IN THE HIGH COURT OF JUSTICE **Claim No. BL-2020-001343**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (CHD) AND INSOLVENCY AND COMPANIES LIST (CHD)

B E T W E E N

(1) LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION)
(2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS, COLIN HARDMAN AND GEOFFREY ROWLEY
(JOINT ADMINISTRATORS OF LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION))
(3) LONDON OIL & GAS LIMITED (IN ADMINISTRATION)
(4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN AND LANE BEDNASH
(JOINT ADMINISTRATORS OF LONDON OIL & GAS LIMITED (IN ADMINISTRATION))
Claimants

-and-

(1) MICHAEL ANDREW THOMSON
(4) SPENCER GOLDING
(5) PAUL CARELESS
(6) SURGE FINANCIAL LIMITED
(7) JOHN RUSSELL-MURPHY
(8) ROBERT SEDGWICK
(9) GROSVENOR PARK INTELLIGENT INVESTMENT LIMITED
Defendants

CLOSING WRITTEN SUBMISSIONS FOR TRIAL OF EIGHTH DEFENDANT

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A. OUTLINE

1. Clearly the collapse of LCF and the consequent collapse of those businesses which it was funding has caused loss and hardship to many. The Claimants seek to attribute all that loss to the Defendants in this action. In this skeleton I will seek to show that the Defendants for whom I acted were genuinely involved in a series of investments which they believed to be potentially very profitable and that all monies borrowed would be repaid in accordance with terms of their lending

2. The issues in this case have been set out at length in the pleadings and the witness statements. The claimants have now filed what they call a skeleton which introduces for the first time a detailed analysis of the documents. They have had a number of years and teams of lawyers to read through these documents and it would seem that rather than provide evidence in the form of witness statement they propose to rely on the hearsay evidence of all the persons who have contributed to emails messages etc which make up a large proportion of these documents. This action deals with matters which stretch out over more than a decade and much of the documentation has only been available to me in the last six months. This has put me at a significant disadvantage in answering every allegation innuendo or adverse inference made by the Claimants in their so-called skeleton.

3. In my skeleton I intend to merely outline to principal points of my defence and will provide greater detail in my oral submissions to the court and of course my witness evidence. Accordingly, I will deal briefly with:

    A. Ponzi scheme allegations

    B. Acquisition and sale of the Lakeview Resort

    C. The sale of the property assets to Elysian and Prime

    D. The proposed reorganisation of LPC in 2018

4. The very detailed skeleton of the Claimants forensically examines each individual transaction over the last decade and criticises the minutiae of the transactions and their documentation. However, they fail to stand back and see the whole picture of the intentions of the parties. It is like going to an art gallery and getting out a magnifying glass to examine the individual brushstrokes rather than stepping back to see the whole picture.

B. ALLEGED PONZI SCHEME

5. It is I think common ground that money from new borrowers was used to pay interest and to redeem earlier loans. That was the business model of LCF and was known to its accountants, auditors and solicitors, including Lewis Silkin who advised them on compliance matters. On its own the use of later investors' money to pay out earlier investors does not make it a Ponzi scheme. To be a Ponzi scheme there needs in addition to be an absence of any intention to repay the loans at their expiry. All financial institutions which lend money use a combination of money's deposited together with interest and capital payments received in order to make interest payments and repay loans. In providing Asset Finance the lending company agrees a facility which will enable the borrower to carry out the intended development and to pay the interest on the funds advanced until the development can be sold and the loans fully repaid.

6. Accordingly, provided that there is a realistic intention to repay the loans made then it is not to my mind a Ponzi Scheme

C. **ACQUISITION AND SALE OF LAKEVIEW**

7. I was instructed towards the end of 2012 to act in connection with the purchase of the site of Lakeview Country Club. The details of the transaction are adequately set out in my witness statement as well as the statement of D2. As far as I was concerned it was a fairly standard property transaction other than that a portion of the purchase price was provided by a group of investors who had hoped to purchase the site though and Isle of Man company called Telos (Isle of Man) Limited. They agreed to invest varying sums in consideration of the agreement by LVCCL to repay the loan together with interest and a percentage of the sale proceeds of any part of the land. The Telos

Investors also assigned to LVCCL their claims against Telos and its directors for the total loss of their investment. In this way it was hoped that they would get some recompense for their losses.

