

RENEGING ON UNDERSTANDINGS

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Introduction

1. Danny (Sean Connery) and Peachy (Michael Caine) had an understanding. They would trek across the mountains into a Taliban-free Afghanistan and come back with great riches. All went according to plan until during a fight Danny was shot by an arrow but no blood was drawn (the arrow landed in his leather belt). The people were convinced he was descended from Alexander the Great and he became King. Peachy tried to persuade him to honour their understanding but Danny reneged on the deal and was more interested in marrying a beautiful local girl (who ironically went on in “real life” to become Shakira Caine). When he tried to kiss her after the ceremony, she bit him and drew blood and the charade was over. Peachy made it back to Rudyard Kipling to tell him the story (so he could write the book) but Danny died singing “Men of Harlech” on a rope bridge! But what is the fate in law of those who renege on understandings they have reached with others?
2. The purpose of this paper is to draw attention to some of the cases where the Courts of equity or common law have provided redress to a person who had reached an understanding with another that fell short of a legally enforceable agreement. Rather than exploring the whole of this area it is proposed to concentrate on those cases where equity has intervened to impose a constructive trust and other cases where the common law remedy of a quantum meruit is available. There are, of course, other remedies that are called upon when someone has gone back on his or her word and reneged on an understanding such as proprietary estoppel and unjust enrichment.

3. What follows is a summary of some of the more relevant cases. It is hoped that on the 23rd April 2009 in the warmth of the Cayman Islands it will prove possible to draw some principles and conclusions from the cases.

Pallant v Morgan [1952] 1 Ch. 43

4. Mr Pallant and Mr Morgan were neighbouring land owners near Haslemere. There was to be an auction of land adjacent to both their properties and they agreed that it was in both their interests that they should not compete against each other at the auction. There were negotiations between them as to how the land was to be divided between them, if they were successful in purchasing it, but no final agreement was reached. Both appointed agents to represent them: Mr Pallant appointed Mr Mason, and Mr Morgan appointed Mr James.
5. Mr Pallant instructed Mr Mason to bid up to £2,000 for lot 16, unless he reached agreement with Mr James (which he was instructed to attempt). The judge accepted Mr Mason's evidence that he did not bid at the auction because he received an assurance from Mr James that, if he refrained from bidding, Mr Morgan would convey certain areas of land to Mr Pallant at a price to be settled in accordance with a formula which had previously been discussed.
6. Harman J held that the agreement made between Messrs James and Mason was too uncertain to be specifically enforceable. Nevertheless, Mr Pallant's claim was successful. At page 48 of the report, the judge applied a principle described in a passage in Fry, on Specific Performance, in which it was said that certainty was not required where there was an element of "*fraud*", which included "*where A agreed with B in effect that if B would not try to buy a certain estate, A would try to buy, and in case of success would cede a portion of the estate to B at a certain price: and B acted on his bargain and allowed A to purchase: and A having purchased refused to perform his part and set up the uncertainty of the part to be ceded.*"

7. The judge said (at page 50) that, since Messrs Pallant and Morgan had failed to agree on a division of the land, the best the Court could do was to *“decree that the property is held by the defendant for himself and the plaintiff jointly, and if they still fail to agree on a division the property must be resold, either party being at liberty to bid, and the proceeds of sale divided equally after repaying to the defendant the £1,000 which he paid with interest at 4 per cent.”*

Banner Homes Group plc v Luff Developments Ltd [2000] Ch 372

8. The claimant (“Banner”) reached an agreement in principle with the defendant (“Luff”) that they would each own 50% of the shares of a company to be acquired for the purpose of purchasing and developing a site at White Waltham, Berkshire. Luff acquired a company called Stowhelm Ltd for this purpose and there were negotiations between Banner and Luff on the terms of the intended shareholders’ agreement.
9. Before contracts were exchanged for the purchase of the site, Luff began to have second thoughts about having Banner as a joint venture partner, but it said nothing to Banner, knowing that Banner might emerge as a rival for the site if it did not think the deal with Luff would go ahead. Contracts were exchanged before any shareholders’ agreement, or other formal written contract, had been executed between Banner and Luff. But the judge found that Luff led Banner to believe that Luff was content to exchange contracts without any written agreement because the shareholders’ agreement was to be executed as soon as possible, the only reason for the delay being that Luff’s solicitor was on holiday.
10. Luff made excuses for not signing up to the shareholders’ agreement and completion of the purchase by Stowhelm took place before Banner was told that Luff no longer considered the agreement acceptable.

