

AUSTRALIA / JUDGMENT

Leedman v Chahhoud [2024] NSWSC 1284

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Supreme Court

New South Wales

Medium Neutral Citation: Leedman v Chahhoud [2024] NSWSC 1284

Hearing dates: 23-26, 29, 31 July, 7 August 2024

Date of orders: 16 October 2024

Decision date: 16 October 2024

Jurisdiction: Equity - Real Property List

Before: Williams J

Decision: See orders at [344].

Catchwords: EQUITY – Equitable charges – Enforceability – Order for judicial sale.

CONTRACTS – Formation – Intention to be bound.

DURESS – Whether the first defendant signed deed under duress exerted by second defendant – Where the evidence does not establish duress – Where the plaintiffs (being the parties seeking to enforce the deed) did not have actual or constructive knowledge of the alleged duress, – Where plaintiffs did not use the second defendant as their agent to procure the first defendant's execution of the deed.

EQUITY – Undue influence – Whether the first defendant signed the deed as a result of undue influence of the second defendant – Where the evidence does not establish undue influence –

Equity – Yerkey v Jones – Where the first defendant was not a volunteer.

EQUITY – Unconscionable conduct – Whether the first defendant suffered from a special disadvantage, - Whether the plaintiffs had actual or constructive knowledge of any special disadvantage.

CONTRACTS – Unjust contracts – Whether the terms of the deed are unjust under the Contracts Review Act 1980 (NSW) – Where the proper law of the deed is the law of Queensland.

Legislation Cited: Australian Securities and Investments Commission Act 2001 (Cth) ss 12BAB, 12CA, 12CB, 12CC

Civil Procedure Act 2005 (NSW) s 101

Contracts Review Act 1980 (NSW) ss 6(2), 17(3)

Property Law Act 1974 (Qld) s 45

Cases Cited: Abdallah v Baygan [2019] NSWSC 1507

Abdallah v Baygan (No. 4) [2020] NSWSC 1075

Akai Pty Ltd v People's Insurance Co Ltd (1996) 188 CLR 418; [1996] HCA 39

Australia and New Zealand Banking Group Ltd v Karam (2005) 64 NSWLR 149; [2005] NSWCA 344

Boutros v Nationwide Capital Pty Ltd [2013] NSWCA 246

Braam v BBC Hardware Ltd [2020] VSCA 164

Commercial Bank of Australia Ltd v Amadio (1983) 151 CLR 447

Dunwoodie v Teachers Mutual Bank Ltd [2014] NSWCA 24

Elkofairi v Permanent Trustee Co Ltd (2002) 11 BPR 20,841; [2002] NSWCA 413

Ermogenous v Greek Orthodox Community of SA Inc (2002) 209 CLR 95; [2002] HCA 8

ET-China.com International Holdings Ltd v Cheung (2021) 388 ALR 128; [2021] NSWCA 24

Fox v Percy (2003) 214 CLR 118; [2003] HCA 22

Garcia v National Australia Bank Ltd

(1998) 194 CLR 395; [1998] HCA 48

Ghannam v BB&B Penrith Pty Ltd [2022] NSWSC 1588

Helou v Chahhoud [2021] NSWSC 878

Jones v Dunkel (1959) 101 CLR 298; [1959] HCA 8

King Investment Solutions Pty Ltd v Hussain (2005) 64 NSWLR 441; [2005] NSWSC 1076

MSPR Pty Ltd v Advanced Braking Technology Ltd [2013] NSWCA 416

Morris Finance Ltd v Free (2017) 18 BPR 37,223; [2017] NSWSC 1417

Moubarak by his tutor Coorey v Holt (2019) 100 NSWLR 218; [2019] NSWCA 102

Narain v Euroasia (Pacific) Pty Ltd (2009) 26 VR 387; [2009] VSCA 290

Nitopi v Nitopi (2022) 109 NSWLR 390; [2022] NSWCA 162

Productivity Partners Pty Ltd (trading as Captain Cook College) v Australian Competition and Consumer Commission [2024] HCA 27

Retirement Village Bargo Pty Ltd v Anwar (2023) 21 BPR 44,177; [2023] NSWSC 209

Roberts v Investwell Pty Ltd (in liq) (2012) 88 ACSR 689; [2012] NSWCA 134

Rogers v Rogers [2020] NSWSC 392

Stellar Vision Operations Pty Ltd v Hills Health Solutions Pty Ltd [2023] NSWCA 102

Sood v Christianos (2008) 14 BPR 26,101; [2008] NSWSC 1087

Stubbings v Jams 2 Pty Ltd (2022) 276 CLR 1; [2022] HCA 6

Thorne v Kennedy (2017) 263 CLR 85; [2017] HCA 49

Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd (2004) 219 CLR 165; [2004] HCA 52

Wakim v Senworth Capital Pty Ltd [2024] NSWCA 102

Watson v Foxman (1995) 49 NSWLR 315

Yerkey v Jones (1939) 63 CLR 649; [1939] HCA 3

Texts Cited: J D Heydon, M J Leeming, P G Turner, Meagher Gummow & Lehane's Equity Doctrines & Remedies (5th ed, 2015, LexisNexis)

N Seddon, Seddon on Deeds (2nd ed, 2022, The Federation Press)

Category: Principal judgment

Parties: Kim Leedman (First Plaintiff)

Anita Leedman (Second Plaintiff)

Trilam Developments Pty Ltd (ACN 130 367 412) (Third Plaintiff)

Chadia Chahhoud (First Defendant)

Elias Taleb (Second Defendant)

Fawaz Helou (Third Defendant)

Ozem Kassem in his capacity as liquidator of Class 1 Form Pty Ltd (In liquidation) (Fourth Defendant)

Representation: Counsel:

Mr Daniel Krochmalik with Ms Ada Lim (Plaintiffs)

Ms Chadia Chahhoud (Litigant in person) (First Defendant)

Solicitors:

JHK Legal (Plaintiffs)

Ms Chadia Chahhoud (Litigant in person) (First Defendant)

File Number(s): 2022/158199

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Judgment

Introduction

1. The plaintiffs in these proceedings are Mr Kim Leedman, Mrs Anita Leedman, and Trilam Developments Pty Limited. Mr and Mrs Leedman are the directors and shareholders of Trilam Developments.
2. The proceedings arise out of a deed dated 16 June 2017 between the plaintiffs (referred to in the deed as the "Retiring Entities") and Mr Elias Taleb (the second defendant), Ms Chadia Chahhoud (the first defendant), Class 1 Form Pty Limited, Steadiform Pty Limited, Steadiform Holdings Pty Limited, Akena Pty Limited, Akena Installations Pty Limited, and Elias Pty Limited (referred to in the deed as the "Continuing Entities").
3. The purpose of the deed, as recorded in the recitals, was to dissolve the legal and commercial relationships between the Retiring Entities and the Continuing Entities in relation to the activities of entities defined as the "Affected Entities" – Class 1 Form, Steadiform, Steadiform Holdings, Akena, Akena Installations, and the Steadiwall Intellectual Property Trust – including the development of structural formwork systems under the names "Class 1 Form" and "Steadiform".
4. The deed required the Retiring Entities to surrender their shares in the Affected Entities and their units in the Steadiwall Intellectual Property Trust, to assign their interest in the intellectual property in the structural formwork systems to the Continuing Entities, and to resign from all positions of office in the Affected Entities, in consideration for payment of a "Settlement Amount" of \$2,100,000. The sum of \$600,000 was payable on execution of the deed (the "Initial Payment"), with the balance of the Settlement Amount payable within two years (the "Deferred Payment"). Interest accrued on the balance at the rate of 1% per month, on a compounding basis. The deed provides that the Continuing Entities' liability to pay the Settlement Amount is joint and several.
5. By clause 7.1 of the deed, each of the Continuing Entities granted a security interest in its present and after-acquired property to each Retiring Entity to secure payment of the Settlement Amount.
6. The Retiring Entities complied with their obligations under the deed, including taking the necessary steps to surrender their shares in the Affected Entities and their units in the Steadiwall Intellectual Property Trust.

7. As referred to in more detail later in these reasons, the Retiring Entities' surrender of those shares and units resulted in Elias Pty Limited becoming the sole shareholder of Steadiform and Steadiform Holdings increasing its shareholding in Akena and Akena Installations, and becoming the sole unitholder in the Steadiwall Intellectual Property Trust.
8. Elias Pty Limited was registered in the Australian Capital Territory in June 2013. Ms Chahhoud has been the sole director and shareholder of Elias Pty Limited since October 2015.
9. Ms Chahhoud was married to Mr Taleb at all times relevant to these proceedings, including when she executed the deed in her personal capacity and in her capacity as the sole director of Elias Pty Limited on 16 June 2017. Ms Chahhoud and Mr Taleb separated in October 2021.
10. The Continuing Entities made the Initial Payment of \$600,000 when the deed was executed. They failed to make the Deferred Payment of \$1,500,000, plus interest in accordance with the deed, by the due date of 16 June 2019.
11. In February 2019, Ms Chahhoud acquired a rural property at Parkers Road in Peak View, near Cooma in New South Wales (the Peak View property). [1]
12. The plaintiffs commenced these proceedings on 31 May 2022 claiming: (1) a declaration that the plaintiffs have an equitable charge over the Peak View property; (2) an order in favour of the plaintiffs as equitable chargees for judicial sale of the Peak View property, and ancillary orders including orders requiring the third and fourth defendant to remove caveats lodged against the title to the Peak View property; (3) judgment against each of the first and second defendants – Ms Chahhoud and Mr Taleb – in the amount of the Deferred Payment, plus interest up to the date of judgment in accordance with the deed and interest after the date of judgment pursuant to s 101 of the Civil Procedure Act 2005 (NSW); and (4) an order for costs on an indemnity basis.
13. The proceedings were dismissed as against the third and fourth defendants in April and May 2023 after those defendants withdrew their caveats from the title to the Peak View property.
14. Summary judgment for the balance of the Settlement Amount plus interest was entered against Mr Taleb on 11 July 2023. The plaintiffs have not recovered any part of that judgment sum from Mr Taleb.
15. It remains for the Court to determine the plaintiffs' claims against Ms Chahhoud.
16. At this stage, the plaintiffs wish to have judgment entered against Ms Chahhoud only in respect of their claim for judicial sale of the Peak View property. The plaintiffs wish to defer until some point after the property has been sold in accordance with any order for judicial sale their claim for judgment to be entered against Ms Chahhoud for the amount owing under the deed following the application of the sale proceeds of the Peak View property in reduction of that amount. The evidence indicates that the value of the Peak View property is considerably less than the principal amount of \$1,500,000 owing under the deed, without

