Undertaking confirms in its opening paragraph that the amount drawn down under the loan will be provided to the Partner, i.e. Mr McMillan, and that it will be by means of a partnership capital subscription. Paragraph (ii) identifies that the partners' capital loan account balance is to be used to discharge any indebtedness under the loan.

72. There is nothing in the background knowledge reasonably available to the parties which suggests any different construction from that indicated by the plain language of the documents.

73. As to the factors prayed in aid on behalf of Mr McMillan:

(1) It is not correct to say he did not want or need to fund his capital account. He signed the document in the full knowledge and understanding that that was indeed its purpose. Moreover the Bank understood that such was its purpose, as stated in the document which Mr McMillan signed. There is no warrant for suggesting that the Bank knew or had any ground to suspect that Mr McMillan was signing the document for a different purpose.

(2) There is no force in the suggestion that the purpose of the loan was not to fund his capital account but to provide working capital for the Firm which was in financial difficulties. Mr McMillan's suggestion that the purpose of the loan was to provide working capital to the Firm does not assist him, because that is what provision by partners of a capital contribution is intended to provide to the Firm. Insofar as it is suggested that it was not intended that Mr McMillan should get the benefit of such a loan:

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(a) As between Mr McMillan and the Firm, that is inconsistent with the entire course of the correspondence and Mr Sanders' promise in his email of 24 June 2010 that when the loan proceeds from the Bank were received by the Firm the amount would be remitted to Mr McMillan. In the written final submissions it was suggested that this was "no doubt" a dishonest promise by Mr Sanders. This allegation, which had not been pleaded or previously foreshadowed was not justified. The mere fact that in the event it does not appear that the money was transferred once received by the Firm does not justify the allegation. On the material before me I am simply unable to say why it was not immediately passed on. Another partner, Mr Landgraf signed his agreement on 13 May 2010 and his loan proceeds were received by the Firm on 21 May 2010, but they were not passed on until 25 June 2010 and only as a result of Mr Landgraf chasing for them.

(b) In any event, even if the Firm did not intend to pass to Mr McMillan the benefit of the loan, its intention is not to be imputed to the Bank, which had no reason to know or suspect any such intention, which would have been contrary to the purpose expressed in the written agreement. It would not therefore form part of the relevant factual matrix.

(3) It does not assist Mr McMillan to point to the fact that the loan was part of a programme whose terms were negotiated by the Bank with the Firm, not the individual partners, and which was intended to be and was administered by the Firm rather than the partner. The Bank could properly assume, as it did, that the Firm was negotiating for the benefit of its partners in seeking to have personal loans available; and that the Firm was seeking to act in its partners' interests in administering the loans on their behalf. None of this suggests that the Firm was acting as the agent of the Bank or that the loans were something different from what their plain terms indicated. Nor does it assist Mr McMillan to point to the fact that the Bank assessed the credit risk on the portfolio by reference to the Firm rather than individual partners. The loans were collateralised by the Firm. Mr Johnman characterised this credit risk as "double default". It is not in any way inconsistent with the partner being the borrower in accordance with the terms of the contractual documentation.

(4) Nor does it assist Mr McMillan to point to the fact that, as Mr Johnman accepted in evidence, the loan was intended and expected to be repaid not by the partner but by the Firm. That was what was intended and expected in the normal and anticipated course of the Firm continuing as a going concern. That was what the written terms provided for, but they equally provided for recourse to the personal liability of the partner in certain circumstances, which have eventuated in this case.

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(5) There is nothing in Mr McMillan's argument that the Firm, as agent for the Bank, represented to him (a) that he would receive the benefit of the loan whereas he did not; or (b) that the loan was solely for the benefit of the Firm; or (c) that the loan was without recourse to him, alternatively that his liability was only as guarantor. In fact:

(a) no such representations were made by the Firm; and

(b) in any event the Firm was not the agent of the Bank for making any such representations; and

(c) in any event the entire agreement clause prevents reliance on such alleged representations.