8. Between exchange of contracts in December 2012 and completion on the 5th April 2013 the price for the property was reduced to £1,525,000[1]. The purchase price was funded by a loan from Messrs Hunt and Banks who had been Directors of Telos (Isle of Man) Limited, the loans referred to above from the Telos Investors and a bridging loan from Ortus Secured Finance.

9. As can be seen from the final price agreed LVCC bought the property at a substantial discount to the price which Telos had agreed to pay and indeed the original price agreed in December 2012 of £2,750,000[2]. It also compares well to the valuation from GVA of £4,650,000[3]. The estate was in a tired and rundown state on acquisition and considerable efforts and investment were made to improve it and the results of this effort can be seen in the subsequent valuations[4].

10. At the end of 2013 Lakeview UK Investments PLC offered to provide funds of up to £17,500,000 to finance the development of the site. The intended developments included the upgrading of facilities, the acquisition of additional lodges and the construction of new lodges and an hotel for which planning permission had been granted. An overhead cable which might have interfered with the construction of the additional lodges was moved at the expense of the power company.

11. In 2015 Lewis Silkin were instructed to advise on the creation of a bond to finance further development of the site. This would have involved the sale of the Lakeview Site to new company which would enter into arrangements for the issue of the bonds. The proposed value of the Lakeview site for this purpose was £6,750,000. In the end the transaction with the bond did not proceed but the sale of the Lakeview estate was going to continue however then wanted to be bought out and he indicated that he would

[1] MDR00011223 13th March 2013
[2] MDR00011628 December 2012
[3] MDR00011693 30th March 2013
[4] MDR00015452 9th June 2013

accept £1,500,000 for his interest in LVCCL provided he could be paid out in a short period of time so contracts were exchanged in July 2015 for the sale by the original owners of LVCCL to London Trading & Development Group Limited at a price of £2,105263.15[5]. London Trading & Development Group Limited became part of the Leisure & Tourism Development PLC group of companies, and it transferred the majority of the Lakeview site to Waterside Villages PLC. It was considered sensible to change the name of estate to Waterside to distance it from the rather poor image that Lakeview had acquired as a result of its neglect by the previous owner.

12. D2 was unable to raise the funds he had expected to enable London Trading & Development Group to pay the purchase price by September 2015 as originally agreed. There were further discussions between the parties as a result of which I was instructed that D4 was no longer going to leave and that the monies due the original shareholders of LVCCL would be agreed as and when funding became available. Also, it was agreed that in addition to the value of the Lakeview site recognition would be given to the original shareholders for the input that they had in connection with the acquisition of the Magante Asset together with the Telos Claim and the Timeshare claim. Despite the comments of the Claimants in their skeleton these were all valuable claims and provided considerable benefit to the purchasers of the shares in LVCC.

13. All the time that this was going on there was progress made in improving the site at Waterside. In particular, Waterside Villages had a programme of purchasing lodges on the site. When LVCCL purchase the site in April 2013 it purchased the Freehold site which had constructed on it 70 holiday lodges. The majority of the Lodges were let out on 999 year leases but there were 24 which were held on a 80 year lease by a timeshare club and 7 lodges in hand. By the time of the sale of Global Resort Property PLC to Elysian Waterside Villages owned all except four Lodges so it had acquired the leasehold interests of 56 Lodges. These were worth in the region of £200,000 per lodge so this added £11,200,000 the value of the site.

[5] D1-0001994 undated

14. In 2016 agreement was reached as to the final value for the sale of LVCCL to London Trading & Development PLC and in July 2016 I was instructed that the Parties had agreed a figure of £6,000,000 for the shares in LVCCL plus the variables. The original agreement was altered to that value. The values of the variable items were also agreed. These were real items.