11. Blackburne J held that there was no binding contract between Banner and Luff. He also decided that no constructive trust had arisen in Banner's favour because it knew that neither side was legally committed until a shareholder's agreement was entered into, and because, in his view, there was no evidence of detriment.

12. Chadwick LJ, with whose judgment Evans and Stuart-Smith LJ agreed, reviewed the authorities in detail. These included Holiday Inns Inc. v. Broadhead (1974) 232 E.G. 951, Time Products Ltd. v. Combined English Stores Group Ltd. (unreported, 2 December 1974) and Island Holdings Ltd. v. Birchington Engineering Ltd. (unreported, 7 July 1981). Chadwick LJ then set out 5 propositions, which can be summarised as follows:-
 - (1) The arrangement or understanding that the claimant will acquire an interest in the property in question must be reached before the acquisition by the defendant of the property in question.
 - (2) The arrangement or understanding does not have to be contractually enforceable. It is no bar to a Pallant v. Morgan equity that the pre-acquisition agreement is too uncertain to be enforced as a contract.
 - (3) The arrangement or understanding should contemplate that the acquiring party will take steps to acquire the relevant property and that, if he does so, the other party will obtain an interest. Furthermore, that the acquiring party must not have told the other party before it is too late that he no longer intends to honour the arrangement or understanding.
 - (4) The claimant must have done (or omitted to do) something in reliance on the arrangement or understanding which either confers an advantage on the defendant or is detrimental to the claimant's ability to purchase the property.
 - (5) The advantage or detriment might be the claimant's agreement to keep out of the market, but that is not a necessary feature. Furthermore, it is not essential that the claimant suffers detriment in addition to the defendant obtaining an advantage: either will do. "*What is essential is that the circumstances make it inequitable for the acquiring party to*

retain the property for himself in a manner inconsistent with the arrangement or understanding on which the non-acquiring party has acted” (page 399B).

13. Chadwick LJ concluded that the judge had been wrong to reject Banner’s claim on the basis that the understanding with Luff was implicitly qualified by the right of either side to withdraw and that he was wrong to find that there was no detriment to Banner. Furthermore, there was an advantage to Luff to keep Banner out of the market.
14. In a short further judgment dealing with the relief to be granted, Chadwick LJ said that Luff could be treated as trustee of the site for Banner if Stowhelm had acquired the site “*as nominee or trustee for Luff.*” Since, on the facts, Stowhelm had acquired the property as its own asset, the correct analysis was to look at Luff’s acquisition of the then issued shares in Stowhelm. These had been purchased in furtherance of the understanding or arrangement between the parties. Accordingly, the Court declared that the issued share capital of Stowhelm was held by Luff for itself and Banner in equal shares.

Krasner v. Machitski [2005] EWHC 1787 (Comm), [2005] All ER (D) 20 (Aug)

15. Mr Krasner introduced to Mr Machitski an opportunity of acquiring a controlling interest in a Romanian company, SC Alro SA (“Alro”) whose business was in aluminium smelting. Mr Krasner’s evidence was that Mr Machitski agreed at an early stage that Mr Krasner would obtain 20% of the shares acquired as “*sweat equity*”, meaning equity in return for his efforts on behalf of the joint venture in securing control of Alro, rather than for any financial investment (see para 42 of the judgment).
16. In paragraph 65 of his judgment, Cooke J recorded that in December 1999 Messrs Krasner and Machitski both signed a Memorandum of Agreement (“MOA”) which recorded the 80/20 agreed split of any shares in Alro acquired and also provided (amongst other things) that Mr Machitski

“shall provide a maximum amount of USD 20m to fund the acquisition. Considerable additional amounts of financing will be required from third party lenders or equity investors, and M and K will work together to obtain such financing on the best available terms.” The judge held that, on a proper construction of the MOA, Mr Krasner was to receive 20% of the shares without any obligation to provide any financing himself (para 68). The parties subsequently agreed that the shares would be acquired by a corporate vehicle, Marco Acquisitions Limited (“MAL”), and that their respective 80/20 holdings would be in that company (see para 75).