(6) The argument that at the time of signing the Loan Agreement there was an unremedied event of default in existence under clause 10.1(j) such that Mr McMillan's liability, if personal, had already arisen, fails as a matter of fact and law:

(a) The factual basis for the argument was that in April 2007 (prior to the merger), four partners had left Dewey Ballantine with balances on their capital accounts which were insufficient to repay the loans because they had been allowed to deduct their liability for losses of Dewey Ballantine in 2006 from their capital accounts; this was a default under clause 10.1(h) of their agreements which was said to give rise to an immediate right of payment from the firm to the Bank of the amount which was on their capital account under (ii)(b) of the undertakings in their loan agreements. However subsequent documents confirm that by the time of Mr McMillan's loan in 2010 there were no outstanding balances in shortfall in relation to former partners who had left Dewey Ballantine or the Firm.

(b) The legal basis for the argument is unsound because it assumes that paragraph (ii)(b) of the undertaking imposes an obligation on the Firm to pay a sum to the Bank as an immediately enforceable debt, whereas the undertaking is negative in form, being merely not to pay the balance of the capital account to the partner in preference to the Bank. If there is no payment to the partner there is no breach of obligation to the Bank.

(7) In these circumstances it is unnecessary to address the additional argument advanced on behalf of the Bank that the terms of the agreement give rise to an estoppel by deed or by contract preventing Mr McMillan from denying that the purpose of the loan was to assist him in making his capital subscription to the Firm as set out in clause 1.

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Sham

74. The classic definition of a "sham" transaction is that of Diplock LJ in ***Snook v London and West Riding Investments Ltd*** [1967] 2 QB 786, 802:

> "As regards the contention of the plaintiff that the transactions between himself, Auto Finance and the defendants were a 'sham', it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the 'sham' which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. But one thing, I think, is clear in legal principle, morality and the authorities (see *Yorkshire Railway Wagon Co. v Maclure* and *Stoneleigh Finance Ltd v Phillips*), that for acts or documents to be a 'sham', with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a 'shammer' affect the rights of a party whom he deceived. There is an express finding in this case that the defendants were not parties to the alleged 'sham'. So this contention fails."

75. Mr McMillan's case depends upon the assertion that he did not intend the agreement to be for the provision of loan capital because he did not want or need a loan for such purposes. I have rejected that assertion and found that he did understand and intend that such was the purpose of signing the loan documentation, as did the Bank. That is fatal to the argument that the Loan Agreement was a sham.

Non receipt

76. The argument that non receipt by Mr McMillan of the proceeds of the loan means that it was never extended to him emerged for the first time in Mr Wardell QC's written final submissions on his behalf. It is misconceived because clause 3 of the Loan Agreement expressly provided that it was to be drawn down by payment into an account in the name of the Firm, which is what happened. Moreover the Firm was the agent of Mr McMillan for the purposes of drawing the loan under the express terms of clause 7. There is no basis for saying that the Firm was the agent of the Bank for the purposes of extending the loan proceeds to Mr McMillan, which appears to be the premise underlying the argument.

Misrepresentation of unremedied event of default

77. This defence fails because:

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(1) Applying the principles I endeavoured to summarise in ***Mabanga v Ophir Energy*** [2012] EWHC 1589 (Comm) at paragraphs [25]-[28] and/or by virtue of the entire agreement clause in clause 15 of the Loan Agreement, there was no implied representation that there were no unremedied events of default.

(2) In any event there was no unremedied event of default as alleged for the reasons I have explained.

Unfair debtor creditor relationship

78. It is common ground that the Loan Agreement constituted a "credit agreement" within the meaning of section 140C(1) of the Consumer Credit Act 1974 ("the Act") so as to engage sections 140A and 140B which provide, so far as relevant, as follows:

"140A Unfair relationships between creditors and debtors

(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following–

(a) any of the terms of the agreement or of any related agreement;

(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;

(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).

(3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.

(4) A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.

140B Powers of court in relation to unfair relationships

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(1) An order under this section in connection with a credit agreement may do one or more of the following–

(a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);

(b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;

(c) reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;

(d) direct the return to a surety of any property provided by him for the purposes of a security;

(e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;

(f) alter the terms of the agreement or of any related agreement;

(g) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.

(2) An order under this section may be made in connection with a credit agreement only–

...

(b) at the instance of the debtor or a surety in any proceedings in any court to which the debtor and the creditor are parties, being proceedings to enforce the agreement or any related agreement; or

(c) at the instance of the debtor or a surety in any other proceedings in any court where the amount paid or payable under the agreement or any related agreement is relevant.