    A. Magante. This was a site in the Dominican Republic which was acquired from Sanctuary. Unlike the site at the Hill this site had not been committed for sale to the Sanctuary investors so all the value that could be obtained from it was for the benefit of Leisure & Tourism Development. It is a highly desirable beachfront property and the uplift agreed was only a fraction of its true value.

    B. Telos Claim. The Telos Investors who had helped find the original purchase of the Lakeview Site had assigned to LVCCL the benefit of any claim that those investors may have against the directors of Telos. This claim was settled on the basis of Messrs Hunt and Banks writing off their original loan which would otherwise have been repayable and as at the date of settlement there was some £760,000 due. In addition to releasing the loan Hunt and Banks paid £565,000 to the liquidator of Telos and finally it was agreed that LVCCL should pay £760,000 to the Telos investors. LVCCL already had a liability to repay them their loans together with a percentage of the sale price of the site and the release of the debt and the contribution of the £565,000 which was paid to the investors reduced their liabilities by £1,325,000.

    C. Timeshare Claim. There had been a long running argument with the Timeshare Club as to their maintenance contributions under their lease. Also the Timeshare owners were ageing and having difficulties in selling their shares. A settlement was agreed whereby on a payment £762,000 the Timeshare Club would surrender its lease of the 24 Timeshare Lodges. At a figure of £200,000 per lodge that provided a benefit to Waterside of approximately £4,800,000. LVCCL. Received back some £70,000 of the £762,000 as it owned a number of timeshare weeks.

15. The Claimants in their skeleton then refer to the sale of the shares in the Company International Resorts Management Limited (this had formerly been called LVCCL) for one pound and suggest that it could not have been worth a sum in excess of £14 million. However, this totally overlooks the fact that the majority of the assets had been removed from the company before the sale and it was being sold with a liability to Lakeview UK Investments PLC in the sum of approximately £5,000,000.

D. SALE OF THE PROPERTY ASSETS TO ELYSIAN/PRIME

16. After the incorporation of LOG D2 and D3 decided to concentrate on developing that business and so agreed to dispose of their property interests. This decision was made towards the end of 2016. In anticipation of a sale there was some reorganisation of the companies to separate out the property and oil and gas interests. London Group PLC changed its name to Global Resort Properties PLC (**GRP)**. London Group LLP was formed to own the interests of D2 and D3. London Power Corporation PLC (**LPC**) was incorporated to take over the oil and gas interests. In April 2017 a share purchase agreement was signed to sell the shares in GRP to Elysian Resorts Group Limited[6]. The Claimants make great play on the errors in that agreement and I am the first person to accept that there were problems with that agreement however the parties the sale to proceed and to make it work so those errors were resolved over the following months. Elysian Resorts Group Limited was owned by Mark Ingham and Tom McCarthy who had previously been running these assets for London Group. At the time of completing this sale LCF had wanted to improve its security over the assets of the group. It had lent money to Leisure & Tourism Developments PLC (**LTD**) which was secured by a debenture over that company but. The assets were held in subsidiary companies. So prior to the sale of GRP the property assets in the Dominican Republic were transferred into two new companies Colina Property Holdings Limited and Costa Property Holdings Limited. LCF also asked that four "support" companies be formed which to which the loans to LTD Were transferred. These support companies took security for these loans from the property companies (including Waterside Villages Limited and CV Resorts Limited. The loans were all guaranteed by companies within the group. The balance of the LTD liability was taken over by Atlantic

[6] D8-0013923 29th April 2017

Petroleum Support Limited which also took and assignment of the benefit of the loan by LOG to Atlantic Petroleum pf. Doubt has been cast by the Claimants as to the propriety of this transaction and as to whether there was corporate authority for it. I took the view at the time that as the members of London Group LLP were also the majority shareholders of LOG (owning nearly 62% of its shares) and a few days later London Group LLP was the sole voting shareholder of LPC which had by then taken over LOG it was in their power to commit the company to this assignment. D2 & D3 considered that this liability was one that should be guaranteed by London Group LLP and I believe that they may have executed such a guarantee. They certainly accepted it as their liability and subsequently made proposals to LCF to pay it off.