17. In June 2000, MAL bought nearly 100% of the shares in a Romanian company called Conef, which owned 10.5% of the shares in Alro (see paras 24, 25 and 105). The funding for this purchase was provided wholly by a company controlled by Mr Machitski. By the time MAL bought the shares in Conef, the parties had realised that it would be impossible to obtain finance, or to re-finance existing loans, with funding from third parties, because of the perceived risk of buying a minority stake in a Romanian company controlled by the state, even though it was scheduled for privatisation (paras 107-109). It, therefore, became clear that Mr Machitski would have to invest substantial additional funds himself, and he ultimately procured funding to the tune of \$150 million gross (para 251).
18. Following the acquisition of the Conef shares, Mr Krasner began to press Mr Sherman, Mr Machitski’s lawyer, to produce a draft document recording an agreement pursuant to which Mr Krasner would purchase 20% of the shares in Conef. A draft letter agreement was produced which envisaged Mr Machitski making a loan to Mr Krasner of the sum required to purchase 20% of the shares in Conef (paras 111-115).
19. The judge found that these events represented a fundamental difference in the position and that the parties *“recognised the MOA to be, in such circumstances a dead letter”* (para 125) and that *“The MOA was no longer applicable and by the parties’ conduct was treated as such. It was implicitly abrogated by the parties”* (para 126).

20. In 2001, Mr Krasner continued to assist in the acquisition of Alro shares and there were continued discussions as to the ownership of the shares. The judge found that these discussions all proceeded on the basis that Mr Krasner would *purchase* 20% of the Alro shares acquired (paras 134 and 143). Various documents were drawn up in which Mr Krasner might have been expected to refer to the MOA or assert an entitlement to 20% of the shares, if he had believed he had one (paras 147, 169 and 190). He did not do so. Indeed, the judge found that he made no reference to the MOA at any time after execution until September 2004 (para 185).
21. The judge dismissed Mr Krasner's claim for specific performance of the MOA. He held that the terms of the MOA, which contemplated a maximum investment of \$20 million by Mr Machitski, were inapplicable to the situation whereby he invested \$150 million (para 251). Both parties' conduct showed that they recognised the MOA was no longer applicable in these changed circumstances (para 252).
22. Mr Krasner made an alternative claim in unjust enrichment and alleged an equity based on Pallant v. Morgan. The judge held that these claims also failed, for the same reason as the contractual claim, saying in paragraph 265: *"Once it is recognised that the MOA is inapplicable in its terms to the acquisition of the Alro shares in the circumstances of which both parties were aware, namely the inability to obtain external funding and the need for Mr Machitski to finance the acquisitions in a sum vastly in excess of \$20M, it is hard to see how there can be any pre-acquisition arrangement or understanding that Mr Krasner would obtain a shareholding in Alro without providing funding, as the MOA had originally envisaged."*
23. The judge went on to note that no claim had been made for a *quantum meruit*, but suggested that, if it had been, it would have been likely to succeed, not only for the value of the agreed 20% of the \$20 million maximum funding from Mr Machitski (i.e. \$5 million), but potentially for more than that, since the work done by Mr Krasner extended over a longer period than had originally been anticipated and proved to be more arduous

(para 269).

Cobbe v. Yeoman's Row Management Limited [2008] 1 WLR 1752

24. Mrs Lisle-Mainwaring (“Mrs L-M”) incorporated the appellant company (“Yeoman’s Row”) as a vehicle which, in 1998, purchased a block of thirteen flats, one of which was her home (“the Property”). In 2001 she began to negotiate with the respondent, Mr Cobbe, who was an experienced property developer. Towards the end of 2002 Mrs L-M and Mr Cobbe reached an oral agreement, which Mr Cobbe regarded as “*binding in honour*”. The substance of the agreement was that:-
 - a. Mr Cobbe would, at his own expense, apply for planning permission to demolish the block of flats and build, instead, a terrace of six houses.
 - b. If permission was granted, the Property would be transferred to Mr Cobbe for an up-front payment of £12 million.
 - c. Mr Cobbe would develop the Property, sell the six houses and pay Yeoman’s Row 50% of the amount by which the gross proceeds of sale exceeded £24 million.
25. The local Council passed a resolution approving the grant of planning permission on 17 March 2004. The very next day, Mrs L-M told Mr Cobbe that she was no longer satisfied with the financial terms of the agreement they had reached and demanded, amongst other terms, an up-front payment of £20 million. Mrs L-M declined to transfer the Property to Mr Cobbe, and he sued her.
26. Etherton J held that Mr Cobbe had established a proprietary estoppel and ordered Mrs L-M to pay him one half of the increase in value of the Property brought about by the grant of planning permission. The Court of Appeal upheld his judgment, and Mrs L-M appealed to the House of Lords.
27. The House of Lords allowed the appeal. Their lordships held that no

proprietary claim was made out, either on the basis of proprietary estoppel, or on the basis of Pallant v. Morgan [1953] Ch. 43. Mr Cobbe's entitlement was to a *quantum meruit* only.

