

Case No: D01WD250

IN THE COUNTY COURT AT LUTON
SITTING AT THE COUNTY COURT AT OXFORD

St Aldate's, Oxford OX1 1TN

Date: 30 October 2018

Before:

HER HONOUR JUDGE MELISSA CLARKE

Between:

(1) NATHAN PATTIE

Claimant

- and -

(1) JOHN THORNHILL

Defendant

Mr Timothy Sherwin (instructed by **Keystone Law**) for the **Claimant**
Mr Martyn Naylor (instructed on a Direct Access Basis) for the **Defendant**

Hearing dates: 3, 4 and 5 September 2018

JUDGMENT

Her Honour Judge Melissa Clarke:

Introduction

1. This is a claim for specific performance of a series of oral agreements which the Claimant, Nathan Pattie ("Mr Pattie") says he reached with the Defendant, Mr John Thornhill ("Mr Thornhill") relating to shares in Pix Pintxo Bars Limited ("PPB").
2. Mr Thornhill is, and was at all relevant times, the Managing Director of PPB, which is a company which operates four Spanish tapas-style 'pintxo' restaurants in London under the brand "Pix Pintxo". It was incorporated in November 2008. The start up capital was provided entirely by Mr Thornhill and his family.
3. PPB opened the first pintxo restaurant in Westbourne Grove in September 2009 ("Westbourne Grove Pix"), a second on Neal Street in April 2010 ("Covent Garden Pix"), a third on Bateman Street in July 2011, which also had a basement bar ("Soho Pix"), a fourth on Upper Street in mid-2013 ("Islington Pix"), a fifth on Portobello Road in September 2013 ("Notting Hill Pix") and a sixth on Ganton Street in July 2014 ("Carnaby Street Pix") (together, "the Pix Restaurants").
4. Mr Pattie, a close friend of Mr Thornhill, was involved in the planning of the proposed business and restaurants at the earliest stages, before PPB was even incorporated, and was employed by PPB from January 2009 to December 2015 (subject to a period from November 2009 to

early 2010 which I will return to). He was also director of a subsidiary company of PPB called Pix No. 3 Limited ("Pix 3") from its incorporation on 15 July 2010.

5. Mr Pattie pleads four oral agreements or variations thereof:

- i) In 2008 he agreed with Mr Thornhill that, in exchange for working with him to set up the business and the Pix Restaurants, to be held through a company to be set up for the purpose (and which became PPB), he would receive 25% of the issued share capital of that company either by transfer from Mr Thornhill's shares, or by Mr Thornhill procuring the issue and allotment of shares by the company ("**2008 Agreement**")
- ii) In June 2009 he agreed with Mr Thornhill (either by way of a new agreement, or a variation of the 2008 Agreement) that in exchange for continuing to work with Mr Thornhill to set up the business and the Pix Restaurants, and continuing to devote his time and effort to the business, he would receive 5% of the company to be set up for the purpose for each year he worked with Mr Thornhill, up to a maximum of 25% of the issued share capital of that company, either by transfer from Mr Thornhill's shares, or by Mr Thornhill procuring the issue and allotment of shares by the company ("**2009 Agreement**").

- iii) In early 2010, after a few months during which Mr Pattie was not working with Mr Thornhill or PPB, he agreed with Mr Thornhill (as a variation to the 2009 Agreement) that in exchange for returning to work for PPB and devoting his time and effort to it, he would receive 2.5% of PPB for each year he worked with Mr Thornhill, up to a maximum of 25% of the equity ("2010 Variation"). In fact, in early 2010, Mr Thornhill caused Mr Pattie to be transferred 2.5% of the issued share capital in Pix 3 (PPB retaining the remainder).
- iv) On 30 June 2015 (although Mr Pattie's case is that, at that point, he was entitled under the 2010 Variation to 15% of the issued shares of PPB), Mr Pattie and Mr Thornhill agreed that in return for Mr Pattie continuing to work for PPB and devoting his time and effort to PPB's business, Mr Pattie would transfer his 2.5% of Pix 3 to PPB in return for Mr Thornhill transferring to him, or causing to be allotted to him, 2.5% of the issued share capital of PPB, and Mr Thornhill would further transfer or procure the allotment to him another 2.5% of PPB bringing Mr Pattie's shareholding to a total of 5% of the issued share capital in PPB ("the 2015 Agreement").
6. It is not disputed that neither Mr Thornhill nor PPB have transferred or allotted any shares in PPB to Mr Pattie, who continues only to hold 2.5% of the issued shares of Pix 3. By this claim, Mr Pattie seeks that Mr

Thornhill be required to perform the 2015 Agreement and transfer or cause PPB to allot to him 5% of the issued share capital in PPB.

7. Alternatively, Mr Pattie makes a case in estoppel, pleading that
 - i) the discussions which led to the 2008 Agreement, 2009 Agreement, 2010 Variation and 2015 Agreement ("the Alleged Agreements") amounted to a series of assurances by Mr Thornhill to Mr Pattie that Mr Pattie would be transferred shares in PPB;
 - ii) Mr Pattie relied on those assurances to his detriment, in that he devoted time and effort to the business of PPB beyond the time and effort for which he was rewarded by way of salary and permitted Mr Thornhill access to his network of contacts in the hospitality and restaurant industry in London without further reward;
 - iii) it would be unconscionable for Mr Thornhill now to deny the Alleged Agreements such that he is estopped from doing so.

8. Mr Pattie seeks an order that shares amounting to 5% of the issued share capital in PPB be transferred to him by Mr Thornhill, or that Mr Thornhill cause PPB to issue and allot shares equivalent to 5% of its issued share capital in order to satisfy the equity which has arisen in

Mr Pattie's favour. Accordingly he only seeks to enforce the 2015 Agreement and not the earlier of the Alleged Agreements.

9. Mr Thornhill denies Mr Pattie's claim. He denies that he entered into the Alleged Agreements or any of them or that there was any contract between him and Mr Pattie relating to Mr Pattie's shareholding in PPB at all. He accepts that certain of the meetings that Mr Pattie relies on took place (although disputes the date of one of them) but denies that they resulted in any binding agreement.
10. If any of the Alleged Agreements were entered into, which he denies, Mr Thornhill denies any personal liability saying that at all material times he acted as a director or on behalf of PPB and/or Pix 3. Further, in relation to each and all of the Alleged Agreements, Mr Thornhill pleads that:
 - i) their purported terms lack sufficient certainty to have given rise to a binding contract;
 - ii) there was no intention to create legal relations between the parties;
 - iii) there was no valid consideration to support any of them
 - iv) they would be void and/or voidable at Mr Thornhill's option by reason of misrepresentations made by Mr Pattie that he would continue to work for PPB in the future;

v) the court should not exercise its equitable discretion to order specific performance because of those misrepresentations and in circumstances where Mr Pattie formed a competitor restaurant company in July 2015 at a time that he was still employed by PPB and owed fiduciary duties as a director of Pix 3.

11. Mr Thornhill denies that Mr Pattie is entitled to rely on any form of alleged estoppel, whether by representation and/or promissory in nature or otherwise in order to create a contractual right against him. He relies on well-established authorities that such estoppel cannot create new causes of action, including contractual causes of action, where none existed before (*Combe v Combe* [1951] 2 KB 215 and *Haden Young Limited v Laing O'Rourke Midlands Limited* [2008] EWHC 1016).

12. In addition, Mr Thornhill:

- i) alleges that Mr Pattie has failed to plead any clear and/or unequivocal representations allegedly made by him which would be sufficient to give rise to an estoppel, and denies that he has made any such representations; and
- ii) denies that Mr Pattie acted to his detriment whether as alleged or at all, as he was paid fairly for the work he did for PPB;

iii) puts Mr Pattie to proof that he "*could have left the business and sought and obtained alternative more gainful employment based on his experience in the industry*" as Mr Pattie pleads.

The Issues

13. The issues which I must determine in relation to the contractual claim are the following:

- i) Has Mr Pattie satisfied the court that he and Mr Thornhill entered into all or any of the Alleged Agreements relating to Mr Pattie's entitlement to shares in PPB?
- ii) If so, what were the terms?
- iii) Has Mr Pattie satisfied the court that Mr Thornhill entered into any such agreements in his personal capacity and not in his capacity as a director of PPB?
- iv) If so, has Mr Thornhill satisfied me that any such agreements are void or voidable for misrepresentation?
- v) If not, should the court exercise its equitable discretion to make the order for specific performance sought by Mr Pattie?

14. If I am not satisfied that Mr Pattie and Mr Thornhill in his personal capacity have entered into any of the Alleged Agreements for the provision of shares in PPB to Mr Pattie, has Mr Pattie satisfied me that

Mr Thornhill is estopped from denying either or all of the Alleged Agreements such that Mr Pattie is entitled to shares in PPB?