even taking into account interest that has accrued since 16 June 2019. The plaintiffs apprehend that they might lose the benefit of the claimed equitable charge if judgment were entered against Ms Chahhoud on their claim for an order for judicial sale and on their monetary claim concurrently, due to a potential merger of the choses in action in any monetary judgment. [2]

17. Ms Chahhoud does not dispute that she signed the deed. By her defence and cross-claim filed on 6 March 2024, Ms Chahhoud pleads that the deed is ineffective, void, or liable to be set aside against her on one or more of the following grounds: (1) she did not intend to be bound by the deed; (2) the "special wives equity" in *Yerkey v Jones*; [3] (3) Mr Taleb, to whom she was married at the time, procured her execution of the deed, at the direction of the plaintiffs, by duress, by undue influence, or by unconscionable conduct, and the plaintiffs knew or ought reasonably to have known this; (4) unconscionable conduct on the part of the plaintiffs within the meaning of the general law or within the meaning of ss 12CA and 12CB of the Australian Securities and Investments Commission Act 2001 (Cth); and/or (5) the deed is unjust within the meaning of the Contracts Review Act 1980 (NSW).
18. Ms Chahhoud's claim of unconscionable conduct is founded on her allegation that, at the time that she signed the deed, she was suffering from a special disadvantage by reason of: (1) not having been given an opportunity to negotiate any of the terms of the deed, and not having been represented during those negotiations; (2) not having been provided with a complete copy of the deed prior to and at the time of signing the deed; (3) not being afforded the opportunity to review the deed prior to signing it; (4) not being afforded the opportunity to obtain independent legal advice in relation to the deed prior to signing it; (5) the provisions of the deed not being explained to her accurately, or at all, before she signed the deed; (6) the provisions of the deed, which was written in English, not being translated for her in a language that she could understand, before she signed the deed, her first language being Arabic; (7) her lack of knowledge or understanding of the nature or effect of the deed that she was being asked to sign; and (8) her lack of intention to be bound by the deed. Ms Chahhoud alleges that Mr and Mrs Leedman and Trilam Developments knew, or ought reasonably to have known, that they did not allow any time, or did not allow adequate time, for Ms Chahhoud to have the nature and effect of the deed explained to her, or to obtain independent legal advice before signing the deed.
19. For the reasons that follow, I have determined that: (1) Ms Chahhoud's conduct in signing the deed, considered objectively, conveyed to the plaintiffs that she intended to be bound by it; (2) the "special wives equity" does not apply to the deed because Ms Chahhoud was not a volunteer; (3) Ms Chahhoud has not established that she signed the deed under duress or illegitimate pressure, or by reason of undue influence or unconscionable conduct by Mr Taleb; (4) the plaintiffs did not engage in unconscionable conduct in connection with Ms Chahhoud's execution of the deed; (5) ss 12CA and 12CB of the Australian Securities and Investments Commission Act do not apply to the deed; and (6) the Contracts Review Act does not apply to the deed.

20. I have also determined that the deed, properly construed, creates an equitable charge in favour of the plaintiffs over the Peak View property acquired by Ms Chahhoud after she executed the deed, and that orders should be made for judicial sale of the Peak View property by way of enforcement of that equitable charge.
21. In coming to those conclusions, I have considered all of the evidence and all of the parties' written and oral submissions, although I have not found it necessary to expressly refer to all elements of those submissions in these reasons. [4] In particular, I have not found it necessary to refer to those elements of Ms Chahhoud's closing submissions that asserted matters of fact in respect of which no evidence was adduced at the hearing that was conducted over six days, or that propounded allegations against the plaintiffs that are outside the scope of the pleaded defence and cross-claim.

Salient evidence and findings of fact

Reliability and credibility of witness testimony

1. As referred to in more detail later in these reasons, Ms Chahhoud and Mr Taleb executed the deed on which the plaintiffs sue at the Canberra office of Ashurst, who were the solicitors acting for the plaintiffs in relation to the deed. Mr and Mrs Leedman were not present on that occasion. The signatures of Ms Chahhoud and Mr Taleb were witnessed by an employed solicitor of Ashurst, Mr Robert Andersen, who gave evidence in these proceedings.
2. As the plaintiffs submitted, and as discussed in more detail later in these reasons, Mr Andersen was careful to distinguish between his very limited recollection of the occasion when Mr Taleb and Ms Chahhoud attended Ashurst's office to sign the deed on 16 June 2017, and evidence of his usual practice when witnessing parties' execution of a deed. It is entirely unsurprising that Mr Andersen does not now claim to have a detailed recollection of that occasion seven years ago, and cannot even specifically recall watching Mr Taleb and Ms Chahhoud sign the deed. It is to Mr Andersen's credit that he took care not to overstate the extent of his recollection. As the plaintiffs submitted, Mr Andersen gave direct, non-evasive answers in cross-examination, including stating succinctly and without hesitation that he has no recollection of taking certain steps that Ms Chahhoud put to in him cross-examination should have been taken before she signed the deed. I accept Mr Andersen as a credible witness, who gave truthful evidence of his limited recollection of the occasion on which the deed was signed, and who put forward the contemporaneous documents that are capable of casting some light on what occurred at Ashurst's Canberra office on that occasion. [5] I reject Ms Chahhoud's submission, which I understood to be directed to Mr Andersen's credibility, that he had a conflict of interest, or that he may be biased in favour of the plaintiffs, because he is employed by a firm of solicitors who had acted for the plaintiffs in relation to the deed (although not in those proceedings), and because Mr Andersen personally had some involvement in representing Mr Leedman in other proceedings. It was not put to Mr Andersen in cross-examination that his evidence was affected by any such conflict or bias. It is inherently improbable that Mr Andersen would give untruthful

evidence thereby breaching his legal obligations as a witness and exposing himself to disciplinary and other sanctions as a solicitor.

3. As the plaintiffs submitted, Mr Leedman and Mrs Leedman answered questions under cross-examination in a direct, responsive and non-obfuscating manner. More importantly, each of them readily made concessions, including concessions that may have felt uncomfortable with the benefit of hindsight. For example, each of Mr and Mrs Leedman conceded that they had not communicated with Ms Chahhoud about the proposed deed at any stage before she signed it, and that Mr Taleb had not told them that he was authorised to negotiate the deed on behalf of Ms Chahhoud. [6] I accept Mr and Mrs Leedman as credible witnesses who gave truthful evidence to the best of their recollection.
4. Ms Chahhoud told several lies under oath in these proceedings when she apparently thought that it would assist her defence and cross-claim to do so. I refer to my findings in relation to each of those lies at [39], [43]–[53], [87], [92]–[97], [284] and [288] below.
5. Ms Chahhoud's credibility was further undermined by: (1) inconsistencies between her two affidavits sworn and affirmed in these proceedings; [7] (2) inconsistencies between those affidavits and her evidence given under cross-examination, [8] during which she had a tendency to give speeches arguing for her cause rather than answering the direct question that had been asked of her; (3) inconsistencies between her evidence and contemporaneous documents; [9] (4) inconsistencies between Ms Chahhoud's evidence and statements that she made to the Court in her submissions in these proceedings; [10] and (5) inconsistencies between her evidence in these proceedings and statements that she has made previously in the course of giving evidence in earlier proceedings in this Court. [11]
6. When questioned about those inconsistencies in cross-examination, Ms Chahhoud gave non-responsive answers, refused to acknowledge the inconsistency, or sought to explain away the inconsistency by attributing the substance of the earlier inconsistent evidence to her teenage daughter (who helped her prepare her first affidavit in these proceedings), to the solicitors formerly acting for her in these proceedings (who prepared her second affidavit in these proceedings), to the interpreter who had sight translated her second affidavit in these proceedings in the Arabic language before Ms Chahhoud swore that affidavit, or to the solicitors who had acted for her in the previous proceedings in this Court and who had prepared the affidavit that she swore in those proceedings. Those purported explanations, which were implausible, further damaged Ms Chahhoud's credibility. [12]
7. I reject Ms Chahhoud's submissions that she was cross-examined in a manner that was unfair to her. Ms Chahhoud complained that she was asked leading questions and submitted that this was improper. Ms Chahhoud also submitted that the questions about some subjects were "excessive and designed to confuse or pressure" her into changing her answer. Ms Chahhoud also complained that Counsel for the plaintiffs asked questions using complex legal terms without ensuring that she fully understood, even when she asked for clarification. Ms Chahhoud submitted that this was "an unfair tactic". There is no substance

to any of these complaints. It is proper and orthodox for a cross-examiner to ask leading questions. It is only when adducing evidence in chief or in re-examination that the questioner is not permitted to ask leading questions. The cross-examiner did spend considerable time on some subjects, but I did not regard the questions about any particular subject as "excessive". The need to spend considerable time on any one subject generally arose from the need to explore the inconsistencies within Ms Chahhoud's evidence to which I have referred above. The questions were designed to clarify Ms Chahhoud's position about each such subject, rather than to confuse or pressure her in any way. The process often became drawn out by reason of Ms Chahhoud's tendency to give evasive, obfuscating answers. That is no fault of the cross-examiner. I reject the submission that Counsel for the plaintiffs persisted in using complex legal terms. When Ms Chahhoud indicated that she did not understand a particular term, despite having the assistance of the interpreter, Counsel addressed the problem by rephrasing the question using different terms.