28. Lord Scott (who gave the leading judgment) held that Mr Cobbe's claim based on constructive trust also failed. He summarised the circumstances giving rise to a Pallant v. Morgan equity as follows (para 30):

“A particular factual situation where a constructive trust has been held to have been created arises out of joint ventures relating to property, typically land. If two or more persons agree to embark on a joint venture which involves the acquisition of an identified piece of land and a subsequent exploitation of, or dealing with, the land for the purposes of the joint venture, and one of the joint venturers, with the agreement of the others who believe him to be acting for their joint purposes, makes the acquisition in his own name but subsequently seeks to retain the land for his own benefit, the court will regard him as holding the land on trust for the joint venturers. This would be either an implied trust or a constructive trust arising from the circumstances and if, as would be likely from the facts as described, the joint venturers have not agreed and cannot agree about what is to be done with the land, the land would have to be re-sold and, after discharging the expenses of its purchase and any other necessary expenses of the abortive joint venture, the net proceeds of sale divided equally between the joint venturers.”

29. Lord Scott held (in paragraph 33) that the principles developed in the proprietary estoppel cases were inapplicable to cases based on Pallant v. Morgan. He identified the critical flaw in Mr Cobbe's case in relation to Pallant v. Morgan as being that Yeoman's Row had owned the Property for years before Mrs L-M began her joint venture discussions with Mr Cobbe. Mr Cobbe knew full well that Yeoman's Row was not bound by any agreement. In paragraph 36 Lord Scott summarised the point by saying, *“This property was never joint venture property and I can see no justification for treating it as though it was.”*

30. Lord Scott went on to list the salient features of the case which precluded Mr Cobbe’s claim (in paragraph 37) as follows:

“...that the appellant owned the property before Mr Cobbe came upon the scene, that the second agreement produced by the discussions between him and Mrs Lisle-Mainwaring was known to both to be legally unenforceable, that an unenforceable promise to perform a legally unenforceable agreement – which is what an agreement “binding in honour” comes to – can give no greater advantage than the unenforceable agreement, that Mr Cobbe’s expectation of an enforceable contract, on the basis of which he applied for and obtained the grant of planning permission, was inherently speculative and contingent on Mrs Lisle-Mainwaring’s decisions regarding the incomplete agreement and that Mr Cobbe never expected to acquire an interest in the property otherwise than under a legally enforceable contract.”

Way v Latilla [1937] 3 All ER 759

31. Mr Way was the manager of a gold mine in the Gold Coast Colony. Mr Way suggested to Mr Latilla that the prospects were favourable if further mining concessions could be obtained. They reached a vague understanding to the effect that Mr Way would share in any profits. Mr Latilla made subsequent comments about protecting Mr Way’s “interests”.
32. Lord Atkin said that these discussions envisaged remuneration on the basis of a “participation” analogous to a commission. He said:

*“...if no trade usage assists the Court as to the amount of the commission, it appears to me clear that **the court may take into account the bargainings between the parties, not with a view to completing the bargain for them, but as evidence of the value which each of them puts upon the services.** If the discussion had ranged between 3 per cent on the one side and 5 per cent on the other, all else being agreed, the court would not be likely to depart from somewhere*

about those figures, and would be wrong in ignoring them altogether and fixing remuneration on an entirely different basis, upon which, possibly, the services would not have been rendered at all” (emphasis added).