The Trial

15. Mr Pattie is represented by Mr Timothy Sherwin and Mr Thornhill by Mr Martyn Naylor. I am grateful to them both for their helpful skeleton arguments, their pragmatic and skilled questioning of witnesses and their clear and well-structured closing submissions. I am also very grateful to them, their instructing solicitors, the parties and witnesses for their patience and flexibility in accepting last minute venue changes which became necessary when problems with construction works in the intended venue of Luton County Court caused that court to be evacuated and closed for 8 days over the trial period. That required the trial to be moved from Luton County Court to Luton Crown Court and then to Oxford Combined Court, which undoubtedly caused additional stress and inconvenience to all concerned.

16. I heard from five witnesses of fact, each of whom filed a single witness statement and attended court to be cross-examined. For the claimant, I heard from Mr Pattie himself and from Mr Sebastian Eshragi. Mr Pattie filed witness statements from a further six witnesses but they were all abroad on the trial dates and I refused a late, oral application on the first day of trial for them to appear by Skype or telephone. Those statements are disputed by Mr Thornhill, who has had no chance to

challenge them in cross-examination. They appear to have chosen not to come to court. Accordingly I give little weight to those witness statements, in relation to which no hearsay notices have been filed. For the defendant, I heard from Mr Thornhill himself, his daughter Harriet Thornhill and Timothy Houldsworth. Mr Thornhill filed a witness statement from a further witness, Mr Theo Bennett, but again he did not attend trial and no hearsay notice was filed. His evidence adds little to the evidence of Mr Houldsworth and as Mr Pattie has not had the opportunity to challenge it in cross-examination I also give little weight to that witness statement.

Mr Pattie

17. I found Mr Pattie to be an unsatisfactory witness in many ways. He gave his evidence in a relatively straightforward manner, and was calm and courteous. I found him to have an honestly-held but exaggerated and misplaced belief in: his own abilities; the importance of the role he played in the creation of the business which became PPB; his place within the management structure of PPB; and the extent and value of his role working for PPB in the last five years of his employment. Coupled with that, in my assessment, was an honestly-held but mistaken belief that his talents were not recognised and rewarded as he felt they should have been. However my impression of much of his evidence about the Alleged Agreements was that he was

presenting a reconstructed version of what he wanted to be the truth, rather than providing truthful evidence to the best of his ability.

18. This can be seen most starkly, I believe, in Mr Pattie's production, in a transcript-style format, of his recollection of three conversations that he had about shares in PPB with Mr Thornhill, during which he says certain of the Alleged Agreements were reached. Those were in June 2009 (allegedly resulting in the 2009 Agreement); in early 2010 (allegedly resulting in the 2010 Variation); and 30 June 2015 (allegedly resulting in the 2015 Agreement). These were first produced in a document entitled "*Voluntary Further Information of the Particulars of Claim*" served by Mr Pattie's solicitors on 24 January 2018. Mr Pattie then inserted them (as amendments) into his witness statement.
19. Although they are presented in the form of verbatim transcripts, they are not, of course transcripts, being produced from Mr Pattie's memory of conversations up to nine years previously. Why then did he produce them in the form of transcripts, and not in the usual narrative witness statement, one might ask? All three conversations as remembered by Mr Pattie are remarkably succinct, involving almost no explanation or talking around the issues at all. I won't set them all out here, but the one for June 2009 is as follows:

"Defendant: "Receiving 25% of the company from day one wouldn't be fair in case you decided to leave after a few months."

Claimant: "I understand a lot has changed since our initial conversations but I've still given the project 100% and pushed to make it happen."

Defendant: "**You'll still get shares. They'll just be issued yearly at 5% up to 25% for as long as you're involved in the company**".

Claimant: "I don't plan on going anywhere so guess it'll work out the same in the end. When will I receive my first 5%?

Defendant: "I will issue the first 5% now as we've been working on the project for over a year".

Claimant: "Thanks, let me know if I need to sign anything.""

20. The actual agreement, on his account, is reached in three sentences (as emphasised). The other transcript-style recollections are similarly succinct. Mr Thornhill described them variously as "*fantasy*" or "*fiction*". Mr Naylor put to Mr Pattie that they were constructed to support his case and he denied it. I have no doubt that they do not represent the actual conversations that Mr Thornhill and Mr Pattie had, as this is not how those parties speak. Neither Mr Pattie nor Mr Thornhill presented as men of few words and Mr Thornhill's tendency is to augment his statements with explanations. I am satisfied that these faux-transcripts are Mr Pattie's distillation of the points he either remembers from those conversations, or wishes the court to accept.

21. The difference between those alternatives, is that one is honest evidence given to the best of a witness's recollection, and the other is reconstructed evidence produced to support a party's case. Mr Naylor for Mr Thornhill submits that Mr Pattie came across as a deluded fantasist who has reconstructed conversation and events based on documents from years later. Mr Sherwin submits that if Mr Pattie is reconstructing the facts to fit his case, he has done it in a very elaborate manner: Why construct seven years of agreements to back up the single agreement in 2015 which he wishes now to enforce, he asks? He submits that if Mr Pattie is wrong in his understanding and recollection of those various conversations about shares with Mr Thornhill, then it is because he is honestly mistaken, and not reconstructing to fit the case he wishes to make.
22. I have thought about this very carefully but there are too many parts of Mr Pattie's evidence which I do not accept, and which I do not believe can be a matter of honest mistakes or honestly held but mistaken recollections, for me to accept Mr Sherwin's characterisation of his client as honest in his presentation of this evidence.
23. For example, I found it impossible to accept Mr Pattie's evidence that he did not know that he had been issued shares in Pix 3 in 2010, believing them to be in PPB until 2015. He accepts that he went to the accountant's firm to sign up the paperwork both for the shareholding and to be made a director of Pix 3. In my view it is inherently

improbable that he would have known he was being made a director of Pix 3 but failed to notice that he was being issued shares in the same company and not in PPB. I also think it is inherently improbable that he could have served as a director of Pix 3 for five years without noticing that he was also a shareholder in that company. It may well be that he didn't fully understand the financial implications of being a shareholder in Pix 3 rather than in PPB until 2015, but that is a different point.

24. Of course just because a witness lies about one thing it doesn't mean he has lied about everything. I have read and reminded myself of the principles from Leggatt J's judgment in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at paras 15 to 22. At para 22, which was recently approved by the Supreme Court in *Bancoult, R (on the application of) (No 3) v Secretary of State for Foreign and Commonwealth Affairs (Respondent)* [2018] UKSC 3, Leggatt J said:

"… the best approach for a judge to adopt… is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose - though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather

than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.”

25. I also remind myself of the earlier guidance of Lord Pearce (dissenting) in the House of Lords decision in Onassis v Vergottis [1968] 2 Lloyds Rep 403 at p 431 in his discussion of the assessment of a witness's oral evidence:

“Credibility involves wider problems than mere demeanour which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or, though an untruthful person, telling the truth on this issue?”

26. I will not quote all of that well-known passage but it finishes as follows:

“On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process. And in the process contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part.”

27. That latter point is also made by Goff LJ in Armagas Ltd v Mundogas S.A. (The Ocean Frost), [1985] 1 Lloyd's Rep. 1, p. 57, who said:

"I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities."

28. Bearing this guidance in mind and for the reasons I have already given, I treat Mr Pattie's evidence with considerable caution and before accepting it I look for corroboration from, in particular, contemporaneous or other documentary evidence or other credible witness evidence, as well as the inherent probabilities. However, as Mr Naylor has highlighted in his submissions, there is a noticeable absence of documentary evidence in support of Mr Pattie's case.

Mr Thornhill

29. I found Mr Thornhill to be a good witness. His evidence was consistent, supported by his other witnesses, he gave straightforward answers to questions and was not evasive. Mr Sherwin submits that he avoided answering questions but I do not agree. Mr Sherwin criticises him in relation to evidence he gave about the lease of a flat in Notting Hill occupied by Mr Pattie. It is clear that he got the parties to the lease wrong, believing that PPB had rented the flat which it had not. He accepted that as a mistake in cross-examination, going on to say instead that he had a clear recollection of PPB guaranteeing the lease or paying the rent although this was not in his witness statement and contradicted the evidence that was in his witness statement. In my

judgment this is a peripheral matter. It doesn't go to any of the issues in the case. It is clear that Mr Thornhill has an unreliable recollection of the circumstances surrounding that flat rental, which perhaps is not surprising so many years later, and that when shown that his memory was incorrect that PPB leased the flat, cast about for a reason for his recollection that PPB was financing it. He appeared to me to be honestly trying to understand or explain his recollection. That does not materially affect my view of his credibility, however, as whether or not PPB paid for the flat didn't materially affect his case. Mr Sherwin also criticises him for a withdrawal of an admission in the Amended Defence, which he gave no explanation for, save that it was a mistake. Again, it is a peripheral matter, in my view. That is the purpose of the mechanism of withdrawal. I found him to be honest, credible and generally reliable, subject to the vagaries of recollection several years after the event, as so well-described in *Gestmin*.