(3) An order under this section may be made notwithstanding that its effect is to place on the creditor, or any associate or former associate

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of his, a burden in respect of an advantage enjoyed by another person.

...

(9) If, in any such proceedings, the debtor or a surety alleges that the relationship between the creditor and the debtor is unfair to the debtor, it is for the creditor to prove to the contrary."

79. In ***Plevin v Paragon Personal Finance Ltd*** [2014] 1 WLR 4222 Lord Sumption, delivering the leading judgment, made the following observations about sections 140A-140C:

> "[10] Section 140A is deliberately framed in wide terms with very little in the way of guidance about the criteria for its application, such as is to be found in other provisions of the Act conferring discretionary powers on the courts. It is not possible to state a precise or universal test for its application, which must depend on the court's judgment of all the relevant facts. Some general points may, however, be made. First, what must be unfair is the relationship between the debtor and the creditor. In a case like the present one, where the terms themselves are not intrinsically unfair, this will often be because the relationship is so one-sided as substantially to limit the debtor's ability to choose. Secondly, although the court is concerned with hardship to the debtor, subsection 140A(2) envisages that matters relating to the creditor or the debtor may also be relevant. There may be features of the transaction which operate harshly against the debtor but it does not necessarily follow that the relationship is unfair. These features may be required in order to protect what the court regards as a legitimate interest of the creditor. Thirdly, the alleged unfairness must arise from one of the three categories of cause listed at sub paras (a) to (c). Fourthly, the great majority of relationships between commercial lenders and private borrowers are probably characterised by large differences of financial knowledge and expertise. It is an inherently unequal relationship. But it cannot have been Parliament's intention that the generality of such relationships should be liable to be reopened for that reason alone. ...
>
> [29] Section 140A was undoubtedly intended to introduce a broad definition of unfairness, in place of the narrowly framed provisions which had previously governed extortionate credit bargains. That much is clear from section 140A(1)(c), whose effect is to extend the concept of unfairness beyond cases where the terms or the way that the creditor applied them makes the relationship unfair. Under that subsection, it extends to any case whatever in which human action (or inaction) produces unfairness. The only limitation on the extreme breadth of sub-paragraph (c) is that the action or inaction in question must be 'by or on behalf of the creditor'. Putting the matter at its very lowest, those words envisage a relationship between the creditor and the person whose acts or omissions have made the relationship

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unfair. If it had been intended to extend the sub-paragraph to any conduct beneficial to the creditor or contributing to bringing about the transaction, irrespective of that person's relationship with the creditor, it would have been easy enough to say so, and very strange to use the language which the legislator actually employed."

80. The following factors point towards the relationship not being unfair:

(1) The terms of the loan were negotiated on behalf of all the partners of the Firm by the Firm's financial officers, whom the Bank was entitled to assume and did assume were acting in the best interests of the partners.

(2) Mr McMillan was an experienced and senior partner in a major international law firm whom the Bank could reasonably expect to understand the clear terms of the agreement which he signed, and to be able to assess the financial implications of doing so. Mr McMillan was not a naïve or vulnerable consumer.

(3) The structure of the loan followed that which was standard at the time for partner capital loan programmes to many professional firms including law firms. There was nothing in the terms as to default or recovery from partners which was unusual or unfair.

(4) The interest rate and tenor of the loan was not unusual or unfair, and not disadvantageous to Mr McMillan; it was not suggested otherwise.

(5) Mr McMillan was under no obligation to finance his capital contribution by a loan from the Bank. He was free to do so from other partner capital loan schemes which the Firm had negotiated with other banks or by any other personal source of funding.

81. On behalf of Mr McMillan it was submitted that the relationship with the Bank was unfair on the following grounds:

(1) Clause 10.1 provided for an Event of Default which the Bank knew, or ought reasonably to have known, would be triggered immediately.

(2) Mr McMillan was not given sufficient information about the interest to be paid on the loan, such as APR or other cost of credit indication.

(3) The Bank made no assessment of Mr McMillan's ability to repay the loan.

(4) The Bank knew, or ought to have known, that the poor financial state of the Firm was such that the loan might not in the event be repaid from Mr McMillan's partnership capital account with the Firm, and failed to tell him of that fact.

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(5) The Firm as agent of the Bank misrepresented the nature of the arrangements to Mr McMillan.