33. Lord Atkin expressly contemplated that the nature of the participation might not be based on a percentage of profits: “*A transfer of a substantial number of shares would have been an adequate satisfaction of any contemplated obligation on Mr Latilla’s part*”.
34. Lord Wright said that the situation was similar to that of an agent for purchase who is not generally remunerated by a fee but by a commission. Once the idea of remuneration by a fee is excluded, the remuneration to which the claimant is entitled is “*at large, and the court must do the best it can to arrive at a figure which seems to it fair and reasonable to both parties, on all the facts of the case.*”

Sharab v. Salfiti, unreported 12th December 1996

35. Ms Sharab introduced Mr Salfiti to representatives of Lafico, the Libyan company responsible for Libyan government investments outside Libya. She also undertook negotiations with Lafico on his behalf in relation to a potential joint venture between one of Mr Salfiti’s companies and Lafico. Ms Sharab alleged an oral agreement under which she was to get 5% of the shares in the JV company.
36. When Mr Salfiti’s resources proved insufficient to complete the proposed deal, Ms Sharab also negotiated for him to substitute for a cash payment the investment of shares in another of Mr Salfiti’s companies.
37. The trial judge (Ferris J) rejected Ms Sharab’s claims based on oral contracts, but held she was entitled, on a *quantum meruit*, to \$1.5m (subject to immaterial adjustments), which was the value of the shares which she said the oral contract entitled her to.

38. The Court of Appeal (Nourse, Judge and Waller LJJ) dealt with the law only briefly. It upheld the Judge's decision that Ms Sharab's receipt of about \$4,000 per month as a director of the JV company was nowhere near the handsome reward which both sides had in mind. As to the principle of awarding the value of the shares which were the subject of the contractual claim:-
- (a) The Court of Appeal endorsed the Judge's reference to Ms Sharab as a "*facilitator*".
 - (b) Similarly, it agreed that the bargainings between the parties indicated that 1.75 million shares was what they both had in mind.
 - (c) The judge would have ordered the transfer of the shares if the joint venture had still been in existence, but Mr Salfiti had since been bought out. The Court of Appeal did not disagree with this.
 - (d) The judge, therefore, ordered Ms Sharab to be compensated as if she had received the 1.75 million shares, but had then been bought out on the same basis as Mr Salfiti.
 - (e) The appellant's submission that the requirement to arrive at a fair and reasonable figure meant that a sum less than the value of the shares should be awarded was rejected.

Hoskings v. Legal & General Ventures [1999] All ER (D) 142

39. The *quantum meruit* claim failed in this case. The key fact was that Mr Hoskings accepted that he began working on the basis that he took the risk that he might be excluded from equity participation by his co-bidders for the target company.
40. When it became clear that he was not going to have an executive role, Mr Hoskings said that the position changed and he then became a consultant

with a mutual expectation that he would receive an equity participation.

41. The Court of Appeal held that for Mr Hoskings no longer to be subject to the risk of exclusion, he would have to have been given an express assurance to that effect. Since he had not been given such an assurance, the claim failed.
42. It follows that, once there is a mutual understanding as to the basis of the deal, there needs to be a clear and unequivocal statement to change it. That principle worked against the claimant in Hoskings, but ought equally to work for the claimant if it is the defendant who says that there was originally an understanding of equity participation which subsequently hanged.

Vernon-Kell v. Clinch [2002] All ER(D) 150 (May) / [2002] EWHC 3092

43. Dr Clinch was involved in the development of biomedical technology, including a process known as Cytometry. The research into this process was only a part of the business of the Fairfield group of companies, controlled by Dr Clinch. Mr Vernon-Kell (“VK”) was involved in attempting to obtain finance for the development.
44. At an early stage, VK did considerable work and introduced Mr McDonald, the principal controller of a company called Texas. At that stage the proposal was that the Cytometry business would be transferred to a new company in which any investment would be made.
45. As negotiations progressed, VK’s role diminished considerably. The deal which was ultimately concluded, in which VK had no hand, was a “reverse takeover” pursuant to which Texas became a major shareholder in the holding company of the Fairfield group, those shares were then transferred to a new company in return for shares in that company, and the new company was then floated. Consequently, the new company controlled all the previous Fairfield business (i.e. including businesses other than

Cytometry).