The other witnesses

30. I am satisfied that the other witnesses came to court to assist it to the best of their abilities by telling the truth to the best of their recollection and understanding. I have no doubts about the credibility or reliability of any of them. Mr Esraghi was an independent witness with no reason to lie. So, too is Mr Houldsworth who left his long employment at PPB, rising from a barman to General Manager, to start an MBA course at university. He has, in my judgment, no reason to come to court to lie

on behalf of his previous employer. Miss Thornhill of course is not independent, but when it was put to her that she was giving evidence simply to support her father her reaction in rejecting that suggestion was, in my view, instinctive and truthful.

Summary of Decision

31. Mr Pattie will be disappointed to learn, I know, that I am dismissing his claim in its entirety. He has failed to satisfy me that he and Mr Thornhill entered into any of the Alleged Agreements. The only agreement relating to the provision of shares to Mr Pattie which I am satisfied they concluded was an agreement in June 2009 that he should have 2.5% of the issued share capital in Pix 3. In my judgment this was agreed by Mr Thornhill acting in his capacity as a director of PPB and he performed that agreement some weeks later by procuring the allotment of Pix 3 shares to Mr Pattie that Mr Pattie still holds.
32. Mr Pattie has also failed to make out his case that Mr Thornhill is estopped from denying any or all of the Alleged Agreements, such that Mr Pattie is entitled to shares in PPB. That is because I am not satisfied that the assurances on which Mr Pattie relies relate to identified property owned (or about to be owned), by Mr Thornhill.
33. The rest of my judgment deals with my reasons for reaching these conclusions.

Evidence and findings

Background of the parties

34. Mr Pattie and Mr Thornhill have been friends since a date neither of them appear to be sure of – somewhere between 2000 and 2004. They agree that by 2008 they were very close friends, akin to family. Mr Thornhill says he thought of Mr Pattie almost as a younger brother, (he being the elder by nine years). Mr Thornhill's daughter, Miss Thornhill, says that she thought of Mr Pattie almost as an elder brother.
35. Mr Thornhill is a businessman with an MBA and many years experience working at board level for multinational companies. He has also founded and run a number of smaller companies as a majority shareholder. He considers himself to be "*highly experienced in a business-start up and rapid growth environment*" and this assessment is not challenged by Mr Pattie. In 2008 he was European Managing Director of Infospace Inc, an American search engine company.
36. Mr Pattie has no formal qualifications but before 2002, as a teenager, he had worked as a kitchen porter and assistant chef in three pubs in East Anglia. In his witness statement he said "*I first moved to London in 2002 and got involved in London's nightclub scene working for and independently setting up, promoting and hosting parties at some of London's most exclusive nightclubs, where I built a vast network of industry professionals. I am a self-taught chef, restaurant operator and restaurant consultant.*" In cross-

examination he said "*I used to host parties and do guest lists for parties at nightclubs*" and "*I just promoted clubs, doing monthly parties. I was paid cash in hand depending on the number of people I got into the clubs*". He confirmed he was not employed by any nightclubs, had no payslips and because he was paid cash in hand he could produce no evidence of his income from bank statements or tax returns from 2002 to 2008.

Initial idea for chain of pintxo restaurants - early to mid 2008

37. In early 2008 Mr Thornhill returned from a trip to Spain where he had eaten in a type of tapas bar called a 'pintxo' bar, and began to think about importing the idea to England by opening a pintxo bar in London. He discussed this with a number of people, including in particular Mr Pattie who was enthusiastic about the idea. Mr Pattie accepted in cross-examination that Mr Thornhill personally came up with the initial concept, branding and beginnings of a business plan for the Pix restaurants in or around March 2008. Mr Thornhill knew that Mr Pattie was involved in some way in nightclubs in London, and that Mr Pattie claimed to have a network of contacts and business knowledge concerning the hospitality and restaurant industry in London. There is a dispute about the extent of his actual experience, knowledge and relevant contacts that I will deal with later. However Mr Thornhill accepted those representations at face value and says in his witness statement that: "*Nathan believed that he could make a valuable contribution to the proposed business by providing access to investors,*

introductions to suppliers and professional advisers, recruit a talented and experienced team, then launch and manage the first restaurant on a day-to-day basis". Mr Pattie denies that he ever said that he could provide access to investors, but does not dispute the rest of it.

38. In May 2008 Mr Thornhill flew Mr Pattie to Barcelona to look at the concept of pintxo bars. There is a dispute about whether this was alone or with a group of other people interested in becoming involved in the business, but nothing turns on that. It is common ground that around this time Mr Thornhill and Mr Pattie discussed Mr Pattie working for the business and being given equity of up to 25% in a future company which would be set up to operate the business. The extent and effect of those discussions is one of the issues I need to determine.
39. Mr Pattie says that Mr Thornhill: "*said that we would be "partners" in the business, that he would take care of the finances, accounting, the raising of capital investment and anything related to this area of the business, and I would be in charge of look and feel, staffing and general day to day running of the business. He said that he had raised money in the past for his businesses and that it would be easy for him to raise the finance for this project. He also said that he wanted me to have a vested interest in the business and for me to make it my own. He stated that I would receive 25% of the business and that we would build the business together; which we did."*"

40. Mr Pattie accepted in cross-examination that there was nothing in writing from that time which documented or evidenced this Alleged Agreement, nor are there any later emails or text messages between him and Mr Thornhill which evidence the 2008 Agreement or even refer to the 2008 Agreement being reached between them. However Mr Pattie relies on an email some 7 years later dated 10 September 2015 from Mr Thornhill to Mr Jeff Gitter, an accountant and shareholder in PPB, in which Mr Thornhill discussed issues around the alleged 2015 Agreement and said: *"We have always intended to reward (and secure) the long-term commitment of those people who are key to the growth of the business, as is normal in any start-up environment. This promise was made long before you invested... It's true that I had doubts about Nathan, but that was some time ago and he is more than justifying his position now. As you point out, he always did have 2.5% of Pix No. 3, so presumably you acknowledge that he is entitled to something. Please also bear in mind that at the beginning (when we founded the business together) he was expecting closer to 25%"* (my emphasis). Mr Pattie says this is an acknowledgement by Mr Thornhill of the 2008 Agreement.

41. Mr Pattie also accepted in cross-examination that he didn't know if the agreement would be fulfilled by a transfer of Mr Thornhill's shares to him, or by Mr Thornhill causing the company that he proposed to set up to operate the business to issue and allot shares to Mr Pattie. He said that he didn't have a view, as long as he ended up with 25% of the

shares in that company. He said that he trusted Mr Thornhill like a brother, so didn't question how it would be done.

42. Mr Thornhill accepts that on a number of occasions during this initial period he discussed a potential equity interest for Mr Pattie in the proposed business, and that a figure of 25% was mentioned. However, he says that this was "*at most a best-case hypothetical scenario and fundamentally reliant on the results that Nathan could deliver. At no point were these conversations intended to be legally binding and no specific details as to equity (or anything else) were ever agreed. The eventual composition of the company was unknown at that time, and equity would be required for investors and potentially other key management...".*
43. I find that in mid-2008 the business was no more than an idea under discussion. There was no incorporated vehicle, there was no funding, no premises, no employees or management team and no business plan. Mr Thornhill had taken no fixed and certain decision at this stage that the business would happen at all.

Incorporation of PPB and search for funding - late 2008 to early 2009.

44. PPB was incorporated on 27 November 2008 with Mr Thornhill as the sole director and sole shareholder. Mr Pattie readily accepted in cross-examination that he was employed by PPB from January 2009 at a salary of £1000 per month up to June 2009 (when his salary was increased), and not the £500 per month he stated in his witness

evidence. However, he claims in the Amended Particulars of Claim that from around early to mid-2008 he devoted his time and effort to the business "*including by way of working for [PPB], but also by spending further time and effort on the business of the Pix Pintxos branded group of bars and restaurants beyond the time and effort for which he was rewarded by way of salary (up to seven days a week)*". His evidence is that he was paid £500 per month from as early as June 2008 for this work. However, it is not disputed that PPB was not incorporated until November 2008 and there were no bars and restaurants opened by the business, and no other staff employed, until Westbourne Grove Pix opened in September 2009. In cross-examination, Mr Pattie was asked what he meant by that statement in those circumstances and he said he: "...*did lots of work, including in researching different areas and sites for restaurants, costings, business plans, finding suppliers, looking at other restaurants etc*". He did not clarify who or what entity had paid him £500 per month during a time before PPB came into existence, and did not disclose any bank statements which might show that he received such monies.

45. Mr Thornhill's evidence is that he only decided to proceed in earnest with the business around December 2008. He then left his full-time position at Infospace, and Mr Pattie was employed by PPB, from January 2009. His evidence in cross-examination on the timing of his decision was convincing, in my view, and I accept it. He said: "*It was on December 25 2008. My daughter was with me that Christmas. We usually go*

skiing and we took [Mr Pattie] with us. I gave him a laptop and a mobile on contract, and said 'here's what you need'. That was when we said it was going to happen." Mr Thornhill said that there were no discussions about company structure before that decision was taken, and that until he decided to go ahead with the business there was no entity for Mr Pattie to work for. I find it more likely than not that Mr Pattie was not employed in any capacity to work on the business before January 2009, although I accept that he was involved in discussions and preliminary research with Mr Thornhill as part of the process of assessing the feasibility of the possible business venture. I cannot make any finding that Mr Thornhill paid him £500 per month to do this work, as it was not put to Mr Thornhill in cross-examination that he did so. I accept it as a possibility.