8. A further matter relevant to the assessment of Ms Chahhoud's credibility is the stark discrepancy between her affidavit evidence about the limited ability that she claims to possess in communicating in the English language and understanding the English language, on the one hand, and the manner in which she has conducted herself in the course of representing herself in these proceedings, on the other hand.
9. In her second affidavit affirmed in these proceedings on 12 March 2024 after it was sight translated for her in the Arabic language, Ms Chahhoud gave evidence that she completed her high school education in Lebanon and undertook two years of university study in Lebanon before marrying Mr Taleb and falling pregnant with her first child. Ms Chahhoud gave evidence that her high school and tertiary studies had been in the French language, and that she had learned only "a small amount of English" in high school. Ms Chahhoud described English as her third language. She gave evidence that she first moved to Australia together with Mr Taleb in about September 2009, shortly before their first child was born. Ms Chahhoud deposed that, at that time, she had "very basic knowledge of the English language – both reading and written". She returned to Lebanon together with Mr Taleb and their four children and her two step-daughters in October 2019. After separating from Mr Taleb in October 2021, Ms Chahhoud remained in Lebanon for a further two years before returning to Australia in November 2023. Ms Chahhoud deposed that:

"Since moving to Australia, my hold of the English language has improved but only in respect of day-to-day matters. On a day-to-day basis, I communicate mostly in Arabic, including with my children. To the extent that I communicate in English, it relates mostly to my children's schooling (when I speak with their teachers or principal) and general day-to-day matters like grocery shopping."

1. That evidence given by Ms Chahhoud of the limited extent to which she says her English language skills improved during the period since moving to Australia in September 2009 until affirming her second affidavit in March 2024 is irreconcilable with the manner in which I observed Ms Chahhoud using the English language during the final hearing before me in July and August 2024.
2. An accredited interpreter in the Arabic language was present in Court at all times during the final hearing. The interpreter sat beside Ms Chahhoud at the Bar table at all times other than during Ms Chahhoud's cross-examination, when the interpreter was seated beside Ms Chahhoud in the witness box. The interpreter translated for Ms Chahhoud throughout the proceedings as and when required by Ms Chahhoud.
3. On the first day of the hearing, Ms Chahhoud cross-examined Mr Andersen with minimal assistance from the interpreter.
4. On the second day of the hearing, Ms Chahhoud cross-examined Mr Leedman for approximately one hour. I observed that, for the most part, Ms Chahhoud asked questions of Mr Leedman in English, and only rarely required the interpreter to interpret Mr Leedman's answers into the Arabic language. The questions that Ms Chahhoud asked of Mr Leedman included questions relating to legal documentation, legal representation, minutes of meetings of directors of companies, tax returns, balance sheets, and PPSR registrations. Ms Chahhoud did not appear to me to waiver or hesitate in formulating her questions in English. I reject Ms Chahhoud's submission that the questions had been formulated for her in advance by her daughter Jasmine, or by her brother-in-law, Mr Sebastian Roi. To my observation, Ms Chahhoud was not reading the questions put to Mr Leedman from notes. Many of the questions were formulated in terms that sought to pursue elements of Mr Leedman's previous answer. Such questions cannot be formulated in advance. Ms Chahhoud's tone in asking her questions was forthright and robust. The cross-examination proceeded at a relatively fast pace.
5. Ms Chahhoud then cross-examined Mrs Leedman for approximately twenty minutes later that afternoon. I observed that Ms Chahhoud made slightly greater use of the interpreter during this short cross-examination.
6. Counsel for the plaintiffs cross-examined Ms Chahhoud for the whole of the third and fourth days and the morning of the fifth day of the hearing. I observed that, throughout her cross-examination, Ms Chahhoud generally waited for questions to be interpreted into Arabic before answering. Her answers were sometimes given wholly or partly in English, but were usually given in Arabic and then interpreted in the English language. It was my impression from Ms Chahhoud's demeanour, facial expression and frequent slight nodding of her head while the interpreter was interpreting Ms Chahhoud's answers into English, that Ms Chahhoud was listening carefully to the English interpretation to see whether she was satisfied with it. At the end of the English interpretation of her answers, Ms Chahhoud frequently nodded her head again more forcefully, and said the word "yes" in English. I

formed the impression that Ms Chahhoud was thereby processing for herself the English interpretation and determining whether she agreed with it. When I raised this with Ms Chahhoud during closing submissions in order to give her an opportunity to make submissions about my observations and impressions, Ms Chahhoud submitted that nodding was simply a habit of hers, and that she always nods her head. Ms Chahhoud submitted that she did not understand the English interpretation fully, but she trusted the interpreter. I reject Ms Chahhoud's submission that the nodding that I observed is simply a habit of hers. I did not observe her to be nodding at other times during the hearing, including when the interpreter was interpreting into Arabic things said by me to Ms Chahhoud, or answers given by witnesses to questions asked by Ms Chahhoud in cross-examination.

7. There were many occasions during Ms Chahhoud's cross-examination when she was asked questions about documents written in the English language. I observed that Ms Chahhoud looked at those documents in the witness box before answering such questions. She appeared to me to be studying the contents of the documents, and she often answered those questions by reference to the contents of those documents. I observed that, irrespective of whether Ms Chahhoud answered the relevant question in Arabic or in English, she did not request the interpreter to interpret the English document into Arabic for her before answering the question.
8. As I have already mentioned, Ms Chahhoud left Australia in October 2019. She then lived in Lebanon for four years, before returning to Australia in November 2023. In cross-examination, Ms Chahhoud gave the following evidence:

"Q. I take it that you didn't speak really any English at all when you were in Lebanon for those four years or so?

A. WITNESS: That's true.

A. INTERPRETER: She said that's true.

Q. Thank you. So it's probably the case that your English got worse between the end of 2019 and 2023 when you were in Lebanon?

A. INTERPRETER: You cannot say that. During that period, my eldest daughter taught me English.

Q. But you just said you didn't speak any English when you were in Lebanon?

A. INTERPRETER: Because everybody around me spoke in Arabic and in French, but in the circumstances where I was at home with two big daughters, stepdaughters, they – we were by ourselves and they did teach me English.

Q. All right, but you didn't speak to them in English as a native language, did you?

A. INTERPRETER: At home, they wouldn't let me speak in Arabic. They would shout at me and they, like, enforce, or they help me learn English. So if I spoke to them in Arabic, they would tell me, 'Repeat the whole sentence in English so you learn.'"

Q. Are you just making this up along the way, or is this really the truth?

A. WITNESS: This is the truth. This is the truth."

1. In describing the extent of her proficiency in English in her affidavit to which I have referred at [30] above, Ms Chahhoud did not mention that her step-daughters taught her English during the four years when she lived in Lebanon. As the plaintiffs submitted, that story is inconsistent with her answer to the first question that I have extracted above that she hadn't really spoken any English at all during those four years. Ms Chahhoud's answer to that first question was given without hesitation. Based on that inconsistency, and Ms Chahhoud's demeanour and tone of voice when she answered the second question above – which I would describe as combative – I formed the impression that Ms Chahhoud made up the story that her eldest step-daughter, or both step-daughters, had taught her English during those four years in Lebanon because she realised when the cross-examiner asked the second question that the Court might otherwise infer that her proficiency in English in 2017 had been something better than that which she displayed during the course of the hearing of these proceedings, and that this might be harmful to her unconscionability defence and cross-claim in these proceedings which rely on her alleged inability to understand the deed that was written in English. The story was a lie designed to support Ms Chahhoud's defence and cross-claim.
2. In 2020, Mr Fawaz Helou and Helou Developments Australia Pty Ltd commenced proceedings in this Court against Ms Chahhoud (the first defendant), Mr Taleb (the second defendant), Steadiform (the third defendant), Steadiform Holdings (the fourth defendant), Class 1 Form (the fifth defendant) and Elias Pty Limited (the sixth defendant) to enforce an alleged loan agreement in respect of a loan of \$500,000 made to the defendants to finance the acquisition of the Peak View property. Mr Taleb had purportedly signed the loan agreement not only on his own behalf, but also on behalf of all of the other defendants, including Ms Chahhoud and Elias Pty Limited. Ms Chahhoud and Elias Pty Limited defended the proceedings on the basis that Ms Chahhoud had not authorised Mr Taleb to sign the loan agreement on her behalf, or on behalf of Elias Pty Limited. It is convenient to refer to those proceedings as the Helou proceedings. [13]
3. As I have already mentioned, Ms Chahhoud has been the sole director and shareholder of Elias Pty Limited since October 2015.
4. Mr Alex Ronayne of Ronayne Owens Lawyers represented Ms Chahhoud, Steadiform, Steadiform Holdings, Class 1 Form and Elias Pty Limited in the Helou proceedings. Ms Chahhoud and Elias Pty Limited, together with the other defendants, filed a cross-claim against Mr Helou and Helou Developments.