(6) The Firm as agent of the Bank procured Mr McMillan to enter into the Loan Agreement by duress, stating that unless he did so, the Firm would not make any distributions to him of the monies owed to him.

(7) Following the execution of the Loan Agreement the Bank failed to provide Mr McMillan with any documentation or information in relation to the Loan, including, statements of account and information about interest charged and paid.

(8) The Firm as agent of the Bank failed to comply with the terms of the Undertaking upon the departure of Mr McMillan from the partnership in December 2010 by repaying his loan over the following 18 months.

82. None of these adds significant support to an argument that the relationship was unfair:

(1) As to an existing event of default, this is the clause 10.1(j) argument which I have rejected for the reasons given.

(2) As to interest rates, the rate was clearly stated in clause 4(a) of the Loan Agreement as 2.25% over the Bank's base rate for US Dollars payable quarterly in arrears. There is no suggestion that this was an unreasonable or unfair rate, and interest paid was generally available for tax relief for the partners. The interest rate was something which could be expected to be readily understood by a senior partner in a major international law firm.

(3) As regards Mr McMillan's ability to repay, Mr McMillan's application asserted an entitlement to an annual partnership compensation of US$1.5 million, and the Bank was entitled to assume, as it did, that as a senior partner in a major law firm his past and current earnings would have put him in a position to be able to repay such sum. Further and in any event, the Loan Agreement envisaged that repayment would in the ordinary course come from Mr McMillan's partnership capital account with the Firm.

(4) The Bank did not know or have grounds to suspect that the financial state of the Firm was such that the Loan might not be repaid from Mr McMillan's partnership capital account with the Firm. In any event the Bank was entitled to assume, as it did, that Mr McMillan as a partner had at least as much knowledge of the financial health of the Firm as was available to the Bank.

(5) The Firm did not misrepresent the nature of the arrangements to Mr McMillan, and was in any event not the agent of the Bank in relation to any such

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representation. The Bank knew of no such representation and was entitled to assume, as it did, that Mr McMillan was an experienced and senior partner in a major international law firm who understood the clear terms of the agreement which he signed and was able to assess the financial implications of doing so.

(6) The Firm did not procure Mr McMillan to enter into the Loan Agreement by duress. He voluntarily did so because he understood that otherwise his capital contribution would be deducted from his distributions. In any event the Firm was not the agent of the Bank for these purposes and the Bank had no reason to know of any such duress had there been any. The Bank was entitled to assume, as it did, that Mr McMillan freely and voluntarily entered into the agreement and understood what he was signing.

(7) As regards information and documentation after the Loan Agreement was entered into, this was sent by the Bank to the Firm. If and to the extent that this was not was not passed on to Mr McMillan, this has little bearing on whether the relationship was unfair. Mr McMillan was aware that one of the virtues of the programme was that loans were centrally administered by the Firm on behalf of the partners.

(8) There is no evidential basis for the assertion that the Firm failed to comply with the terms of the Undertaking upon the departure of Mr McMillan from the partnership in December 2010. I am unable to conclude that he ceased to be a partner at that date given his substantial receipts in 2011, and there is no ground for concluding that he was entitled to a withdrawal from his capital account at any time before the bankruptcy of the Firm.

83. The Bank has discharged the burden of showing that the relationship was not unfair.

Counterclaim: breach of duty to advise

84. The Bank did not owe any relevant duty to advise Mr McMillan. The allegation fails on the following additional grounds.

85. As to the suggestion that the Bank should have advised Mr McMillan that the purpose of the loan was not to fund his capital account:

(1) the purpose of the loan was to fund Mr McMillan's capital account; and

(2) in any event the Bank had no knowledge, or reason to suspect, that that was not the purpose of the loan, which was the purpose clearly stated in clause 1 of the Loan Agreement.

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86. As to the suggestion that the Bank should have advised Mr McMillan that the loan involved his personal liability as primary obligor, that was clear from the face of the contractual documents.

87. As to the suggestion that the Bank should have advised Mr McMillan that the Firm was in poor financial health so as to render the borrowing imprudent, the Bank did not know, and had no reason to suspect, that the financial state of the Firm rendered the borrowing imprudent.

88. As to the suggestion that the Bank should have advised Mr McMillan that at the time of signing the Loan Agreement there was an unremedied event of default in existence under clause 10.1(j), there was no such event of default for the reasons I have explained.