January to June 2009

46. From January to June 2009 Mr Thornhill describes Mr Pattie's work for PPB as "*part-time... mainly involved attending property viewings and occasional design meetings the average time commitment of which amounted to no more than one day per week*" for which Mr Pattie was paid £1000 per month by PPB. Mr Thornhill says that during this period: "*...it became clear to me that [Mr Pattie's] representations about his prior industry experience and contacts had been greatly exaggerated and he was unable to introduce the company to any of the investors, industry professionals, suppliers, advisers or other key partners that he claimed to have within his*

professional network. It seemed to me that [Mr Pattie] had no business knowledge or experience of the restaurant sector at all."

47. Mr Pattie accepted in cross-examination that until the first site on Westbourne Grove was leased in June 2009, there was no business to manage, but was adamant that he worked more than one day a week during this period. He described himself as having a big workload.
48. In terms of introductions that he made to PPB, Mr Pattie names Mr Ben Nicholas, a commercial property lettings agent, who Mr Thornhill accepts assisted PPB in finding the Westbourne Grove site. However Mr Pattie accepted in cross-examination that Mr Nicholson was a friend of his housemate who he met socially, and not a business contact. He had no previous professional relationship with him. He also named Mr Nikita Jayasurya, a graphic designer, who Mr Thornhill accepts assisted PPB in coming to the final design of the logo used by PPB for the Pix Pintxo brand. Again, Mr Pattie accepted in cross-examination that Mr Jayasurya was a good friend of his and not a business contact. He had no previous professional relationship with him. Apart from some waiting and bar-tending staff hired for Westbourne Grove Pix, (one of whom, Mr Lars Weidemann became a General Manager of PPB), Mr Pattie provided no further evidence of any industry professionals, suppliers or advisors that were within his professional network who he introduced to PPB or Mr Thornhill.

49. In relation to his business knowledge, Mr Pattie accepted in cross-examination that he had no experience in running or operating any business, let alone a restaurant business and he accepted, fairly in my view, that there was a significant difference between operating a business and running parties in nightclubs. He said: "*I knew how to operate parties.*"
50. I accept Mr Thornhill's evidence that Mr Pattie had exaggerated and misrepresented: (i) his prior industry experience; (ii) the extent of his professional contact network and how that could be leveraged to the advantage of the proposed business (and PPB once that had been incorporated); and (iii) his business knowledge of the restaurant sector. This amounted to a misrepresentation of the extent to which he was able to operate at the management level of a business which was proposed to, and eventually did, operate and run a number of restaurants in London.
51. I make this finding because of the dearth of Mr Pattie's evidence in support of his contention that he did have such experience, knowledge and network. His evidence of restaurant experience amounts to teenage jobs at a lowly level in the kitchens of a few country pubs. I do not know how long those jobs lasted nor how many hours he worked as he provides no documentary evidence of them, but they are not the sort of jobs which involve any management-type roles. His evidence of having a "*vast network*" of hospitality industry professionals is almost

wholly lacking. His experience of the wider hospitality industry is also unsupported by documentary evidence and, by his own admission, different to operating a restaurant business.

52. Conversely, I find support for Mr Thornhill's position from the various iterations of the draft business plans dated November 2008, March 2009, April 2009 and June 2009:

- i) The first iteration, in November 2008, describes Mr Pattie as the "*Concept Director*" and says he is "*responsible for delivering the values and experience that will come to define the brand, including styling, staff, and, most importantly, clientele... In the short-term, Nathan will be responsible for front-of-house management at the first Pix... once established, he will take a key role in the set-up and early operations of each new location.*" It describes him as "*a prominent figure in the London bar/club sector the past six years, working with high profile venues including Sketch, The Cuckoo Club and Bouji... he also spent 2 years as manager of 43 South Molton Street, the private members club in Mayfair.*" Mr Pattie accepted in cross-examination that he has never been manager of 43 South Molton Street, but said that he didn't know it was in the business plan.
- ii) The second iteration of the business plan in March 2009 described Mr Pattie as responsible for "*Concept and Brand Development*". It removed the reference to him managing 43

South Molton Street, now saying that he had “*worked with*” that venue. It also downgraded his involvement in the business saying “*In the short-term, Nathan will be responsible for managing the first floor at Pix Soho... once established, he will take a key role in ensuring our values are carried forward into each new location.*”

- iii) By the iteration in April 2009, Mr Pattie is described as “*co-founder of Pix*”, and continues to state that he is “*responsible for delivering the values and experience that will come to define the brand*”, but the paragraph referring to his roles in the short-term and in the future is gone. The final iteration in June 2009 has removed the page about the management team entirely.
53. In my judgment, the changes to the business plan support Mr Thornhill’s evidence that over that period, he became aware that Mr Pattie did not have the experience etc that he would provide to the business.
54. I also prefer Mr Thornhill’s evidence that Mr Pattie was not working full-time for the business from January to June 2009, let alone 7 days a week. I have set out what Mr Pattie said he was doing, namely “*researching different areas and sites for restaurants, costings, business plans, finding suppliers, looking at other restaurants etc*” but it is clear to me from his evidence, and that of the other witnesses, that Mr Pattie was not financially literate and had no involvement in the financial side of the

business, and so I do not accept that he was involved in either costings or business plans. He has put forward no evidence of any suppliers that he found, although it may be that he did suggest some. It seems to me that Mr Thornhill's description of Mr Pattie carrying out site visits and assisting with design is about right. It is unclear what else he could have done before a site was found, given the limitations of his experience and expertise. I also note that Mr Pattie's salary increased by 2.5 times to £30,000 per annum once the lease for the Westbourne Grove Pix was secured, and draw the inference that he received that pay rise because the amount of work he was required to do also significantly increased.

Funding and the first restaurant- June 2009

55. Despite Mr Thornhill's efforts in early 2009, neither he nor Mr Pattie was successful in finding outside investors for PPB. Accordingly Mr Thornhill approached his father (also called John Archie Thornhill so to avoid confusion I will refer to him as Mr Thornhill Sr) to invest in mid-2009. Mr Thornhill Sr invested £800,000 in return for 25% of the equity in PPB. Mr Thornhill retained the remaining 75% and moved to London from Cambridge to devote himself to the business full-time.
56. In June 2009, too, the first restaurant lease was secured for the Westbourne Grove Pix. Mr Pattie's salary was increased to £30,000 per annum. Mr Pattie states, and Mr Thornhill believes it is probable, that

they had further discussions regarding Mr Pattie's entitlement to equity in PPB but the extent and effect of those discussions is one of the issues I have to determine.

The 2009 Agreement

57. Mr Pattie alleges that after the lease had been signed, he met with Mr Thornhill in June 2009 to discuss the shareholding because he was dissatisfied that, on his case, he had been working on the Pix project for around a year, full time, but Mr Thornhill had still not transferred to him any shares in PPB. Of course I have found (i) that he had only been employed by PPB for six months at this point; and (ii) he had not been working full time for Pix until this time. Mr Pattie says that: "*Mr Thornhill suggested that since he had to borrow the money [for PPB] from his father which was very different from raising investment from an external source, our initial agreement would have to change. He told me that, if I decided to leave after a couple of months his giving me (or arranging for me to get) 25% of the shares in [PPB] it would not be fair [sic]. He stated that I would still receive 25% but it would be given in 5% instalments. He suggested that 5 years commitment to the project would be a fair amount of time to have earned 25%.... this was the first time that the idea of my being locked into the business for any period of time was mentioned.*"

58. I have already set out Mr Pattie's transcript-style evidence of the conversation he said he had with Mr Thornhill, earlier in this

judgment. I note that this narrative provides more detail than that ‘transcript’.

59. Mr Pattie said that there was no doubt in his mind after that meeting that he and Mr Thornhill had reached a firm agreement that he would receive equity of 5% of PPB, in addition to his salary, “*for each year I worked for Mr Thornhill up to a maximum of 25%*”, and that he believed Mr Thornhill was “*making me a personal promise, based on our long-standing friendship*”. He says he did not understand Mr Thornhill to be acting as a director of PPB at the time.
60. Mr Pattie confirmed in cross-examination that, once again, he gave no thought to whether he received Mr Thornhill’s shares by transfer or shares issued and allotted by PPB. He said he never questioned how the shares would come about. He further said that he did not discuss with Mr Thornhill, and did not consider, the dilutive effect if the company issued and allotted shares to him. When asked why he had given up 20% of the business which, on his own case, he was entitled pursuant to the 2008 Agreement, he said that he had nothing in writing from the 2008 Agreement so he was in no position to argue as he couldn’t do anything about it. He said he was not pleased about it.
61. It was put to him that the recollected transcript of the conversation and the fact that agreement was reached were both “*fantasies*”, but he denied it. He was asked why, if he had found himself in difficulties

with the 2008 Agreement resulting from it not being in writing, he had not ensured that he had documented this 2009 Agreement, even informally by email, and he had no real answer to give.