5. On 26 May 2020, Ms Chahhoud – as the first defendant/cross-claimant and as the director of the sixth defendant/cross-claimant, swore affidavits verifying the defence and cross-claim filed in the Helou proceedings. Neither the defence and cross-claim nor the verifying affidavits were sight translated for Ms Chahhoud before she swore the verifying affidavits.
6. On 8 July 2021, Ms Chahhoud swore an affidavit in the Helou proceedings in which she deposed to being the sole director of Elias Pty Limited, and gave evidence concerning the acquisition of the Peak View property. That affidavit was not sight translated for Ms Chahhoud before it was sworn. Ms Chahhoud and Elias Pty Limited defended the proceedings on the basis that she had not authorised Mr Taleb to sign the loan agreement on her behalf, or on behalf of Elias Pty Limited.
7. The Helou proceedings were heard before Parker J. The transcript of that hearing records that Ms Chahhoud was cross-examined for a period of about 20 minutes on 20 July 2021 in English, without any assistance from an interpreter. Ms Chahhoud appeared via audio visual link from Lebanon for that purpose. She was questioned about the subjects addressed in her 8 July 2021 affidavit, including the acquisition of the Peak View Property. The transcript records two instances during the cross-examination in which Ms Chahhoud communicated that she was having difficulty hearing the question, and one instance in which those present in the court room did not appear to have heard her answer to the question. The transcript records one instance in which his Honour instructed Ms Chahhoud to wait for the question to finish, after she had interrupted the cross-examiner by commencing her answer before he completed asking the question. Ms Chahhoud's relatively brief cross-examination otherwise appears to have proceeded smoothly. The transcript does not record any instance of Ms Chahhoud stating that she did not understand the question, asking for the question to be rephrased, or asking for the question to be repeated (other than on the two occasions when she stated that she had not heard the question).
8. In the present proceedings, Ms Chahhoud was asked in cross-examination about the two verifying affidavits and the substantive affidavit that she had sworn in the Helou proceedings without the assistance of an interpreter, and about her cross-examination in those proceedings. Ms Chahhoud gave evidence that she was able to understand the affidavits that she swore without an interpreter because her solicitor in the Helou proceedings explained everything "in detail" while "simplifying his words", and because her daughter was with her assisting her to understand. Assuming that Ms Chahhoud was referring to her eldest daughter, that child would have been eleven and twelve years old when Ms Chahhoud swore her affidavits in the Helou proceedings in May 2020 and in July 2021.
9. In relation to her cross-examination in the Helou proceedings, Ms Chahhoud gave evidence under cross-examination in the present proceedings that "the judge, he was very nice to me and he repeated his question thousands of times so I can understand it". Ms Chahhoud said that, when she was asked a question, "I would take a lot of time to understand it, I'll ask them to repeat the question once and twice, and I'll take a lot of time to be able to answer, and I would tell them, 'Sorry, I did not understand, can you repeat?'". Ms Chahhoud then

indicated that she could not remember whether it was counsel or Parker J who she claimed repeated questions to her "again and again", but she remained adamant that this did occur. Ms Chahhoud said that she did not know at the time that she was cross-examined in the Helou proceedings that she could have requested an interpreter.

10. Ms Chahhoud's evidence about the process by which her affidavits were prepared in the Helou proceedings is internally inconsistent and inherently improbable. On the one hand, Ms Chahhoud asserts that her solicitor was using simplified words. On the other hand, Ms Chahhoud claims that her solicitor was nevertheless able to explain everything to her in detail. Assuming (without deciding) that Ms Chahhoud's eldest daughter did provide some assistance to her at the time that she swore the three affidavits in the Helou proceedings, it is inherently improbable that her solicitor, Mr Ronayne, would have been content for Ms Chahhoud to swear those affidavits without having them sight translated for her by an interpreter if, as Ms Chahhoud claims, she had required him to use simplified words to explain the substance to her, and if she had been enlisting the help of her child to explain those simplified words to her. It is equally improbable that the solicitor would have exposed Ms Chahhoud to the risk of cross-examination without the benefit of an interpreter.
11. Ms Chahhoud's account of what occurred during her cross-examination in the Helou proceedings is falsified by the transcript of that cross-examination to which I have referred above.
12. I find that Ms Chahhoud's account of the preparation of the affidavits that she swore in the Helou proceedings and her cross-examination in the Helou proceedings is a story that she made up under cross-examination in the present proceedings in an effort to support her contention that she has only limited ability to understand spoken and written English and to communicate in the English language, and that she was therefore suffering from a special disadvantage when she signed the deed that is the subject of these proceedings. That is to say, Ms Chahhoud lied when giving evidence under oath in these proceedings about her affidavits and cross-examination in the Helou proceedings.
13. On the basis of all of my observations recorded at [32]-[37] above, the evidence concerning Ms Chahhoud's affidavit and oral evidence in the Helou proceedings, and Ms Chahhoud's false evidence given in these proceedings about the preparation of her affidavits and about her cross-examination in the Helou proceedings, I reject Ms Chahhoud's evidence in her second affidavit affirmed in these proceedings that, since moving to Australia in September 2009, her English language skills have improved "only in respect of day-to-day matters" such as speaking with her children's school teachers or communicating while doing the grocery shopping. I find that, although English is Ms Chahhoud's third language, she is capable of understanding and communicating in English about a far greater range of subjects, including those that were covered in her cross-examination of Mr Leedman conducted in English. [14]

14. Given that I have found that Ms Chahhoud's evidence about her step-daughters teaching her English in Lebanon from 2019 is untrue, it is inherently probable, and I find, that Ms Chahhoud had a similar level of proficiency in the English language in 2017 – some eight years after she had arrived in Australia, and only two years before returning to Lebanon – as she had at the time of the hearing in 2024, less than one year after returning from Lebanon in November 2023. I reject Ms Chahhoud's denials of that proposition in cross-examination.
15. I find that, in giving evidence in these proceedings that her English language skills have improved "only in respect of day-to-day matters" since September 2009, in falsely claiming that her step-daughters had taught her English during the four years in which they lived in Lebanon during the period from 2019 to 2023, and in lying about her affidavits and cross-examination in the Helou proceedings, Ms Chahhoud deliberately sought to give the Court the false impression that her ability to understand spoken and written English and to communicate in the English language in 2017, when she signed the deed that is the subject of these proceedings, was far more limited than was in fact the case. I find that Ms Chahhoud sought to mislead the Court in that way because she perceived that this would assist her defence and cross-claim in these proceedings, both of which rely on her claimed limitations in the English language at the time the deed was signed as contributing to the special disadvantage from which she claims to have been suffering at that time.
16. For all of the reasons at [25]–[53] above, I do not accept the evidence of Ms Chahhoud about any disputed matter, except where her evidence is contrary to her own interests, inherently probable, consistent with undisputed objective facts, or corroborated by contemporaneous documents or some other reliable source.
17. Ms Chahhoud did not adduce any evidence from Mr Taleb. The plaintiffs submitted that the Court should therefore infer that Mr Taleb's evidence about the circumstances in which Ms Chahhoud signed the deed that is the subject of the proceedings would not have assisted Ms Chahhoud. [15] I reject that submission. Mr Taleb is Ms Chahhoud's estranged husband, and a defendant against whom judgment has already been entered in these proceedings. Mr Taleb's liability under that judgment will be reduced by the proceeds if sale of the Peak View property if the plaintiff's succeed in obtaining an order for judicial sale against Ms Chahhoud. Mr Taleb is therefore not a witness Ms Chahhoud would be expected to call, and the "rule" in *Jones v Dunkel* is not engaged. [16]

Nature of the business relationship between Mr and Mrs Leedman, Mr Taleb and their associated companies

1. Mr and Mrs Leedman operate an invoice financing business through a company called Leedman Financial Services Pty Ltd (LFS), which was a franchisee of Fifo Capital.
2. Mr and Mrs Leedman first met Mr Taleb in about late 2012 or early 2013 to discuss the invoice financing needs of his formwork business known as Class 1 Form. LFS provided invoice financing for Class 1 Form from about mid-2013.