89. As to the suggestion that at some stage after the loan had been entered into the Bank should have advised Mr McMillan that the Firm was in poor financial health:

(1) until very shortly before the bankruptcy the Bank did not know, and had no reason to suspect, that the Firm was in such financial distress as to make repayment of the loan by the Firm unlikely; and

(2) in any event Mr McMillan has failed to establish that if at any time after he had entered into the loan he had been told that there was a risk that it would not be repaid by the Firm, he would have been in a position to do something, and would have done something, which would have resulted in repayment of any part of the loan by the Firm; accordingly had there been any breach of duty by the Bank he would have failed to prove any loss.

Account

90. From the second half of 2010, there were some repayments made by the Firm to the Bank in respect of loans to partners who had left. The Bank relied on the Firm to identify the partners in respect of whom such payments were made. There were no such payments made on behalf of Mr McMillan. There is no reason to suppose that there should have been, because I am unable to conclude that he ceased to be a partner in December 2010 or that he was entitled to a withdrawal from his capital account at any time before the bankruptcy of the Firm. There is therefore nothing to account for in respect of the principal of the debt of US$540,000.

91. So far as interest is concerned, the scheme was such that interest ought to have been paid by the Firm to the Bank until it declared bankruptcy. I will consider whether there is any issue which requires the taking of an account in relation to interest in the light of the quantification of interest proposed by the Bank following judgment.

Conclusion

92. The Bank is entitled to judgment against Mr McMillan.

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EXHIBIT 2

Filed in First Judicial District Court
1/11/2017 4:19:02 PM
Carver County, MN

From: Radloff, Jill [Jill.Radloff@stinson.com]
Sent: Monday, September 12, 2016 6:01 PM
To: 'Justin Bruntjen'; Silton, Steve
Cc: Crosby, David; Halferty, Laura
Subject: RE: Tribute payment

Justin and Steve,

As Laura discussed with Justin earlier today and I understand Steve also inquired about, the estate only received $2.1 million from Jobu as the wire information posted to HighQ shows and Jobu's letter incorrectly states it paid the Estate a full $2.33 million. The commission amount was to be paid directly by Jobu to Londell/Charles as permitted under the Advisory Agreement. Since Laura spoke to Justin, we have confirmed this afternoon that Londell received a check for $116,500 from Jobu for his share of the commission on the advance under the Advisory Agreement. Charles has indicated that he did not receive payment. We will be following up with Jobu and clarifying the payment amounts that have been made.

Thanks,
Jill

From: Justin Bruntjen [mailto:justin@b2lawyers.com]
Sent: Monday, September 12, 2016 11:09 AM
To: Radloff, Jill
Subject: Tribute payment

Jill,

Jobu is claiming that they paid the estate 2.33 million and the estate from what I can see only received 2.1 million. Did the experts already take out 233 thousand dollars for their commission? Please let me know as soon as possible as this has an impact on our negotiation with the experts regarding how much to settle with them for. I would also like to see the payment information that shows the experts received this 233 thousand.

--

Justin Bruntjen, Attorney at Law
Bruntjen & Brodin Legal
2915 Wayzata Blvd.
Minneapolis, MN 55405
612-242-6313

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EXHIBIT 3

Filed in First Judicial District Court
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Carver County, MN

From: Silton, Steve
Sent: Friday, September 2, 2016 9:02 AM
To: Krishnan, Laura <laura.krishnan@stinson.com>; 'agislason@lommen.com'; Andrew Stoltmann <andrew@stoltlaw.com>; Anthony Jones <AnthonyJonesEsq@gmail.com>; Celiza Braganca <lisa@stoltlaw.com>; Crosby, David <david.crosby@stinson.com>; Dillon, Brian A. <Brian.Dillon@gpmlaw.com>; 'fkwheaton@gmail.com'; Jennifer Santini <jen@sykorasantini.com>; Joanna Sunderland <jsunder106@aol.com>; Justin Bruntjen <justin@b2lawyers.com>; 'Ken@lommen.com'; Kramer, Liz <liz.kramer@stinson.com>; Moerke, Katie <katie.moerke@stinson.com>; Nevin.Harwood@gpmlaw.com; Routhier, Lauren <lauren.routhier@stinson.com>; Shea, Matt J. <Matt.Shea@gpmlaw.com>; Kane, Tom <TKane@cozen.com>
Cc: 'Fasen, Deborah, D' <DDFasen@Bremer.com>; cnordal@bremer.com; Albrecht, Susan, K <skalbrecht@Bremer.com>; Rostad, Jeffrey, D <JDRostad@Bremer.com>; Pat Mazorol <pat@pmazorol.com>
Subject: RE: 1119 Morgan Ave. North

Laura,

Thanks for the email. I appreciate the complexity of non-profits in the context of an estate, though I am still confused.