62. Mr Thornhill denies that any agreement was reached in June 2009. He said that it was probable that he had a conversation with Mr Pattie about shares as that topic was never far from Mr Pattie's mind, however he said that the conversation recorded in the recollected transcript produced by Mr Pattie did not happen. He said that by June 2009:

- i) he had put in £200,000 to PPB, moved to London and taken operational control of the business. His father had put in £800,000 for a 25% stake. That is not disputed
- ii) it had become apparent to Mr Thornhill, as shown from the changing business plans, that Mr Pattie had exaggerated his experience, knowledge and contact list such that he could not fulfil a managerial role, but instead was being used as "*a junior person with no defined role*" who worked alongside Mr Thornhill during the pre-opening building works and fit-out, doing menu tastings, attending meetings etc. I accept that evidence for the reasons previously given;
- iii) he accepted that Mr Pattie was helpful in recruiting staff from amongst his social circle and that Mr Pattie was working and

being paid, but stated in cross-examination that he had no value to PPB beyond what he was being paid and was not bringing anything to PPB which Mr Thornhill could not find anywhere else. I accept that evidence which flows from the fact that Mr Pattie was fulfilling an undefined, junior role.

63. In those circumstances, as he stated in his witness statement: "*it simply isn't plausible that I would agree to give 25% of [PPB] away based on nothing more than the continued employment of an individual whose prior assurances had already proven questionable... Importantly, my father and I were able to provide funds for the first few sites, but recognised that we would be issuing new shares to investors at various stages of our development and growth. To grant one minority shareholder unequivocal and increasing rights would be commercially unwise, seriously prejudicing PPB's ability to raise future investment, and neither myself nor my father...would have agreed to it*".
64. It was put to Mr Thornhill that if Mr Pattie had left PPB in June 2009, being a crucial time after the first lease had been taken on, PPB would have been in difficulties. Mr Thornhill said no, he kept him on out of kindness and pity because he wished to find a role for him because of their close relationship. He pointed to the fact that Mr Pattie was suspended on full pay two months after Westbourne Grove Pix opened and said that caused PPB no difficulties at all. Again, I accept that evidence which seems to follow my finding that Mr Pattie was fulfilling an undefined, junior role.

Fit out and opening of Westbourne Grove Pix

65. The fit-out of the Westbourne Grove Pix commenced almost immediately the lease was signed, and it opened for business in September 2009. Mr Pattie's evidence is that in the lead up to opening Westbourne Grove Pix: "*I worked on the look and feel, staffing and general day to day running of the business. I chose wines, found suppliers, found staff, arranged and worked with designers... for the restaurant, found chairs and furniture from junk and antique shops, progressed the opening and attended the site most days, set up a Facebook account, and attended a large number of business meetings. I was Mr Thornhill's "dogsbody" throughout this period.*" Mr Thornhill agrees with all of this except "*the general day to day running of the business*" which he said was carried on at an strategic management level by him, and at an operational level by Lars Weidemann, the General Manager. In particular, he agrees with Mr Pattie's description of himself as Mr Thornhill's dogsbody.

Difficulties after the opening of Westbourne Grove Pix

66. Difficulties arose between Mr Thornhill and Mr Pattie after the opening, in October and November 2009. Mr Pattie states in his witness evidence that during this time Mr Thornhill became very aggressive towards him, verbally abusing him, often in front of staff and customers and assaulting him by punching him in the back whilst in mid-service. In cross-examination he changed his evidence, saying that

this happened during the period from September to November 2010.

Mr Thornhill denies this happened at any time. Mr Thornhill says that Mr Pattie was behaving erratically and unprofessionally, as well as maintaining a late-night, party lifestyle which was incompatible with carrying out a full-time job. Mr Pattie denies this.

67. There is no other witness evidence supporting Mr Pattie's claims of Mr Thornhill's aggression towards him either in late 2009 or late 2010. If the verbal and physical assaults took place in front of staff and customers as Mr Pattie says, I am surprised that he has called no witnesses to it. Mr Pattie in cross-examination said that Mr Rollo Weeks would have supported him, but Mr Weeks' witness evidence does not mention this behaviour, and of course Mr Weeks did not attend the trial.
68. Other witnesses support Mr Thornhill's complaints of the difficulties with Mr Pattie's behaviour. Mr Thornhill described Mr Pattie in oral evidence as "*turning from younger brother to problem child*" and identified his "*partying lifestyle*" and mental health vulnerabilities as key contributors. Miss Thornhill described him as "*a likeable liability*", saying that on many occasions he came to work at the restaurant "*still exhibiting the effects of the night before... often he didn't show up at all*". In cross-examination she said that he had problems conducting business as he would turn up late, sometimes with his dog: "*He was not always professional*". Mr Houldsworth did not join PPB until later in 2010, but

also described issues arising from Mr Pattie's lifestyle and moods, and how those affected other staff with whom he "*had a strong 'social influence'*", and the business. He said "*I would say that both socially and at work Nathan has an unpredictable personality, including dramatic mood swings and a forceful, often destructive presence.*" His later evidence supports the earlier evidence of Mr Thornhill and his daughter.

69. In November 2009 Mr Pattie was asked by Mr Thornhill not to come to work. Mr Pattie described this in his written evidence as Mr Thornhill trying to fire him, but accepted in cross-examination that it could fairly be described as a suspension on full pay, as Mr Thornhill also described it.
70. Given Mr Pattie's acceptance that he was suspended on full pay, and in light of the other evidence I have set out, I am satisfied on the balance of probabilities that Mr Pattie's behaviour was often difficult and disruptive to management, other staff, and the business at this time.

2010 Variation Agreement

71. In early 2010 while Mr Pattie was suspended without pay, he and Mr Thornhill met to discuss his future with PPB. There is no dispute about that, but there is a dispute about the agreement that was reached at that meeting, and that is one of the issues I have to determine in this case.

72. Mr Pattie claims that this meeting resulted in the 2010 Variation, which varied the 2009 Agreement to his detriment: now he would be entitled to 2.5% (and not the 5% he says he was previously promised) of the issued share capital in PPB for each year he worked with PPB, up to a maximum of 25%. Mr Pattie says that he relied on that agreement to come back and work for PPB full-time, when he could have gone elsewhere and earned more by way of mere salary.
73. Once again we have presented in transcript-form Mr Pattie's verbatim recollection of the conversation. Once again it is improbably short and succinct, the whole conversation being dispatched in eight pithy exchanges. Once again, Mr Pattie tells the court that he was not happy with the reduction in his entitlement but he felt he was not in any position to argue with Mr Thornhill as he had nothing in writing to confirm their previous oral agreement. Once again (despite being caught out for the third time with no evidence of previous agreements forcing him, on his case, to reduce his shareholding from his previous alleged entitlement), Mr Pattie took no steps to document or evidence this new agreement, whether by a contemporaneous or later note, or email or text. Once again there is no reference to this agreement in any correspondence, texts, emails or messages exchanged between Mr Pattie and Mr Thornhill over the next five years.
74. Mr Thornhill remembers that meeting quite differently. He says that at that meeting Mr Pattie accepted that he was unable to continue in his

previous role but pleaded with him not to dismiss him, saying that he would do anything to keep his job and stating that he would, over time, find a meaningful role. Mr Thornhill said that he was very concerned about Mr Pattie's lifestyle and his mental state, and so he:

"...agreed that [Mr Pattie] could remain employed by PPB on a scaled-down basis in the hope that an appropriate role would emerge over time. For several months this was limited to doing odd jobs and making coffee in a back room on Saturday afternoons. At no point after this did [Mr Pattie] fulfil any customer-facing or staff-management role within the organisation and he was certainly not generally managing the business as claimed."

75. Mr Thornhill agrees that they talked about a possible equity interest for Mr Pattie, who was adamant that he had "*earned something*" from the work he had already carried out. Mr Thornhill says that he was not prepared to issue to him shares in PPB as: (i) that would dilute the voting rights of the existing shareholders, who were likely to be diluted anyway by future fundraising; and (ii) the issue of new shares would require the consent of Mr Thornhill Sr as majority shareholder, and Mr Thornhill didn't believe that his father would agree to this. However, he was considering restructuring the business so that PPB would be the holding company with a subsidiary operating company, Pix 3, beneath. Accordingly he agreed with Mr Pattie to issue to him 2.5% of Pix 3.

76. In cross-examination Mr Thornhill said that he agreed to do so to reflect and give Mr Pattie credit for his assistance in recruiting staff for

the business. He said that it was a token gesture to accommodate Mr Pattie's need for a shareholding, save face with his friends and "*shut him up in relation to his constant demand for shares*".