3. Class 1 Form was in the business of erecting formwork for concrete in the construction industry, using a product called "Permaform". During a visit to Class 1 Form's warehouse in Queanbeyan after LFS began financing the company, Mr Taleb told Mr Leedman that he was developing a plastic formwork product, but that he needed investors to fund the work necessary to protect the intellectual property and to develop and commercialise the product, and to begin performing installations using the product. Mr Leedman discussed this with Mrs Leedman, and they decided to invest by acquiring an interest in the following companies which they established together with Mr Taleb, Mr Andrew Bannick and Mrs Nicole Bannick:
 1. Akena Pty Ltd; [17]
 2. Akena Installations Pty Ltd; [18] and
 3. Akena Holdings Pty Ltd, which was established to act as the trustee of an intellectual property trust. This company subsequently changed its name to Steadiwall Holdings Pty Ltd, and then to Steadiform Holdings Pty Ltd. [19]
1. Each of those companies was registered in Queensland.
2. Mr and Mrs Leedman held their interest in those companies through Trilam Developments, a company registered in South Australia. Mr and Mrs Leedman were, and remain, the sole directors and shareholders of Trilam Developments.
3. Trilam Developments also acquired units in the Steadiwall Intellectual Property Trust, which had been established with Akena Holdings (ultimately renamed Steadiform Holdings) as the trustee. Mr Leedman became a director of that trustee company.
4. About six months after investing in the Akena companies, Mr and Mrs Leedman caused Trilam to invest \$500,000 in Class 1 Form in consideration for a 50 per cent shareholding in that company. At the same time, Mr Leedman became a director of Class 1 Form, which was registered in New South Wales. [20]
5. A further company, Steadiwall Pty Ltd, was registered in Queensland in April 2015. Trilam Developments became a shareholder and Mr Leedman became a director of that company, which was subsequently renamed Steadiform Pty Ltd. [21]
6. The Akena companies – Akena, Akena Installations and Akena Holdings – operated in Queensland. Class 1 Form operated in Canberra, save for one project in Queensland.
7. I accept Ms Chahhoud's evidence that she was not involved in the management of the companies in which Mr and Mrs Leedman invested through Trilam Developments. Neither Mr Leedman nor Mrs Leedman gave evidence to the contrary. Ms Chahhoud was not a party to any of the correspondence tendered in these proceedings concerning the management of those companies in the period leading up to the execution of the deed in June 2017.

8. Ms Chahhoud was on the payroll of Class 1 Form during the financial year ended 30 June 2015, but I accept her evidence that she did not in fact work at that company in that period, during which she had two young daughters and gave birth to a third – Rebecca – in April 2015. Ms Chahhoud's evidence that she did not work for Class 1 Form is consistent with Mr Leedman's evidence in cross-examination that Mr Taleb had made arrangements to put Ms Chahhoud on the payroll for Class 1 Form before he became involved in Class 1 Form together with Trilam Developments and Mrs Leedman. Mr Leedman did not suggest that Ms Chahhoud in fact worked at Class 1 Form.
9. From October 2015, Ms Chahhoud was the sole director and shareholder of Elias Pty Limited, which was a substantial shareholder in Class 1 Form, Akena, Akena Installations, Steadiform and Steadiform Holdings, as discussed later in these reasons. However, Ms Chahhoud was not a director of any of those companies in which Elias Pty Limited held shares.

Nature of the relationship between Ms Chahhoud and Mr Taleb

1. In her first affidavit sworn in these proceedings on 16 March 2023, Ms Chahhoud gave evidence concerning her marriage to Mr Taleb, in which she deposed: "I am of a culture where the husband controls all the financial and legal matters".
2. In her second affidavit affirmed on 12 March 2024, Ms Chahhoud gave more detailed evidence about the nature of her relationship with Mr Taleb. Ms Chahhoud deposed that she married Mr Taleb in January 2009, and she fell pregnant with their first child shortly thereafter. They moved to Australia in September 2009, and their first child – Jasmine – was born soon afterwards. At some stage, Mr Taleb's two daughters from his previous marriage came to live with them. They subsequently had three more daughters of their own. As I have mentioned earlier in these reasons, Ms Chahhoud, Mr Taleb and their family returned to Lebanon to live in October 2019. Ms Chahhoud and Mr Taleb separated in October 2021, although they remain legally married. Ms Chahhoud returned to Australia, together with her four daughters, in November 2023. Mr Taleb remains in Lebanon.
3. In her second affidavit, Ms Chahhoud deposed that, since she married Mr Taleb in 2009, her full-time role has been that of a homemaker, and her focus has been on raising her children. Ms Chahhoud deposed that, since the birth of her eldest daughter in 2009:

"...I have not ... engaged in any meaningful paid employment. During the time that I was married to Elias until October 2021, he was the sole income earner and my children and I relied solely upon him to provide for us financially."

1. Ms Chahhoud deposed that she did engage in some casual employment:

"For a period between 2009 and 2014, I privately tutored 3 students in the French and Arabic languages – both reading and writing. I taught these students for about 2 hours 3 times per week, and only to fill my time during the days. I did not have any family or friends in Canberra. I was paid \$25 per tutoring session, which money I gave to Elias to store in the safe that he kept at his yard."

1. Ms Chahhoud's tax returns and notices of income tax assessment were produced to the Court in response to a notice to produce issued by the plaintiffs in these proceedings on 21 May 2024, after Ms Chahhoud had affirmed her second affidavit. The plaintiffs tendered those documents, which record that Ms Chahhoud's taxable income was \$55,188 in the 2015 financial year (being the year in which she was included on the payroll of Class 1 Form), \$20,546 in the 2016 financial year, \$20,646 in the 2017 financial year, \$20,715 in the 2018 financial year, and \$13,731 in the 2019 financial year. In each of those financial years, Ms Chahhoud claimed a deduction for business expenses that were described as motor vehicle expenses. In the 2020 and 2021 financial years, during which Ms Chahhoud was living in Lebanon, she submitted tax returns declaring taxable income of \$21,654 and \$22,850 (respectively). Ms Chahhoud again claimed a deduction for motor vehicle expenses in the 2021 financial year.
2. Ms Chahhoud gave evidence in cross-examination that her tax return in each of the years referred to above were prepared by Mr Roi, who is her accountant. According to Ms Chahhoud's evidence, she was careful to make sure that the returns correctly recorded her income for the relevant year, and she would check that the amount was correct before authorising Mr Roi to lodge the returns with the Australian Taxation Office.
3. After Ms Chahhoud's tax returns and notices of income tax assessment had been produced to the Court in response to the notice to produce, and prior to the commencement of the hearing, Ms Chahhoud sent correspondence to my Associate indicating that she wished to change her evidence in her second affidavit concerning her earnings. Ms Chahhoud was permitted to do so at the commencement of her oral evidence. Ms Chahhoud then gave evidence through the interpreter that, during the period from 2010 to 2013, she had been "working for some Lebanese people in things related to food and, and their home" in addition to tutoring students in French and Arabic. Ms Chahhoud also gave evidence that she carried on the tutoring work not only during the period from 2009 to 2014, but also during the period from 2016 to 2021.
4. In relation to the tutoring work, Ms Chahhoud gave evidence in cross-examination that, in the period after 2014, she conducted about three tutoring sessions per week, that each session was between two and three hours, and that she was paid at the rate of \$25 per hour. She continued these tutoring sessions via audio visual link after she returned to Lebanon in October 2019.

5. Ms Chahhoud's evidence of the extent of her tutoring activities would account for only about half of the income reported in her tax returns referred to above, which are for the 2015 and subsequent financial years. When Ms Chahhoud was cross-examined about this, she claimed that she had also earned income during those years from cooking food for Lebanese people. This was inconsistent with the oral evidence that Ms Chahhoud had given a short time earlier when, after being given an opportunity to correct her evidence in relation to her income, she had identified 2010 to 2013 as the period during which she had earned some income from "working for some Lebanese people in things related to food and, and their home".
6. The higher level of Ms Chahhoud's taxable income reported to the ATO in the 2015 financial year compared to the other financial years referred to above is attributable to Ms Chahhoud being recorded on the payroll of Class 1 Form with a gross salary of \$59,038 in the 2015 financial year. I have accepted Ms Chahhoud's evidence that she did not in fact work at Class 1 Form in the 2015 financial year. [22] I therefore reject Ms Chahhoud's evidence that she carefully checked the accuracy of the income recorded in her tax returns prepared by Mr Roi before authorising him to lodge them to the ATO.
7. Ms Chahhoud's affidavit evidence describing Mr Taleb as the "sole income earner" during their marriage was wrong having regard to the income recorded in her 2015 to 2021 tax returns. When challenged about this in cross-examination, Ms Chahhoud acknowledged that she had earned money, but said that Mr Taleb was solely responsible for paying their expenses. Ms Chahhoud claimed that this was what she had intended to convey, and blamed the inaccurate description of Mr Taleb as the "sole income earner" on her solicitors who had prepared her second affidavit. That purported explanation is implausible. The affidavit was sight translated for Ms Chahhoud before she affirmed it. It was her responsibility, with the benefit of that translation, to ensure that the affidavit was accurate according to the best of her recollection before she affirmed it.
8. In the course of giving this evidence seeking to explain her description of Mr Taleb as the "sole income earner", Ms Chahhoud said that: "my money was my money. I used to save them, because I had a dream and I wanted to achieve it". It is very difficult to reconcile that evidence with Ms Chahhoud's evidence concerning her relationship with Mr Taleb in her first affidavit, in which she described it as being part of "a culture where the husband controls all the financial and legal matters".
9. Ms Chahhoud gave the following evidence about her relationship with Mr Taleb in her second affidavit affirmed on 12 March 2024:

"I have always known Elias to work in the construction industry and may have had a business involved with the supply or manufacture of plastic walls. Having said that, I did not really understand exactly what he did or the details of his business.

...

The dynamic between Elias and me was such that he took care of matters of business and things that were external to the home. He did not discuss with me his business dealings or business relationships or property ownership (except as described below). Elias did not speak to me at length about any topics and rarely, if ever, told me anything about his work. As such, I relied upon and trusted Elias during the marriage and followed his instruction whenever he required any documents to be signed.

I dedicated my time and attention towards creating a home for my daughters and maintaining our house."

1. In relation to signing documents, Ms Chahhoud deposed in her second affidavit that:

"There was a longstanding practice between Elias and me where he came to me with documents and I signed them without reading them and without knowing or understanding what I was signing. He did not leave the documents with me to read.

...