17. As stated above the original SPA for the sale of GRP to Elysian was badly drafted and there were discussions to amend it reducing the consideration from a gross sum for the value of the assets to a net sum after settlement of the liabilities and by omitting reference to Preference shares in GRP and replacing that with settling the liability for the consideration with the issue of preference shares in Elysian. During the summer of 2017 Prime Resort Development Limited made an offer to Elysian to take over the Dominican Resort Assets. As very little of the consideration for the sale to Elysian had been paid it was necessary for the shareholders of GRP to be party to this agreement. An SPA was signed on 13th September 2017[7].

18. Subsequently Prime offered to buy the remainder of the assets of Elysian and an SPA for the sale of Elysian to Prime was. Singed on the 7th November 2017[8]. Before the completion of the sale took place the accountants for D2 and D3 advised that it would be helpful from a tax point of view to restructure the agreements so in accordance with that advice I prepared a further and final SPA for the sale[9] of Elysian to Prime. This agreement was stated to disapply the earlier agreements and to stand in their place. In addition to the SPA there was a detailed disclosure letter and numerous ancillary documents recording

[7] D2D10-00033606 13th September 2017
[8] D2D10-00037030 7th November 2017
[9] MDR00225049 21st November 2017

the movement of assets, these are listed in an Index to Bible[10]. This transaction was completed.

19. The Claimants suggest that the assets transferred by these agreements were not worth what was being claimed in the various SPAs. However, my understanding at the time and now is that the values were underpinned by professional valuations which have been fully disclosed. I would refer to a valuation by John Spacey in respect of the Waterside site in June 2018 which valued it then at a total of £33,199,350[11]. D2 in his Witness Statement also refers to various valuations which support the figures in the SPAs.

E. REORGANISATION OF LPC

20. In 2018 I was told by D2 and/or D3 that they intended to make some changes to LPC. LOG's investment in IOG plc was likely to do particularly well when they were able to announce that they were making their Final Investment Decision (**FID**) to proceed with drilling a well for the gas and linking it to the gas terminal at Bacton. It was anticipated that this would happen during the course of 2018. This would give rise to the possibility of enabling some shareholders of LPC to exit and others to stay on. In addition, they wanted to change the structure of the holding company by getting rid of the preference shares in LPC and also making all shares voting shares. Furthermore, I was told that the shareholders in LPC were interested in adding the investments in the small technology businesses that D2 and D3 had recently acquired to LPC. So, I was asked to consider a suitable structure to enable this to happen. Initially I considered a simple arrangement whereby LOG or LPC would just buy the shares in the relevant companies. However, I was aware that accountancy firm Mazars had been asked to advise on the restructure of the preference. In about June 2018 I was told by D2 and D3 that the board of LPC at their meeting had agreed to the proposed restructure and also agreed the method recommended by Mazars to for the new company to acquire the preference shares. Accordingly, I devised a plan whereby as a first step the technology businesses be acquired by a new company. This company would borrow the money from LOG to pay for the shares in the technology companies. The board of LPC had already decided to form a new

[10] D8-0028834 December 2017
[11] D1-0007745

holding company to be called London Power & Technology Limited and instructed Lewis Silkin to form it. I suggested that this new company should acquire the preference shares in LPC which were owned by London Group LLP. The method of transferring the shares to the new holding company were set out in the Mazars' plan, this involved the LLP resolving to distribute the preference shares to the members in specie and then them selling the preference shares to the new holding company[12]. At the same time, I was aware that LPC chief financial officer David Elliott had made a calculation of LOG's net worth using the Black Scholes method which had been adopted the auditors of LPC BDO. This showed a net asset value in excess of £200,000,000[13].

21. The SPA which I drafted for the acquisition of the technology assets was signed on the 21st June 2018[14]. It provided for the payment to D2 and D3 of the sum of £20,000,000 in return for shares in London Artificial Intelligence Limited and Intelligent Investments Limited. Then after Lewis Silkin had incorporated London Power & Technology Limited I prepared a SPA for the sale of the Preference shares in LPC[15]. In August 2018 I visited the offices of Lewis Silkin and explained to them the two transactions and how they fitted into the proposed reorganisation of LPC. They were instructed to finalise all matters including the completion of the two SPAs.