77. Mr Thornhill's evidence in cross-examination was that there was no discussion of PPB, only about PPB creating a subsidiary in which Mr Pattie would be given 2.5% of shares with no strings attached, and with no promise of any additional shareholding in the future. That was followed up by a visit by him and Mr Pattie to an accountant where the necessary paperwork was signed to make Mr Pattie a director of Pix 3 and allocate the promised shareholding to him, the remaining 97.5% being held by PPB. Mr Naylor submits that this evidences that Mr Thornhill was acting as a director of PPB, and not in his personal capacity, in relation to their discussions and the agreement reached in early 2010.
78. Mr Pattie accepts that he visited the accountant and signed paperwork, but says that he didn't understand what he was signing and wrongly believed until about May 2015 that he had been allotted shares in PPB and not in Pix 3. Mr Thornhill says that is a "*flat lie*". Mr Houldsworth, who became a director of Pix 3 on 4 April 2014 until 8 August 2018, says that he finds Mr Pattie's claim to have been unaware of his own shareholding in Pix 3 until 2015 "*very difficult to believe bearing in mind that he was a Director of the company and shareholdings were clearly never far from his mind*". I have already found that I do not accept Mr Pattie's

evidence and do not believe that it was honestly given. I am satisfied on the balance of probabilities that he did know that he had been issued shares in Pix 3 in 2010.

Mr Pattie's role at PPB from 2010 - 2015

79. Both parties agree that Mr Pattie returned to work in early 2010 and continued to work for PPB until 2015. His salary rose from around £30,000 to £32,000 in 2011/12; £42,800 in 2012/13; £44,600 in 2013/14; and £58,000 in 2014/15 (although he left part way through that year).

There is a dispute about the extent and importance of Mr Pattie's role at PPB during this time.

80. Mr Pattie said that he: *"...worked on site seven days a week, taking deliveries, working on the floor, attending daily and weekly meetings, ensuring the maintenance of the sites, dealing with staffing, menu progression and working with chefs, dealing with staff issues, building new restaurants, finding new sites, making coffee, running food to the bar and tables, disciplining staff, opening sites with general managers, and generally working as hard as it was possible for me to work to ensure that the business was a success."* He said that in doing so, he went *"way beyond what I would have expected to do if I were merely a manager"* or *"a mere employee"* but that he did so because he considered himself, based on his agreements with Mr Thornhill, to be the junior partner in the business. In his witness statement Mr Pattie said that he could have found a better

paying job at a higher salary elsewhere, but he didn't do so because he considered that this was 'his' business. He says that Mr Esraghi asked him a number of times to come and work for the restaurant that he owned. Mr Esraghi supports that and I accept his evidence.

81. I have before me a schedule of jobs which Mr Pattie disclosed as a maintenance list, setting out 268 tasks that he performed during four months in 2013/2014. In fact it has a small number of non-maintenance related tasks, including writing out recipes, taking photos of new dishes and changing menus. He accepted in cross-examination that it shows nothing involving HR or staffing issues, budgeting or costs management, marketing or communications, but says that it was a non-exhaustive list.
82. Mr Thornhill says that after Mr Pattie's return to work he had several months of doing little except making coffee, but gradually established a role for himself dealing with building works and maintenance, and as PPB's business grew and they opened more Pix Restaurants his salary increased to remain a fair salary for the work he was doing. Mr Thornhill says that the work Mr Pattie was carrying out at this time did not utilise any of the capabilities, experience, professional network that he had claimed to possess when he had joined the business. That seems to be borne out by the maintenance list and the evidence of Miss Thornhill and Mr Houldsworth, and I accept it. He says that Mr Pattie did not deal with staff issues which were for the general manager, he

did not run food to the bar or tables which was for the waiting staff, he did not deal with menu progression which was for the chefs and general managers, and he did not discipline staff. Again, that appears to be supported by the evidence of Miss Thornhill and Mr Houldsworth, and I accept it.

83. Miss Thornhill says that Mr Pattie's claims to have been a key figure in the management of the business at this time are "*simply not true. My father was the Managing Director and also worked at the restaurant every day, dealing with finance and the structure for future growth. Lars Weidemann was the General Manager who dealt with all staffing and operational issues. I honestly didn't know what [Mr Pattie's] role was within the business at this point and I don't think anyone else did either. [Mr Pattie] didn't have the skills or temperament to work in a customer-facing environment but as the company grew we opened more locations and he became a kind of maintenance manager.*"
84. Mr Houldsworth began working for PPB in early 2010 as a bartender, while Mr Pattie was suspended. When Mr Pattie returned to work, Mr Houldsworth said: "*For several months I wasn't really sure what Nathan's job was. He would hang around behind the scenes during the day, but wasn't in any obvious customer-facing or administrative role that I could see. Sometimes when we were very busy he would help in the kitchen making coffee but that seemed to be the extent of his contribution... Eventually Nathan became a sort of maintenance coordinator for any structural or*

equipment problems within the premises. As the restaurants are open daily from midday to midnight, any remedial work needs to be done at night, so somebody has to provide access and supervise the tradesmen. As he had no real 'daytime' role in the business and a highly nocturnal lifestyle, Nathan was the obvious choice." He said Mr Pattie was also responsible for managing the fit-out works for new Pix Restaurants and refurbishments. He said these were the only responsibilities he knew Mr Pattie to have during the seven years he worked for PPB. He strongly disagreed with Mr Pattie's suggestion that he was a key figure in the management of the business generally. I accept the evidence of both those witnesses and find that Mr Pattie's primary role was that of maintenance and site manager or coordinator, and that he was not a key figure in the management of the business.

2015 Agreement and Mr Pattie's departure from PPB

85. In summer 2015 Mr Pattie and Mr Thornhill met and discussed Mr Pattie's entitlement to shares in PPB. Mr Pattie says this meeting was held on 30 June 2015 and shows text messages setting up the meeting on that date. Mr Thornhill says it was scheduled to take place on 30 June 2015, but he had to cancel on short notice and so no meeting took place. There is no text message or other evidence of cancellation. He says it eventually took place on 25 August 2015. Miss Thornhill also attended at part of that meeting and agrees that it was in August. She remembers a sunny day and being surprised to bump into her aunt,

who lives in Brighton, in the street outside the pub. Of course these things could also have happened in June, but she says it was August to the best of her recollection.

86. I have no doubt from the contemporaneous text messages that Mr Pattie and Mr Thornhill did plan to meet on 30 June 2015. However in light of the emails that Mr Thornhill sent to Mr Gitter on 8 and 9th September 2015, which both parties accept were sent as a result of the meeting between Mr Pattie and Mr Thornhill that summer, I find it more likely than not that the meeting was held on 25 August 2015 as I think it is unlikely that the follow-up email to Mr Gitter would have been sent more than two months after the meeting to which it related. The evidence which Mr Pattie relies on, being a weather report saying that it was raining in London on 25 August, does not assist me. It cannot tell me either that it was or was not sunny outside a pub in Chelsea at the time that Miss Thornhill was at the meeting.
87. Once again, what happened at that meeting is disputed and is an issue that I need to determine. Mr Pattie says that in exchange for continuing to work with Mr Thornhill, they agreed that he would receive a total of 5% of the issued share capital in PPB, which would be made up of 2.5% of PPB shares in exchange for the shares Mr Pattie held in Pix 3, and a further 2.5% of PPB shares bringing him to a total shareholding in PPB of 5%. Mr Pattie says that they shook hands on this agreement, that

there were no conditions attached but that Mr Thornhill said he would look into how to transfer the shares in a tax efficient manner.

88. Mr Thornhill accepts that Mr Pattie asked for the exchange of Pix 3 shares for PPB shares, and for a further 2.5% of PPB shares, and that he agreed in principle to investigate the possibility of creating a contractual mechanism that would achieve that subject to his continued involvement with the business and the achievement of future benchmarks, but says that no binding agreement was concluded. He says that he told Mr Pattie he needed time to consider the proposal, and that it would be subject to his continued employment with PPB and the additional 2.5% would need to be measured against future performance objectives. Those conditions would be defined as part of the legal arrangement.
89. Mr Thornhill says that he discussed these plans with the other directors of Pix 3, Miss Thornhill and Mr Houldsworth, and told them that he thought it very unlikely that Mr Pattie would achieve any meaningful targets that might be set as he had not delivered any project on time or on budget since he had become responsible for building works in 2013. This is confirmed in Miss Thornhill's and Mr Houldsworth's witness statements.
90. The email that Mr Thornhill sent to Mr Gitter on 8 September 2015 said, to the extent relevant:

"As mentioned previously, we need to make some changes in the shareholdings to accurately represent Nathan's entitlement.

The aim is that ultimately he should have 5% (or the rights to 5%) of the group at today's share cap.

Currently he holds 2.5% of Pix No. 3. I'm hoping it is reasonable to suggest that the two companies are inextricably linked and so a straight swap (No.3 shares for PPB shares) would be justified.

For the 'new' 2.5% we should probably look at an option agreement to avoid any tax implications."

91. Mr Gitter replied the next day:

"...I am not particularly delighted that my shareholding [in PPB] will be diluted without any added value being given to the company. We had an implicit understanding that dilution would only occur where additional funding is involved.