To your knowledge, what is the status of the property on 1119 Morgan Ave. North? As indicated in my prior email, the property was consistently listed as an asset of the PRN Estate as recently as August 15, 2016-which is four days after the most recent transfer. Is it that property now lost to the Estate?

Were you, or anyone on your team, aware of either of the transfers of 1119 Morgan Ave. N. since Prince's death?

Does your investigation involving Mr. Cousins involve the multiple transfers of this property? Was the information I provided yesterday news to the Estate?

In light of the information provided, is any further action being taken on behalf of the Estate? Where there any other assets of the now defunct non-profit, L4OA, LLC?

I would very much appreciate specific answers to my questions, as the potential loss of this property is of substantial concern to my client. For efficiency, I broke out the questions into groups, and you can simply type in the answers after the questions in a follow up email.

Truly,

Steve

From: Krishnan, Laura [laura.krishnan@stinson.com]
Sent: Thursday, September 01, 2016 9:18 PM
To: 'agislason@lommen.com'; Andrew Stoltmann; Anthony Jones; Celiza Braganca; Crosby, David; Dillon, Brian A.; 'fkwheaton@gmail.com'; Jennifer Santini; Joanna Sunderland; Justin Bruntjen; 'Ken@lommen.com'; Kramer, Liz; Krishnan, Laura; Moerke, Katie; Nevin.Harwood@gpmlaw.com; Routhier, Lauren; Shea, Matt J.; Silton, Steve; Kane, Tom
Cc: 'Fasen, Deborah, D'; cnordal@bremer.com; Albrecht, Susan, K; Rostad, Jeffrey, D; Pat Mazorol
Subject: RE: 1119 Morgan Ave. North

Counsel,

The issues surrounding Mr. Nelson's charity are complex and the records are sparse. The absence of good paperwork makes the analysis particularly challenging. These entities are not assets of the estate; however, the estate has an interest because Mr. Nelson's estate is a creditor of each entity as he paid property taxes on their behalf.

Below is a Summary of the Facts We Know:

On November 12, 1996, Mr. Nelson created a Minnesota nonprofit corporation called Love For One Another Charities. At creation, the Directors of the Corporation were Prince Rogers Nelson, Mayte Garcia Nelson and Kirk Johnson. We do not have any documentation suggesting that this was ever modified. On April 24, 2008, Attorney Brian C. Stegeman at Henson & Efron organized L4OA, LLC. The organizational documents indicate the only member of the LLC is Love 4 One Another Charities, a Minnesota non-profit corporation. Mr. Cousins is listed on some of the LLC documents as the manager. We do not have any documentation suggesting this was ever modified.

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The Special Administrator has investigated this to confirm title to real estate and because Mr. Nelson paid property taxes for real estate owned by Love For One Another Charities (2 parcels across from Paisley on Audubon Rd. with a tax assessed value of approximately $3M) and L4OA, LLC (1119 Morgan-tax assessed value of approximately $304,000). Mr. Nelson has directly paid the real estate taxes due on the real estate investments held in the name of Love For One Another Charities and L4OA, LLC. According to Clifton Larson Allen records, Mr. Nelson advanced over $1,000,000 to cover real estate taxes and utilities held by both entities over the past few years.

Love For One Another Charities appears to have been run properly until 2007. At the end of 2007, its Kleinbank account (#816587) in the approximate amount of $8.2 Mil was transferred into a Grand Bank account (Acct #10186765). The name on both accounts was Love For One Another Charities and they both reflected the charity's tax identification number; the Grand Bank account referenced Patrick Cousin's Florida address. Grand Bank issued a 1099 for the interest in 2007 to the charity. The EIN on the interest statement is the Love For One Another Charities EIN.

Love For One Another Charities has not filed 990s since 2007 (the 2007 990 was prepared by McGladrey and appears to have been signed by Mr. Nelson). Mr. Cousins identified himself as the CFO of Love For One Another Charities in a letter to McGladrey on 11/11/08.