22. The Claimants claim that the documents are incoherent in that the buyer was at the time owned by the sellers and they question the values attributed to the assets. I was told at the time that the value of the technology assets had been agreed with the rest of the board of LPC – they certainly were prepared to ratify the transaction at their board meeting in February 2019 and they also confirmed this in their witness statements which were prepared for the Summons issued by the Claimants, see for example the statement of Mr Starkie[16]. As to the fact that LPE Enterprises Limited was owned by the sellers this is correct but it was just the first stage in the transaction. The money to pay the consideration was lent to the company by LOG so that when LOG/LPC acquired LPE Enterprises it would do so for nil consideration as it would take on the debt of the loan. If

[12] D2D10-00046673
[13] D2D10-00046671
[14] D8-0037280 June 2018
[15] D8-0062291 2nd August 2918
[16] D8-0059580

for instance LOG had bought LPE Enterprises then the value of this acquisition would have to be taken into account when valuing the shares in LPC for those shareholders who wished to exit. So to avoid unnecessary complications to that process the transaction was done in this manner. As to the allegation that it was unauthorised use of LOG's monies the principle of purchasing these assets had been approved by the board on the 14th June 2018 and was ratified at the February meeting. In any event London Group LLP owned all the voting shares in LPC and could also have ratified it.

F. PAYMENTS TO D8

23. As explained in my Witness Statement at paragraph 90, when I was invited to work directly for the group rather than through Buss Murton as previously I was advised by my accountants to incorporate a company to provide my services. I accordingly incorporated Sedgwick Company Management Limited (company number 08921540) and all the payments to me listed in the Neutral Statement of Facts have been paid in respect of invoices issued by my company. Up to February 2021 these payments have included VAT which has been accounted for to HMRC. Expenses of the company included the provision of a legal precedent service at a cost of £5,750 per annum plus VAT, travelling and subsistence expenses, companies house fees etc. The Company of course paid corporation tax on its net profits and I then paid income tax in the income paid to me by the company.

G. OPENING SUMMARY

24. I honestly believed that D1, D2, D3, and D4 were seeking to run a number of businesses with a view to making profits. Whilst they did borrow substantial sums of money these were backed by valuable assets and security over them and the amount of those borrowings was within the limits agreed from time to time both as to the percentage of loan to net asset value and the total facility. Had LCF not failed when it did then I believe that the loans would have been repaid in full.

CLOSING SUBMISSIONS

25. The Claimants decided not to call any witnesses as to the history of the matters which gave rise to their claims and instead relied on the documents disclosed and from them selected those which in their view supported their claims. Their reason for not providing any witness statements as to the history of these matters was that they as Administrators of the Claimant companies did not have direct knowledge of the events and instead they relied on the document and have subjected the various transactions to detailed forensic examination and interpretation. The result is an overcomplicated picture. Had they wanted to provide evidence to the Court they could easily have called as witnesses the various people whom they interviewed in the course of their investigations, but they chose not to do this.

26. I would hope in this Closing Submission to simplify matters and relying on the documents to show that the activities of the Defendants for whom I provided legal advice were engaged in a legitimate business activity namely to acquire distressed assets, seek to improve them and then to realise a profit on their disposal. They intended to do this by borrowing money secured on the value of the assets. Although they looked at number of potential businesses, they only invested in Lakeview Country Club, Paradise Beach in the Cape Verde Islands, the two sites in the Dominican Republic IOG plc and Atlantic Petroleum.

27. Lakeview Country Club was clearly a successful acquisition and could have been a much more successful investment had the full development plan been successfully completed. It was purchased at a price of £1,385,000 plus £140,000 for the chattels and other assets. This is set out in the original contract dated 20th December 2021[17] and the Supplemental Agreement dated 15th March 2013[18]. Shortly before the purchase was completed there was a valuation from GVA in the sum of £4,650,000[19]. In 2014 GVA valued the site at £7,150,000 in its present condition but at £12,400,000 if its business plan is implemented.