I know you say this change was always going to happen but, in truth, that is not how I understood it. Your mention of letting Nathan have shares in the holding company is really something new because at the time we invested you were quite dismissive of him, although I imagine your view has now changed which is why you want to provide him with shares in the top company.

At a personal level, this change, whilst adding nothing to the company, could be quite expensive for me and Mark in terms of the dilution so I can't really see why things shouldn't be left as they are unless I could be convinced that giving him 5% of the top company is fair when we paid £200,000 for 10%. Dare I say it, but if you think it is a fair comparison then you might consider transferring some of your shares to him rather than

diluting ours or indeed, trying to find some sort of fair compromise."

92. Mr Thornhill responded, on 10 September:

"For the record... I am certain it was made very clear prior to your investment that our shareholdings would likely be further diluted by up to 10% to provide long-promised equity for the senior management team. The fact that this current issue relates to Nathan is incidental. We have always intended to reward (and secure) the long-term commitment of those people who are key to the growth of the business... This promise was made long before you invested, and I can't break it purely because you don't remember, or see the value in securing and motivating our human assets..."

It's true that I had doubts about Nathan... Please bear in mind that at the beginning (when we founded the business together) he was expecting closer to 25%.

...Ultimately we must all have faith that a positive and fair outcome will prevail, but my breaking a long-standing commitment to our key assets cannot be conducive to that."

93. Mr Pattie and Mr Thornhill's relationship came to an end when Mr Pattie abruptly resigned on 19 October 2015. Mr Pattie left the business and his employment by PPB ceased in December 2015.

94. There is a dispute about whether Mr Pattie had warned Mr Thornhill that he was thinking of leaving PPB at the meeting which I have found took place in August 2015. Mr Pattie's witness statement (and his

transcript-style reconstruction of the meeting) states that Mr Pattie told Mr Thornhill that he was not sure where his future lay. In cross-examination, Mr Pattie said several times that the possibility of leaving PPB was "*at the back of my mind*" during the meeting, which of course implies that it was not said at all. In an email the day after his resignation, on 20 October 2015, Mr Pattie says "*I've been thinking about leaving since Ganton St, so yes when we spoke about the shares, leaving was always on the back of my mind, this was the reason why I only asked for 5% not more.*" Again, in my judgment, this suggests that Mr Pattie did not tell Mr Thornhill of his plans at the meeting.

95. Mr Thornhill is adamant that Mr Pattie gave him no hint that he might not remain with the company, and says that the whole discussion at that meeting was around rewarding Mr Pattie's future commitment to PPB and future performance of his role, which would have been meaningless if he knew that Mr Pattie was going to resign. I am satisfied on the balance of probabilities that Mr Pattie did not tell Mr Thornhill at any time before 19 October 2015 that he was thinking of resigning from PPB.
96. In September 2016 Mr Pattie opened a restaurant called Fancy Funkin Chicken which he operated through a company he had incorporated on 1 July 2015 called Fancy Funkin Chicken Limited ("FFC"). He became a director of FFC on 24 August 2015. That restaurant has since closed. Mr Thornhill was unhappy to learn that Mr Pattie had

apparently been planning to open another restaurant as early as July 2015, and that those plans were afoot at the time of their meeting in August 2015. On 10 March 2016, he wrote to Mr Pattie: "*I made it clear in previous discussions that your shareholding would increase only as part of an ongoing commitment to the business. Obviously that has not come to pass. Had you been honest, the discussion would not have happened in the first place.*"

Determination of issues

Issue (i) – Did Mr Pattie and Mr Thornhill enter into all or any of the Alleged Agreements relating to Mr Pattie's entitlement to shares in PPB?

97. The burden is on Mr Pattie as the claimant to satisfy the court of the existence of the Alleged Agreements, or any of them, to the civil standard, being the balance of probabilities.

98. Mr Naylor relies on the case of *Blue v Ashley* [2017] EWHC 1928 in which a financial consultant claimed that the majority shareholder of Sports Direct, Mr Mike Ashley, owed him £14million under the terms of an oral contract said to be concluded in a public house in London. In that Leggatt J at paragraph 45 stated:

"Generally speaking, it is possible under English law to make a contract without any formality, simply by word of mouth. Of course the absence of a written record may make the existence and terms of a contract harder to prove. Furthermore, because the value of a written record is understood by anyone with

business experience, its absence may – depending on the circumstances – tend to suggest that no contract was in fact concluded. But those are matters of proof: they are not legal requirements. The basic requirements of a contract are that: (i) the parties have reached an agreement, which (ii) is intended to be legally binding, (iii) is supported by consideration, and (iv) is sufficiently certain and complete to be enforceable: see e.g. Burrows, “A Restatement of the English Law of Contract” (2016) section 2.”

99. As a statement of the law it is uncontroversial but elegant and I gratefully adopt it.

2008 Agreement

100. I am not satisfied on the balance of probabilities that a contract in the form of the 2008 Agreement was concluded between the parties in mid-2008 for the following reasons:

- i) I have found that in mid-2008 the business which became PPB was no more than an idea. I accept that at that time Mr Pattie and Mr Thornhill discussed Mr Pattie having an interest in the business should it happen, but in mid-2008 Mr Thornhill had not decided to build the business yet. I have found he did not reach that decision until 25 December 2008. I accept Mr Thornhill’s characterisation of these discussions as “*hypothetical*” and dependent on numerous factors, including the extent to which Mr Pattie could deliver on his promises, the funding

requirements of the business, the equity which was needed for outside investors and other key management, etc, and that he had no intention to be legally bound by these conversations. I am satisfied on the balance of probabilities that there was no agreement, there was no intention (by Mr Thornhill at least) to be legally bound, and there was no certainty of subject matter to form an enforceable contract. Nothing was certain about this potential business except the proposed concept of a chain of pintxo restaurants in London.

- ii) Mr Thornhill's statement to Mr Gitter some seven years later that Mr Pattie "*was expecting closer to 25% [of PPB]*" does not, in my view, undermine that finding, since that, too, shows that there was no certainty in amount and that it was only an expectation, not a binding agreement.
- iii) There is no other documentary evidence to support it at all, whether a record of the Alleged Agreement or even a reference to it or any discussion of it in a text, email or letter.

2009 Agreement

101. I am not satisfied on the balance of probabilities that a contract in the form of the 2009 Agreement was concluded between the parties in June 2009 for the following reasons:

- i) There is no documentary evidence to support it at all, whether a record of the Alleged Agreement or even a reference to it or any discussion of it in a text, email or letter, either between or from either of the parties. This is one of those circumstances where, as per Blue v Ashley, the absence of evidence is not only a want of proof, but also itself evidence that no agreement was in fact made.
- ii) The absence of any such evidence is particularly surprising given Mr Pattie's evidence that he had given up a present entitlement to 20% of PPB shares pursuant to the 2008 Agreement because he had no choice, as he had nothing in writing to evidence the 2008 Agreement. In those circumstances I would expect him to jot down the agreed terms on an email to Mr Thornhill, or document them in some other way. He did not.
- iii) It seems inherently improbable that at a time when Mr Thornhill and his father had put a total of £1,000,000 of their own money into the business (which is not disputed), and at a time when, as I have found, Mr Thornhill knew that Mr Pattie had exaggerated and misrepresented his industry experience, contacts and business knowledge such that he was not able to operate at the management level that Mr Thornhill had believed he would, Mr Thornhill would agree to give away 25% of the business (at a post-money valuation of £250,000) over 5 years to Mr Pattie.

- iv) It is also inherently improbable because:
- a) If the agreement was to issue shares to Mr Pattie, both Mr Thornhill and Mr Thornhill Sr would be diluted significantly. I accept Mr Thornhill's evidence that his father would not have agreed to it;
 - b) Also if the agreement was to issue shares to Mr Pattie, I accept Mr Thornhill's evidence that it would have prejudiced PPB's ability to raise future money, since any investor would also be subject to that 5% dilution per annum for the next 5 years. I cannot understand why Mr Thornhill would have agreed to it;
- v) I prefer Mr Thornhill's evidence that no meeting or agreement took place at all.

2010 Variation

102. I am not satisfied on the balance of probabilities that a contract in the form of the 2010 Variation was concluded between the parties in early 2010 for the following reasons:

- i) I have found that there was no 2009 Agreement and so there was nothing to vary in 2010.
- ii) The finding that there was no 2009 Agreement undermines a great deal of the evidence given by Mr Pattie about this Alleged

Agreement, as he said that he accepted this agreement to his detriment, because he didn't have the 2009 Agreement in writing. That cannot be the reason, given that I have found there was no 2009 Agreement.

- iii) There is no documentary evidence to support that there was any agreement reached between the parties in relation to shares in PPB at all at this time, whether a record of the agreement itself or even a reference to it or any discussion of it in a text, email or letter, either between or from either of the parties. Once again, the absence of evidence is not only a want of proof, but also itself evidence that no such agreement was in fact made.

- iv) I accept Mr Thornhill's evidence that the agreement that was reached between them in January 2010 was in relation to the Pix 3 shares, because that was the agreement that was implemented by the issue of 2.5% of Pix 3 to Mr Pattie several weeks later.