While I cannot recall specifically when or what types of documents I signed, I recall numerous occasions in the past 10 years when Elias brought me documents and said to me words to the effect of "Sign this" and he pointed to parts of the document he wanted me to sign. When he did this, I was not given the documents to read and did not read them. On some occasions, I asked him "What is this?". On every occasion, he became visibly agitated and responded in words to the effect of "Just sign it". I cannot recall an instance where the documents were left with me."

1. In her opening submissions made on the first day of the hearing, Ms Chahhoud described her relationship with Mr Taleb as involving a much greater level of control than she had suggested in her affidavit. Ms Chahhoud submitted:

"In, in this country, I don't deal with lawyers. It's only my husband who deals with that. My husband is in charge. I don't have any authority over everything – anything in the family and running of the family. It's my husband's responsibility.

Whatever he says, I do it.

12 years, I was under his mercy. I, I always did what he asked me to do.

Without me knowing or seeking any advice. That's the thing. And if I don't do it ...

Problem will, will emerge if I don't do it."

1. Ms Chahhoud gave evidence in her second affidavit that she first became aware that she was the sole director of Elias Pty Limited as a result of these proceedings, which were commenced on 31 May 2022. Ms Chahhoud deposed:

"As a result of these proceedings, I have become aware that I was and am the sole director and secretary of Elias Pty Limited. I became aware when I saw that I had signed some pages that formed a Deed the subject of the dispute in these proceedings in a signature block that referred to Elias Pty Limited.

...

I do not know what business, if any, either of Elias Pty Limited or Class 1 Form Pty Limited conduct or conducted. In or around 2021, I became aware from a conversation with Sebastian that Elias Pty Limited was an "asset holding company" although I do not know what assets it holds. I do not have access to any of the books and records of these Companies. I do not know who takes care of these Companies. ..."

1. Ms Chahhoud's account of her relationship with Mr Taleb and her directorship of Elias Pty Limited in her opening submissions and evidence to which I have referred at [80]-[83] above is untrue in some respects, and materially inconsistent in other respects with statements that she has made prior to the commencement of these proceedings or with other aspects of her evidence in these proceedings.
2. First, Ms Chahhoud's statement in opening submissions that she does not deal with lawyers, and that only her husband deals with lawyers, is not true. As discussed earlier in these reasons, Mr Ronayne, solicitor, represented Ms Chahhoud in the Helou proceedings in 2020 and 2021, and Ms Chahhoud has given evidence in these proceedings describing her dealings with Mr Ronayne in the course of preparing her affidavits in the Helou proceedings. [23] As referred to later in these reasons, Ms Chahhoud instructed solicitors in connection with her sale of a property in Harrison in the Australian Capital Territory in October 2016 [24] , and in connection with her purchase of the Peak View property in February 2019. I infer that Ms Chahhoud's statement in her opening submissions that she does not deal with lawyers, and that only her husband deals with lawyers, was a false claim that she made in the belief that it would be helpful to her defence and cross-claim in these proceedings to describe her relationship with Mr Taleb as one involving total control on his part and total lack of control on her part in relation to all matters concerning financial or business affairs.
3. Second, Ms Chahhoud's description of herself as a "homemaker" during the whole of her marriage to Mr Taleb in the second affidavit that she affirmed in the present proceedings is inconsistent with the affidavit that she swore on 8 July 2021 in the Helou proceedings, in which her occupation was described as "Director", and in which Ms Chahhoud deposed that she had been "engaged in business for five years". When confronted with these inconsistencies during cross-examination in the present proceedings, Ms Chahhoud attributed to Mr Ronayne the decision to describe her occupation as a director. Ms Chahhoud also said that "business" meant "as in cooking and cleaning, not like a business business". I reject Ms Chahhoud's evidence given under cross-examination in these proceedings that she had only meant for her affidavit in the Helou proceedings to convey to

the Court and to the parties that she was engaged in the business of "cooking and cleaning" on her own account, and not "a business business". If that had been Ms Chahhoud's intention, it would have been a simple matter for her to require the solicitor acting for her in the Helou proceedings to amend her affidavit to describe the nature of the business before she swore that affidavit. She did not do so. I find that Ms Chahhoud intentionally conveyed to the Court and the parties in the Helou proceedings one impression of her occupation and activities, and that she intentionally conveyed a very different impression in her affidavits and in her opening submissions in the present proceedings. In the Helou proceedings, it suited Ms Chahhoud's interests to portray herself as the sole person with authority to make decisions on behalf of Elias Pty Limited. In the present proceedings, it is more consistent with Ms Chahhoud's defence and cross-claim to distance herself from any knowledge of or involvement in the affairs of Elias Pty Limited.

4. Third, Ms Chahhoud's claim made in her opening submissions that during her 12 year marriage to Mr Taleb she had been "under his mercy" is very difficult to reconcile with her own evidence that she set aside her own modest earnings to pursue her own "dream" rather than contributing to paying their household and family expenses. [25] It is also inconsistent with Ms Chahhoud's evidence that she stipulated her requirements for a property to be purchased for herself to fulfil her "dream", that she tasked Mr Taleb with identifying a property which met those requirements, that she insisted that he arrange to sell the Harrison property that he purchased which she considered did not satisfy her requirements, and that she then tasked Mr Taleb with identifying a replacement property that did satisfy those requirements. According to Ms Chahhoud's evidence, it was through this process that Mr Taleb identified the Peak View property and Ms Chahhoud made the decision to purchase that property. [26]
5. Fourth, Ms Chahhoud's evidence that she first became aware that she was the sole director of Elias Pty Limited as a result of these proceedings which were commenced in May 2022, and that she did not know anything about the nature of that company's business prior to 2021, is false.
6. As Ms Chahhoud acknowledged in cross-examination, she signed a consent to act as a director of Elias Pty Limited in October 2015 and it was explained to her at that time that Elias Pty Limited was "a shareholder company" that "does not have any workers, does not have anything", and that its purpose was "to protect the ownership of the plastic wall". Thus, contrary to her 12 March 2024 affidavit, Ms Chahhoud knew when she agreed to be appointed as a director of Elias Pty Limited in October 2015 that it held shares that were connected to the ownership of "the plastic wall" which she has always known Mr Taleb was involved in manufacturing or supplying as part of his work in the construction industry. [27] As referred to later in these reasons, [28] Elias Pty Limited was in fact a substantial shareholder in Akena, Akena Installations, Steadiform and Steadiform Holdings, and a substantial unit holder in the Steadiwall Intellectual Property Trust. Elias Pty Limited's proportionate shareholding in those companies and its unitholding in the trust increased in

June 2017 when Mr and Mrs Leedman caused Trilam Developments to surrender its shares and units in accordance with the deed that is the subject of these proceedings.

7. In her affidavit sworn on 8 July 2021 in the Helou proceedings, Ms Chahhoud deposed that she was the sole director of Elias Pty Limited, and that the company's main purpose was asset holding. Thus, Ms Chahhoud was aware by no later than July 2021, and well before the commencement of the present proceedings in May 2022, that she was the sole director of Elias Pty Limited.
8. As I have already mentioned, Ms Chahhoud and Elias Pty Limited defended the Helou proceedings on the basis that Ms Chahhoud had not authorised Mr Taleb to sign the loan agreement in issue in those proceedings on her behalf or on behalf of Elias Pty Limited. [29] In her 8 July 2021 affidavit, Ms Chahhoud referred to that loan agreement as "the Purported Loan Agreement". Ms Chahhoud deposed:

"I did not and never have authorised, instructed or given permission to the Second Defendant [Mr Taleb], or any other person to sign the Purported Loan Agreement on behalf of myself or the Sixth Defendant [Elias Pty Ltd].

...

At no time did I cause the Sixth Defendant, or authorise anyone, to draw funds from the Sixth Defendant to repay Mr Helou or another person at his direction."

1. As Counsel for the plaintiffs put to Ms Chahhoud in cross-examination in these proceedings, it was implicit in Ms Chahhoud's evidence in the Helou proceedings that, as the sole director of Elias Pty Limited, she was the only person who could cause that company to enter into any agreement, and the only person who could authorise the use of that company's funds to make any payment. It was implicit that Mr Taleb had no ability or authority to act on behalf of Elias Pty Limited, without Ms Chahhoud as sole director specifically conferring such authority on him. The evidence given by Ms Chahhoud under cross-examination in these proceedings denying those propositions (that is, denying that those matters were implicit in her evidence in the Helou proceedings) was implausible and I reject it.
2. During cross-examination in these proceedings, Ms Chahhoud doubled down on her assertion that she only became aware through these proceedings that she was the sole director of Elias Pty Limited. Ms Chahhoud gave a detailed account of how she claims to have become aware of her position as sole director through these proceedings, which was inconsistent with the account given in her 12 March 2024 affidavit. Ms Chahhoud gave the following evidence:

"Q. [Reading from Ms Chahhoud's affidavit affirmed on 12 March 2024 in these proceedings] It says "As a result of these proceedings I have become aware that I was an [sic] am the sole director and secretary of Elias Pty Ltd."

A. WITNESS: Yes.

Q. It's not true that you only became aware of that as a result of these proceedings?

A. WITNESS: It is true.

Q. But in your affidavit in the Helou proceedings you said that you were a director of that company for five years?

A. WITNESS: Yes. True.

Q. So it was a lie, wasn't it, for you to write in these proceedings that you've become aware that you were and are the sole director and secretary of Elias as a result of these proceedings? That is the proceedings that are now before the Court, before her Honour?