[17] **MDR00011628** 20/12/2012
[18] **MDR00011390** 15/03/2013
[19] **MDR00011693** 27/03/2013

28. There were subsequent valuations of the site culminating in a valuation in 2018 in the sum £33,199,350[20].

29. Although the Claimants in their Opening written and oral statements go into great detail as to how money was paid out to various defendants and on what they spent the money received they make scant reference to the money spent by the companies in which they invested. In respect of Lakeview when the site was purchased only 7 of the 70 lodges were unencumbered with leases. When the whole site was sold to Prime Resort Development Limited all except 4 lodges were owned without encumbrance. The former owner's residence had been converted into individual suites. The whole site had been upgraded, power lines that crossed the site had been buried and the site was fully connected to the internet with WIFI extending throughout the site.

30. The Claimants allege that the various transactions whereby the shares Lakeview Country Club Limited were sold to London Trading & Development Group Limited (**LTDG**) were carried out solely for the purpose of wrongfully extracting money from the Bondholders for the benefit the individual Defendants. This is not the case the money used to pay those the shareholders who were selling their shares was borrowed by Leisure and Tourism Developments PLC (**LTD**) on the strength of the valuations provided to LCF. The money was borrowed for its general commercial purposes see page 8 the first LCF Facility Agreement dated 27th August 2015[21]. As long as the amount borrowed was less than 75% of the net worth of the Borrower, see clause 12.1.13 of the Facility Agreement of the 27th August 2015. Within those parameters LTD could use it as it wished for its commercial purposes and where it had surplus funds it could use them for the benefit of shareholders or former shareholders. Once borrowed the money became LTD's money and it was no longer the Bondholders' money as LCF had used their money in exchange for a right to receive from LTD the repayment of the sums borrowed together with the interest and other payments specified in the Facility Agreement. So, it was a matter between LTD and its subsidiary LTDG reach agreements with the selling shareholders and subject to those agreement to make payments pursuant to the various SPAs. The SPA's in respect of the Lakeview site were not to my knowledge disclosed as a reason for borrowing money from

[20] **D1-0007745** 07/06/2018
[21] **MDR00068824** 27/08/2015

LCF, the borrowing was solely based on the value as established by the valuations and accounts submitted.

31. In cross examination the Claimants sought to challenge the valuations but there is no evidence that I was involved in commissioning the valuations or submitting them to LCF. Similarly, there is no evidence that I was involved agreeing with LCF how much could be drawn down from the Facility nor the timing and amounts of the drawdowns, save with the exception of the amounts drawn down by Global Advance Distributions Limited pursuant to the provisions of the SPA's relating to the sale of the property assets to Prime Resort Developments Limited.

32. During this time the accounts of LCF were audited. The audits were carried out for the 2015 accounts by Oliver Clive and Co, the 2016 accounts by PricewaterhouseCoopers and the 2017 accounts by Ernst & Young LLP. From the fact that in each of these years their accounts were audited by respected firms of auditors it was safe to assume that the auditors satisfied themselves as to the security which LCF had over the assets of the borrowers and that the valuations supported the amounts drawn down by each borrower. Each of the three sets of accounts were unqualified.

33. The Claimants spent a considerable amount of time their openings dealing with the transactions in 2017 relating to the sale of the property interests to Elysian Resorts Group Limited and eventually to Prime Resort Development Limited. They had made a great deal of the inadequacies of the original SPA when the shares in Global Resort Property PLC were sold to Elysian Resorts Group Limited[22]. I entirely agree that there were many faults in that document but I not being sued for any failings in the drafting of that document and those failings were subsequently put right. The SPA dated 21st November 2017[23] corrected all the earlier failings and set out the final position as agreed between the parties. On the 6th December 2017 the transaction was completed in accordance with the terms of the SPA and all the ancillary documents to give effect to the agreement were also executed. These documents are contained in the transaction bible and listed in the index to the

[22] **D8-0022036** 29/04/2017
[23] **D8-0024684** 21/11/2017

bible[24]. A careful analysis of these documents would have enabled the Claimants to have a better understanding of the transactions. Effectively D1, D2, D3 and D4 sold their interests in the property assets to Prime Resort Development Limited for £22,300,000 of which £2,500,000 was due to Messrs Ingham and McCarthy. This was further reduced by £5,000,000 in respect of the amount due to Lakeview UK Investments PLC who had a charge over part of the Lakeview site which was dealt with in a SPA relating to the sale of International Resorts Management Limited to Prime Resort Development Limited which was signed on 11th April 2018[25].