2015 Agreement

103. I am not satisfied on the balance of probabilities that a contract in the form of the 2015 Agreement was concluded between the parties in June 2015 for the following reasons:

- i) I have found that the meeting at which Mr Pattie says a concluded agreement was reached was held on 25 August 2015 and not in June 2015.
- ii) Mr Pattie's case is not supported by the correspondence which followed that meeting, in particular the email from Mr Thornhill to Mr Gitter that "*The aim is that ultimately he should have 5% (or the rights to 5%)... for the new 2.5% we should look at an option...*". The wording highlighted is not, in my view, compatible with a settled agreement that Mr Pattie should be given 5% of PPB in return for his Pix 3 shares, with no strings attached. It does support Mr Thornhill's case, in my judgment, that: no binding agreement was concluded; he told Mr Pattie he needed time to consider the proposal; and that the additional 2.5% would be conditional.
- iii) Mr Thornhill's case that the proposal was that the additional 2.5% would be subject to Mr Pattie's continued employment with PPB and the achievement of future performance objectives is supported by the evidence of Miss Thornhill and Mr Houldsworth, both of whom say that they were told by Mr Thornhill of the proposed swap of Pix 3 for PPB shares and a proposed future earn of shares by Mr Pattie, but that the latter would be dependent on performance targets that he was unlikely to meet. I accept their evidence.

- iv) Mr Thornhill's case also appears to be supported, in my view, by an email from Mr Pattie dated 18 November 2015 when he asked Mr Thornhill to confirm that he was "*in the process of confirming my shares/share options... During our meeting you said you wanted to think of the best way to approach my shares and that you wanted to think about it over the weekend. That was three weeks ago and I still haven't given any indication of how you'll be moving things forward*". It appears to me that that reference to a meeting "*three weeks ago*" either refers to a meeting and discussion around the time of Mr Pattie's resignation from the company towards the end of October 2015, or is a reference to the 25 August 2015 meeting at which the proposals were discussed, but the reference 'three weeks' is incorrect and should refer to 'three months'. I think it is more likely than not to be the former. In either case, however, it does not support Mr Pattie's case that a concluded agreement was reached in June 2015 (or, indeed, in August 2015).
- v) Mr Thornhill's case is, in my view, further supported by his response to that email, also on 18 November 2015: "*The current 2.5% holding in Pix No. 3 will be transferred into 2.5% of [PPB], as I know you felt that 2.5% of Pix No. 3 was worth less. The other 2.5% will be in the form of an option to be exercised at some future point (i.e. if we sell the business or you are happy to pay the taxes involved in exercising the option before then) and will be subject to us finding a*

way to continue to work together in some way going forward, e.g. project-managing specific future site fit-outs (for which you would also be paid, obviously. I assume this is in line with your understanding. Let me know if you interpreted it differently".

104. For those reasons I am satisfied on the balance of probabilities that the meeting in August 2015 resulted only in proposals which Mr Thornhill took away to consider, think about and consult upon. There was no intention to create legal relations on his part, and there was no certainty of terms sufficient to make those proposals an enforceable contract. Although there appears to be a measure of agreement between Mr Pattie and Mr Thornhill that one of the elements of the proposal was for a swap of Mr Pattie's Pix 3 shares for PPB shares, in my judgment this was only one part of a package of considerations that made up the proposal, and it would be wrong, in my view to pull it out of the package and treat it as a legally binding contract in isolation, as Mr Sherwin submits that I should.

105. What is also clear from this contemporaneous documentation, in my judgment, is that Mr Thornhill was not at this time acting in his personal capacity. He was entering into discussions with Mr Pattie as a director of PPB, and he followed up those discussions as a director of PPB, by approaching Mr Gitter as an accountant and shareholder in PPB, and by keeping informed the other two directors of Pix 3 at that time, Miss Thornhill and Mr Houldsworth. To the extent that he

discussed a swap of Mr Pattie's shares in Pix 3 for shares of PPB as part of the proposed transaction, that swap was to be carried out by PPB, who would end up with Mr Pattie's Pix 3 shares. Accordingly even if I am wrong and there was a settled agreement reached with Mr Pattie on the terms he states, I am satisfied that any such agreement was reached with Mr Thornhill acting for PPB, and accordingly Mr Thornhill has no personal liability.

106. Mr Sherwin points to an acrimonious text message exchange of 19 October, the day Mr Pattie resigned, in which Mr Pattie said: "*...do you remember the conversation about sorting my shares! It took so much to have that conversation that's just been swept aside without a mention... I want my shares in writing*". Mr Thornhill replied: "*...Regarding your shares – you couldn't be more wrong. Actually I have been fighting a bloody battle over this with Jeff [Gitter] who was not at all happy about it... In the end I have agreed that the new shares for you should come only out of my part.*" Mr Sherwin submits that this supports Mr Pattie's case that (a) a settled agreement was reached in June (or August) 2015 and (b) Mr Pattie reached that agreement in his personal capacity. I do not agree. I consider that it shows: (a) that there was no settled agreement, as Mr Gitter's approval was necessary; and (b) any discussion of Mr Pattie providing his own shares arose only after the date that Mr Pattie says the agreement was settled.

107. Given those findings, I will not go on to consider other submissions made by Mr Naylor for Mr Thornhill, including that there was no valid consideration. Issues (ii), (iii) and (iv) also fall away.

Issue (v) - Estoppel

108. Mr Sherwin clarified at trial that the claim made by Mr Pattie was a claim in proprietary and not promissory estoppel, and that the assurance relied upon was that made by Mr Thornhill at the meeting in June 2015 (or August 2015 if I found that was the date of the meeting, as I have done).

109. There is no single comprehensive legal definition of a proprietary estoppel. There are many judicial expositions of the concept in the authorities from which to choose.

110. I do not believe that it is disputed that it can be gleaned from the authorities that for a proprietary estoppel to be established, the following elements must exist: (i) an assurance or representation made by the party against whom the estoppel is sought; (ii) upon which the party seeking to establish the estoppel has reasonably relied to his detriment; (iii) such that it would be unconscionable for the party against whom the estoppel is sought to insist upon his strict legal rights.

111. In the case of *Lester v Woodgate* [2010] EWCA Civ 199, at para 26 of the judgment of Patten LJ (with whom Sedley LJ and Jacob LJ agreed), he said:

"Proprietary estoppel is conventionally based on a representation by words or conduct which amounts objectively to a statement about the future enforcement of legal rights or an intention to confer on the representee an interest in property. The court has to determine whether the words used or the acts done would reasonably convey to the other party an assurance which it was reasonable for that party to rely upon."

112. But what is the proprietary right which is to be estopped? Mr Naylor relies on the statement of Lord Walker in *Thorner v Major* [2009] UKHL 18 at para 61, who said "*...it is a necessary element of proprietary estoppel that the assurances given to the claimant (expressly or impliedly, or, in standing-by cases, tacitly) should relate to identified property owned (or, perhaps, about to be owned), by the defendant*".

113. The difficulty with Mr Pattie's case in proprietary estoppel is, in my judgment, a simple one. He seeks to enforce assurances made in August 2015 which do not relate to property owned (or about to be owned) by Mr Thornhill. I have found that any discussion of Mr Pattie providing his own PPB shares to satisfy the proposed additional 2.5% to be earned by Mr Pattie arose only after the date that Mr Pattie says the agreement was settled. That was only raised by Mr Gitter in September 2015 and only first mentioned by Mr Thornhill to Mr Pattie

on 19 October 2015. I am satisfied that any assurances given to Mr Pattie on 25 August 2015 related to shares in PPB which would be issued to Mr Pattie, either in exchange for his Pix 3 shares being transferred to PPB or for the 'new' 2.5% to be earned by him. Mr Thornhill has no proprietary right in shares in PPB which are to be issued by that company. He was one of a number of shareholders in PPB at the time and the issue of shares by PPB would dilute all of them proportionately.

114. For that reason I am satisfied that the claim in proprietary estoppel is fatally flawed and I will not go on to consider the other submissions made by the parties on the claim, save one. I have found that the proposals reached in the August 2015 meeting include that the 2.5% 'new' shareholding proposed for Mr Pattie was conditional upon: (a) him remaining employed by the business; and (b) meeting defined performance measures. In those circumstances, given that Mr Pattie had incorporated a new company through which he proposed to open a new restaurant at the time of the August 2015 meeting, and he knew at the time of the meeting that he was unlikely to remain employed by the business and would not, therefore meet, any performance measures once agreed, and that he did in fact resign from the company several weeks later, even if I was satisfied that Mr Thornhill had a proprietary interest in the relevant shares, I would not find that there was sufficiently substantial detrimental reliance by Mr Pattie to justify the

intervention of equity. As I say, the exchange of Pix 3 shares for PPB shares was part of the overall package of proposals and I do not consider it equitable that it be pulled out and considered separately. In any event it is undeniable, in my judgment, that the PPB shares issued by PPB in return for Pix 3 shares to be held by PPB are not shares in which Mr Thornhill has any proprietary interest for the reasons I have given.