The Tax exempt status of Love For One Another Charities was revoked on 2/13/12 for non-filing of the income tax returns (990s) and it has not been reinstated. Forms 1120 have not been filed for the organization for 2012 to present, and to the best of our knowledge, the organization has not had any income. The entity is not under audit for any years to our knowledge, and its sole assets that we know of are three pieces of real estate. Note that we do not have any information for 2008 1099s. In January of 2008, we have records of what appear to be legitimate expenses for Love For One Another Charities (letterhead and envelopes with the Florida address); Mr. Cousins signed the checks. In addition, we know that a separate account was being used to pay property taxes and utilities for this charity.

We also have discovered that there was a Deutsche Bank/ Alex Brown (5XY-017570) account in the name of Love For One Another Charities. The account paperwork indicates it was being sent to Mr. Cousins at his Florida address. At the end of January, 2008, there is a Deutsche Bank account where stock is being purchased in the name of the charity at this address in the amount of approximately $300,000. We have these bank statements too (end of January 2008). We do not know whether it was funded, in part with the $8,200,000. We do not have any additional information regarding these monies.

As part of our investigation, we have been working closely with Gina DeConcini at Fox Rothchild as well as Alyssa LeTourneau and Dudley Ryan at CliftonLarsonAllen. We have also requested information from Mr. Cousins. We have a commitment from Mr. Cousins to provide us with approximately 70 boxes of materials that document his work with Mr. Nelson.

In short, the Special Administrator still needs to run facts to ground before the estate takes any action. need additional documentation before the estate can make a decision with respect to its legal options. It is important to remember that the statute of limitations on any claim an estate may make is tolled for one (1) year.

Laura

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From: Silton, Steve [mailto:SSilton@cozen.com]
Sent: Thursday, September 01, 2016 10:03 AM
To: Radloff, Jill; 'Shea, Matt J.'; 'Dillon, Brian A.'; 'Ken Abdo'; 'agislason@lommen.com'; 'justin@b2lawyers.com'; 'Frank Wheaton'; 'Van Jones (vanjones68@dreamcorps.us)'; 'Lisa Braganca'; 'Andrew Stoltmann (andrew@stoltlaw.com)'; 'Joanna Sunderland (jsunder106@aol.com) (jsunder106@aol.com)'; 'Jennifer Santini (jen@sykorasantini.com)'; Kane,

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Tom; Krishnan, Laura; Bransford, Traci; "Fasen, Deborah, D' (DDFasen@Bremer.com)'; Phelps, Todd; 'pat@pmazorol.com'; jdrostad@bremer.com; Ordal, Craig, N (cnordal@Bremer.com); Albrecht, Susan, K (skalbrecht@Bremer.com); Crosby, David; Peterson, Douglas
Cc: Omarrjbaker; Van Jones (vanjones68@magiclabsmedia.com)
Subject: 1119 Morgan Ave. North

SLS and Bremer:

I am attaching a title chain report for the property located at 1119 Morgan Ave. North, Minneapolis. This property has been listed as Estate assets.

As of the date of Prince's death, the property was owned by L4OA, LLC, which I understand was Prince's foundation. It is currently not in good standing. As you can see from the report, the property was sold on or about June 6, 2016 by L4OA, LLC to Reboot Charity, Inc., pursuant to deed signed by Patrick Cousins as Chief Manager. Though consideration was not listed, from the sales tax paid, it looks like the sale was for a nominal amount.

On or about August 5, 2016, the building with resold to Faith Deliverance Holiness Church. The deed was signed by Jeremy Smith. From limited research, It appears that Mr. Cousins has an affiliation with Reboot Charity, Inc. and a relationship with Mr. Smith.

Omarr worked on this building himself, and brought this strange sale to my attention.

Were these sales orchestrated by the Special Administrator and legal team? If so, what was the proceeds to the estate. I have not seen any documents regarding the transfer of this property, though I did not join the case until after June 6. That being said, the 1119 Morgan Property was listed as Estate property at the meeting at SLS's office on August 15.

I would appreciate any light you could shed on this issue.

Truly,

Steve

Steve Silton
Member | Cozen O'Connor
33 South 6th Street, Suite 4640 | Minneapolis, MN 55402
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