46. Briggs J held that there was a “*series of agreements as to [VK’s] reward, made and re-made as the deal to which it related kept changing during the long running negotiations*” (para 74).
47. The Judge also held that the particular oral agreement on which VK relied (which was proved) was an agreement as to the particular reward applicable if the negotiations were successful in the form then envisaged, which was before the reverse takeover was contemplated. For that reason, the oral agreement did not apply to the eventual deal, which was quite different, and the contractual claim failed.
48. There was a separate (later) trial of the *quantum meruit* claim. The legal principles were common ground and included (see para 3):-
 - a. It is necessary to show that the claimant’s activities are the effective cause of the result upon which remuneration is conditional.
 - b. The Court must place a fair value on the services.
 - c. The reward may be a fee, or a participation such as a commission, or a payment in kind, such as shares rather than cash.
 - d. In ascertaining the fair value, the Court may derive particular assistance from evidence of the parties’ mutual dealings.
49. As to the “effective cause” point, the Judge held that:-
 - a. VK introduced Mr McDonald.
 - b. Mr McDonald was the principal controller of Texas.
 - c. Mr McDonald was particularly keen on the Cytometry project, which was the heart of Texas’ investment.
 - d. Although the deal was ultimately structured very differently from the original plan, it remained a “*fulfilment of his [Mr McDonald’s] original ambition.*”

50. It was argued that a £30,000 payment made to, and accepted by, VK had satisfied his claim. As to this, although the Judge expressly declined to decide the point, he proceeded on the basis that a necessary first step was to determine whether £30,000 was within the range of reasonable remuneration and, if it was, then the fact that the Court might have awarded more was of no assistance to the Claimant.
51. The Judge then considered whether VK was entitled to shares rather than cash:-
- a. Having determined a number of relevant factual disputes, he decided that the conduct and mutual dealings of the parties over a substantial period was persuasive evidence that they intended VK to receive some “*participation*” rather than cash.
 - b. If it could have been shown that the investment could not have proceeded if VK had received shares, that would have carried great force, but it was not proved.
 - c. The fact that the ultimate deal involved the sale not only of the Cytometry business but also of the other businesses in which Mr Clinch’s company was involved, did not mean that there was no entitlement to shares, just that the amount of shares awarded should be reduced. In this regard:-
 - i. The judge was concerned to exclude benefits which “*did not fall within the scope of [VK’s] retainer*”; and
 - ii. He said that a broad brush approach was appropriate.
 - d. Ultimately the judge concluded that a reasonable reward by way of *quantum meruit* required that VK should obtain both shares and some form of conditional deferred cash.
 - e. The Judge then made findings as to the terms on which shares would have been allotted to VK, including restrictions (a lock-in clause) and options.

- f. Because, however, VK's evidence was that he would have sold the shares issued to him within a defined time-scale, the judge calculated his compensation by reference to the sums VK would have received had he been given, and then sold, the shares.

Vedatech v. Crystal Decisions [2002] All ER(D) 318 (May)

52. Mr Subramanian of Vedatech helped to develop and market a computer program called "Holos" in the Japanese market. Holos was produced by a company called Holistic Systems (UK) Ltd (later called Crystal Decisions, the defendant).
53. Vedatech alleged an oral agreement to share in revenue from software sales, but the Judge held that the alleged agreement was too vague or uncertain to be legally binding. He held, however, that Mr Taylor (who controlled Holistic) had been concerned that Vedatech should assume some risk in return for its (uncertain) share in the revenue, as a result of which Vedatech agreed to (and later did) provide an employee to work on the project free of charge.
54. There were various claims apart from a *quantum meruit* claim, e.g. a claim for tortious interference with employees' contracts. All such claims were rejected.
55. As to *quantum meruit*:-
 - a. Holistic said it had paid agreed charges for work done by employees of Vedatech, and that was all that was due.
 - b. Vedatech said that the amount to be awarded should include sums calculated by reference to profits made on sales of Holos in Japan (i.e. along the lines of the alleged oral agreement).
56. Jacob J applied the principles of unjust enrichment, holding that there was (i) a benefit (ii) at the claimant's expense, which (iii) was unjust.

57. The Judge rejected the submission that the most the claimant is entitled to is the reimbursement for “*what he put in*”. He relied on Way v Latilla, although he said that the parties left matters in an even more nebulous state than in that case.
58. The Judge also rejected the submission that the invoices rendered by Vedatech for the employees’ services showed that the parties had agreed the value to be paid by the defendant: “*the expectation of some sort of participation in return for risk, which was there from the outset at Mr Taylor’s insistence, was never removed*” (para 89).
59. The fact that Vedatech was asked to, and did, undertake risk as to the success of Holos (not merely risk as to whether there would be a contract with Holistic), meant that it was entitled to some reward if the risk proved beneficial. But, Vedatech was not to be put in the same position as if it had a full contract on terms which would have been unacceptable to Holistic, nor was it entitled to a proprietary claim, or a claim for an account of profits.