A. WITNESS: No, I wasn't lying.

Q. What explanation do you have for saying in this affidavit [referring to Ms Chahhoud's 12 March 2024 affidavit in the present proceedings] at paragraph 28 that you only became aware that you were the sole director and secretary of Elias Pty Ltd as a result of these proceedings?

A. WITNESS: I wasn't lying.

A. INTERPRETER: I knew that I am the – or that I became the only director. I did not know before. I thought there was – Eli was with us. The lawyers told me "You are the only responsible person, and there is nobody else".

Q. When do you say these lawyers told you that?

A. INTERPRETER: When I went to speak to them, they checked on their laptop, on their computer. That's when they told me "No, you are the only one", because they checked something about what's in my name. I don't know, but that's what they said. I don't know.

A. WITNESS: ... (Foreign language) ... what's on my name, what's not in – on my name, and then they said "No, you're the only one director. There's no-one else director with you." That's what they said. I don't know.

A. INTERPRETER: They checked on their laptop.

Q. Look at the second sentence of paragraph 28 [referring to Ms Chahhoud's affidavit affirmed in these proceedings on 12 March 2024]. You've said that you became aware – that is, became aware that you were the sole director and secretary of Elias – when you saw you signed some pages that formed a deed the subject of the dispute in these proceedings?

A. (No verbal reply)

Q. Is that true, or is what you just said a moment ago true?

A. INTERPRETER: Both are correct, because they also showed me papers.

A. WITNESS: My signature on it.

Q. You're just making this up as you go along right now, aren't you?

A. WITNESS: No. You can't assume that ... (Foreign language) ...

A. INTERPRETER: You cannot say that.

..."

1. I formed the impression that Ms Chahhoud's detailed account of lawyers having undertaken searches on their laptops in her presence and ascertained that she was the sole director of Elias Pty Limited had been made up on the run in cross-examination in an effort to lend substance to her claim that she first became aware of her position as sole director through these proceedings, in circumstances where she perceives that it will assist her defence and cross-claim if she can distance herself from understanding the affairs of Elias Pty Limited.
2. Ms Chahhoud's failure to answer when first confronted with the different account given in her affidavit affirmed on 12 March 2024 was an uncomfortable silence. Her silence and her demeanour at the time suggested to me that she had forgotten that she had given that different account in her affidavit. Ms Chahhoud's assertion that both accounts are true is a further lie. Neither account is true, because, as I have already mentioned, Ms Chahhoud was aware that she was the sole director of Elias Pty Limited by no later than 8 July 2021 when she swore her affidavit in the Helou proceedings identifying herself as the sole director.
3. When this was put to her in cross-examination in these proceedings, Ms Chahhoud said that, according to the research undertaken by the solicitor acting for her in the Helou proceedings, she was the sole director, and that she had agreed to say so in her 8 July 2021 affidavit on the basis of what her solicitor told her at the time. However, Ms Chahhoud added that, "till now, I'm not 100% sure". Expanding on that answer, Ms Chahhoud said: "I don't know if I'm the only one because I never been ... I was never asked about anything, no-one took my opinion about anything. I know that I am a director by name but I have no other things, I don't know anything".
4. That answer does not explain Ms Chahhoud's evidence given in paragraph 28 of her 12 March 2024 affidavit that she became aware through these proceedings that she was, and remains, the sole director of Elias Pty Limited – which accepts that she is in fact the sole director – in circumstances where she has known this since at least 8 July 2021 when she gave evidence in the Helou proceedings identifying herself as the sole director and impliedly asserting that she was the only person with authority to act on behalf of Elias Pty Limited. As I have already said, Ms Chahhoud's evidence in paragraph 28 of her 12 March 2024 affidavit is false. As was put to Ms Chahhoud in cross-examination, it was a deliberate lie to try and distance herself from Elias Pty Limited in circumstances where she perceives that this will be helpful to her defence and cross-claim in these proceedings.
5. For all of the reasons explained at [25]-[54] and [84]-[97] above, I do not accept Ms Chahhoud's uncorroborated evidence in these proceedings about the nature of her relationship with Mr Taleb, and the "dynamic" between her and Mr Taleb, during the course of their twelve year marriage.

July 2014 dinner

1. It is common ground that Mr and Mrs Leedman came to dinner at the home of Mr Taleb and Ms Chahhoud in July 2014. This was the first occasion on which Ms Chahhoud met Mr and Mrs Leedman. Ms Chahhoud has given evidence that Mr Roi also attended the dinner. Mr and Mrs Leedman, who had met Mr Roi prior to the dinner, deny that he attended the dinner. Nothing turns on whether or not Mr Roi was present.
2. In her affidavit affirmed on 12 March 2024, Ms Chahhoud gave evidence that the conversation at the dinner was conducted in English. Ms Chahhoud deposed that everybody was speaking at a fast pace about things of which she says she had no background knowledge or understanding. She was preoccupied with cooking and serving the food, and the others did not invite her to participate in the conversation, or attempt to explain to her what they were talking about. Ms Chahhoud deposed that she cannot now recall what was said, and that they were speaking at a pace that was too fast for her to understand. According to Ms Chahhoud's evidence, she had some limited conversation with Mrs Leedman during the evening about the food that she had prepared for the dinner, about her children, and about how she would wash up all the dishes after the dinner.
3. In cross-examination, Ms Chahhoud initially said that she did not remember speaking to Mr and Mrs Leedman at all during the course of the evening. When reminded about the contents of her affidavit, Ms Chahhoud reverted to her evidence that she had limited conversation which involved her answering any questions that Mr and Mrs Leedman asked about the food or about her children. Ms Chahhoud said that she could not recall whether there was any discussion about her having undertaken some university studies in Lebanon. She did not recall whether she indicated to Mr and Mrs Leedman that she had any difficulty understanding English.
4. According to Mrs Leedman's first affidavit sworn on 4 October 2023, she had a conversation with Ms Chahhoud at dinner about her background, in which Mrs Leedman also shared her own family background with Ms Chahhoud. Mrs Leedman no longer recalls exactly what was said, but she recalls that either Ms Chahhoud or Mr Taleb mentioned that Ms Chahhoud had been to university or undertaken some further education after completing high school in Lebanon. Mrs Leedman gave evidence that, whilst she noticed that Ms Chahhoud had a slight accent, she had no difficulty speaking with Ms Chahhoud in English.
5. In her second affidavit sworn on 6 April 2024, Mrs Leedman gave evidence that she had several conversations in English with Ms Chahhoud throughout the evening. Mrs Leedman deposed that she did not recall what they had spoken about, other than the food that Ms Chahhoud had served. Mrs Leedman deposed that she recalled that Ms Chahhoud had a slight accent, but that it was not difficult to understand what she was saying, and that she did not observe Ms Chahhoud experiencing any difficulty engaging in conversation with Mrs Leedman in English.

6. Given the passage of time since July 2014, it is understandable that Mrs Leedman no longer has a detailed recollection of the substance of her conversation with Ms Chahhoud over dinner, and it is unremarkable that Mrs Leedman's account of those conversations in her second affidavit contains even less detail than her account in her first affidavit sworn six months earlier.
7. In his affidavit sworn on 5 October 2023, Mr Leedman gave evidence that Ms Chahhoud had participated fully in the conversation at the dinner table, that he had no difficulties understanding her English, and that she did not seem to him to have any difficulties understanding what he said. Mr Leedman deposed that their discussion was mainly "social chitchat", and he does not recall any discussion about business affairs. In his subsequent affidavit sworn on 6 April 2024, Mr Leedman confirmed his recollection that Ms Chahhoud was included in the discussions over dinner. Mr Leedman deposed that he no longer has any detailed recollection of what was discussed, but that he recalled Ms Chahhoud speaking about her early life in Lebanon, about attending university there, about how she had met Mr Taleb, and about her children and step-children. Mr Leedman deposed that Ms Chahhoud does have a slight accent when she speaks English, but he had no difficulties understanding her and he did not perceive that she had any difficulties understanding him or others at the dinner when they spoke to her in English.
8. I accept as inherently probable Ms Chahhoud's evidence that she was preoccupied with cooking and serving the food when Mr and Mrs Leedman came to her home for dinner at Mr Taleb's invitation in July 2014. I accept the evidence of Mr and Mrs Leedman, which is not inconsistent with Ms Chahhoud's evidence, that they had some conversation with Ms Chahhoud during the course of the evening, including about her life in Lebanon, her university studies there, and her children, and that those conversations were conducted in English. For the reasons explained at [24] above, I accept that their interactions with Ms Chahhoud on the occasion of the dinner did not cause them to think that she had any difficulty understanding and communicating in the English language, although it would have been clear to them from the discussion about her life in Lebanon and from the slight accent that they observed that English was not Ms Chahhoud's first language. I note that Ms Chahhoud does not claim to have communicated with Mr and Mrs Leedman in Arabic through Mr Taleb interpreting for her. Nor does she claim to have done anything else, or to have said anything to Mr and Mrs Leedman, that would have alerted them to any difficulty that she now says she experienced understanding the English conversation at the dinner table on that occasion.

Limited dealings between Mr and Mrs Leedman and Ms Chahhoud

1. In his affidavits sworn on 5 October 2023 and 6 April 2024, Mr Leedman deposed that he saw Ms Chahhoud only a couple of times in the year or so after the July 2014 dinner, and that he did not recall seeing her or speaking with her at any time after about mid-2016. Mr Leedman did not recall what he spoke about with Ms Chahhoud on the few occasions that he saw her

after the July 2014 dinner, but he did not suggest that they discussed any business matters. Mr Leedman did not recall any occasion on which Ms Chahhoud had indicated to him that she did not understand what he was saying to her in English.