34. There were issues with regard to the loans to CV Resorts and the security of the charge over the loan by LOG to Atlantic Petroleum. The Claimants were adamant that the security of the loan to Atlantic Support was inadequate but in addition to the debenture over Atlantic Petroleum Support Limited but in addition to the debenture there were cross guarantees by both London Group LLP and LOG dated29th April 2017[26]. The Claimants complained that there was no corporate authority for this transaction but they forget that the members of London Group LLP were at the time executing the Guarantee the majority shareholders of LOG and within a few days London Group LLP owned all the voting shares in LPC which became the owner of LOG so that they were in a position to ratify the transaction. In any event they were conscious that these loans needed to be repaid and made an offer to do so on 19th July 2018[27]. This was repeated at a meeting in September 2018 when draft heads of terms were handed to D1 and Alex Lee[28] and they were emailed to Alex Lee in November 2018 with a reminder that he had agreed to document the agreement[29].

35. The Claimants in their submissions roundly criticised the transactions relating to the reorganisation of LOG and LPC which are fully described in Section E of my Opening Submissions above. All that I would add to that is that at the time the value of LOG was thought by David Elliott the CFO of LPC and LOG that LOG's interest in IOG alone was

[24] **D8-0028892** 06/12/2017
[25] **D8-0035090** 11/04/2018
[26] **D8-0013705** 29/04/2017
[27] **D8-0037838** 19/07/2018
[28] **D8-0040615** 24/09/2018
[29] **D8-0061470** 21/11/2018

worth in the region of £285,460,000. This was referred to in the board meetings of LOG and LPC in June 2018[30]. This calculation was carried out in the same way adopted by BDO in their audit of LOC and LOG.

36. In the second witness statement of Mr Shiner[31] he refers to the report received from RICS as to the value of LOG's investment in IOG. The RISC report stated that they considered the value of IOG to be between £60million and £290million[32].

37. Accordingly at the time when the D1, D2, D3 and D4 received the substantial payments in 2018 the value of LOG fully justified the borrowing from LCF of these monies.

38. In paragraph 4(3)(i) of their reply to my Defence[33] the Claimants asserted that as a result of my suspension as a solicitor I was unable to give legal advice. This totally misunderstands the effect of being suspended as a solicitor. Solicitors do not have a monopoly of giving legal advice. Suspension as a solicitor prevents a person from holding themselves out as a solicitor and for carrying out reserved work as set out rule 8 of the SRA Practice Framework Rules which are set out in an email to me from the SRA dated 16 October 2018[34].

39. In conclusion at the time when monies were borrowed from LCF by the companies to whom I provided legal advice were legitimately carrying on businesses with a view to making a profit and with the intention of repaying the loans out of the realisation of the assets which secured the loans. In respect of the property assets which were disposed of in 2017 they were sold at a profit. As an aside the Claimants seek to taint this transaction as fraudulent because Mr Mitchell was subsequently found guilty of fraud in an unrelated matter. As far as I was concerned this was a genuine arms-length commercial transaction. The monies borrowed and disbursed in 2018 were justified by the values that were ascribed to the investment in IOG. Whilst there may have been deficiencies in the paperwork at times with regard to Facility Agreements and/or security these were rectified and the Administrators were able to take control of all the relevant assets. As

[30] **D2D10_00047170** 14/06/2018
[31] **C1/7** 11/10/2023
[32] **MDR_POST_00000315** 26/02/2019
[33] **B3/6**
[34] **D8_0042022** 16/10/2018

far as monies paid to me are concerned these were paid for the legal services which I rendered over a number of years. They were paid in part out of monies that were borrowed from LCF but by the fact of them being borrowed they then became the property of the companies which borrowed them who then paid my agreed remuneration and expenses.