2. In cross-examination, Mr Leedman was asked whether he knew that Mr Taleb was controlling and strict with Ms Chahhoud and their children. Mr Leedman answered that he did not know that. Mr Leedman was also asked whether he and Mr Taleb had ever discussed the relationship between Mr Taleb and Ms Chahhoud. Mr Leedman answered that he and Mr Taleb had sometimes discussed their families and that, during such discussions, Mr Taleb had spoken of Ms Chahhoud and their children in a caring, loving and respectful way, and that Mr Leedman "never thought for one time ever that there would be any issues with your, with your marriage or your relationship". Mr Leedman readily acknowledged in cross-examination that he had not asked Ms Chahhoud about her relationship with Mr Taleb. That is understandable, having regard to the very limited contact between Mr Leedman and Ms Chahhoud.
3. In her affidavit sworn on 4 October 2023, Mrs Leedman deposed that she and Ms Chahhoud were not close, and that she had spoken to Ms Chahhoud only a couple of times after first meeting her at the July 2014 dinner. Mrs Leedman deposed that she and Ms Chahhoud "never talked business".
4. Ms Chahhoud gave evidence that she had no further contact with Mr and Mrs Leedman after the July 2014 dinner until just after the birth of her daughter, Rebecca, in April 2015. According to Ms Chahhoud's evidence, Mrs Leedman came to visit her at her home one evening after Rebecca's birth, bringing a gift. Mrs Leedman stayed for about 25 minutes, during which they discussed their children, Ms Chahhoud's pregnancy, and how she was feeling. Mr Taleb was present throughout the visit.
5. Mrs Leedman gave evidence of visiting Ms Chahhoud at her home following the birth of a child in about September 2018. Save for the timing of the visit, Mrs Leedman's account of it was consistent with Ms Chahhoud's account in all material respects. I accept Ms Chahhoud's evidence that the visit occurred in 2015, shortly after the birth of her daughter, Rebecca. Ms Chahhoud's unchallenged evidence is that she has four children with Mr Taleb, who were aged 14, 11, 8 and 3 years old at the time Ms Chahhoud affirmed her affidavit in these proceedings on 12 March 2024. It follows that the youngest child, Elena, was born in 2020 or 2021, when Mr Taleb and Ms Chahhoud were living in Lebanon. No child was born to Ms Chahhoud in Australia after the birth of Rebecca in 2015. Mrs Leedman was mistaken in her recollection that the visit occurred in 2018. I note that this was not directly put to Mrs Leedman in cross-examination, but she did appear to be uncertain about the timing of the visit when asked about it. That is understandable, given the passage of time.
6. In her affidavit affirmed on 12 March 2024, Ms Chahhoud gave evidence that the July 2014 dinner and Mrs Leedman's 2015 visit were the only occasions on which she met Mr or Mrs Leedman. She had no other communications with them, save for sending a message via Mr

Taleb to thank them for some flowers that they sent her on one occasion when she was in hospital. In cross-examination, however, Ms Chahhoud acknowledged that she had met Mr Leedman a few more times in the year or two after the July 2014 dinner, because Mr Taleb had brought Mr Leedman to their home in Pialligo, near Canberra. Ms Chahhoud did not remember speaking with Mr Leedman on those occasions.

7. Mrs Leedman gave evidence that she had spoken with Ms Chahhoud "a couple of times" in addition to the July 2014 dinner and her subsequent visit to Ms Chahhoud which I have found occurred in 2015 rather than in 2018. Mrs Leedman provided no details of those interactions, save to say that Ms Chahhoud had never said anything to her about any bullying or anger that Mr Taleb subjected her to, either in relation to their business affairs or more generally.
8. Considering this evidence as a whole, I find that there was limited contact between Ms Chahhoud on the one hand and Mr and Mrs Leedman on the other hand during the period of about two years after the July 2014 dinner. I find that that this contact ceased by about mid-2016, by which time Mr Leedman was negotiating with Mr Taleb the terms on which Trilam Developments would exit from its investment in Class 1 Form and in the Akena and Steadiform companies, as referred to below. [30] For the reasons explained at [24] above, I accept the evidence of Mr and Mrs Leedman that nothing occurred in the course of their limited contact with Ms Chahhoud in the period after July 2014 which caused them to think that she had any difficulty understanding and communicating in the English language.
9. I also accept the evidence of Mr and Mrs Leedman that nothing in their interactions with Ms Chahhoud, or in Mr Leedman's interactions with Mr Taleb, caused them to think that Ms Chahhoud was subjected to any kind of bullying or aggression in her relationship with Mr Taleb, as Ms Chahhoud has alleged in these proceedings. Even Ms Chahhoud did not suggest that Mr and Mrs Leedman were aware of that alleged conduct. On the contrary, Ms Chahhoud gave evidence in cross-examination that, in the presence of others, Mr Taleb was "always protecting their beautiful image".

Negotiations for the dissolution of the business relationship from mid-2015

1. In mid-2015, Class 1 Form became involved in a security of payments dispute with a building company known as RGD Constructions.
2. Mr Leedman gave evidence that he lacked the appetite to deal with Class 1 Form's construction disputes, and he did not get along with Class 1 Form's employee who was responsible for managing those disputes, Mr Peter Zardo. Mr Leedman therefore resigned as a director of Class 1 Form in September 2015.
3. By late 2015, Mr and Mrs Leedman had decided that they wanted to exit their investment in Class 1 Form. Mr Leedman discussed this with Mr Taleb, who said that he would find another investor to buy them out.

4. Certain proceedings were commenced in about mid-2015, which Mr Leedman refers to as the "Arona litigation". Mr Taleb, LFS and Mr Leedman were defendants in those proceedings. Mr Taleb engaged Legal on London to represent him, and Mr Leedman engaged Ashurst to represent him and LFS.

October 2015: Ms Chahhoud becomes the sole director and shareholder of Elias Pty Limited

1. Ms Chahhoud was appointed as a director of Elias Pty Limited on 12 October 2015. Mr Taleb resigned as a director on the same date. As discussed earlier in these reasons, Ms Chahhoud consented to her appointment at the time. Contrary to the evidence given by Ms Chahhoud in these proceedings, she was well aware by no later than July 2021 that she was the sole director of Elias Pty Limited. I do not accept Ms Chahhoud's assertions in these proceedings that she was the director of Elias Pty Limited in name only. Those assertions are inconsistent with her evidence in the Helou proceedings, which clearly implied that Ms Chahhoud was in fact in control of the affairs of Elias Pty Limited. [31]
2. According to ASIC's records, Ms Chahhoud became the sole shareholder of Elias Pty Limited on about 2 November 2015. Elias Pty Limited, in turn, held shares in Akena, Akena Installations, Steadiform Holdings (then known as Akena Holdings) and Steadiform (then known as Steadiwall). Elias Pty Limited also held units in the Steadiwall Intellectual Property Trust.
3. As the plaintiffs acknowledged, Elias Pty Limited was the trustee of a trust. Ms Chahhoud did not adduce any evidence in these proceedings concerning the nature and terms of that trust. Nor did Ms Chahhoud adduce any evidence suggesting that Elias Pty Limited held the shares and units referred to above in its capacity as trustee of that trust, rather than for its own benefit, when Ms Chahhoud became the sole director and shareholder of Elias Pty Limited in October and November 2015, or in June 2017 when Ms Chahhoud signed the deed that is the subject of these proceedings. ASIC company extracts for Akena, Akena Installations, Steadiform Holdings, and Steadiform that were tendered in these proceedings record that Elias Pty Limited was the beneficial owner of the shares of which it was registered as the holder in each of those companies, at least at the various dates of those searches. No documents were produced to the Court in response to a notice to produce issued by the plaintiffs to Ms Chahhoud, and a subpoena issued by the plaintiffs to the proper officer of Elias Pty Limited, requiring production of, inter alia, the trust deed of the trust of which Elias Pty Limited is the trustee, tax returns for that trust and for Elias Pty Limited, and financial records of that trust.

Further negotiations for the dissolution of the business relationship in 2016

1. In the first half of 2016, CSR Building Products alleged that Steadiform's formwork invention infringed CSR's patent. Mr Leedman and Mr Taleb had different views about how Steadiform should respond to those allegations.
2. By June 2016, Mr and Mrs Leedman had decided to exit their investment in the Akena and Steadiform companies in addition to Class 1 Form. Mr Leedman and Mr Taleb began discussing the buyout terms.
3. On 11 July 2016, Mr Taleb sent an email to Mr Leedman asking "if you Accepting this offer or not so I know how to get the legal paper done...".
4. On the morning of 12 July 2016, Mr Leedman sent an email to Mr Taleb stating:

"The offer of \$2 million dollars now to buy my shares of the collective companies is accepted.

This acceptance is subject to the preparation and receipt of a draft contract by your lawyer by cob next Monday, 18 July 2016 or earlier, for my review and if I agree to the terms and conditions. Is this timeframe possible? Please confirm.

Our expectation is finalisation of formal documents and payment by 25 July 2016."

1. Mr Taleb replied to Mr Leedman by email on the afternoon of 12 July 2016, stating:

"We can prepare it all by the time frame that you are requesting but still yet to receive the trust deed for the steadwall intellectual property trust and other other trust that we set up ... reason why is that we need to include in the deed all the parties involved."

1. I infer from this exchange of emails between Mr Taleb and Mr Leedman on 11 and 12 July 2016 that Mr Taleb had conveyed to Mr Leedman prior to 11 July 2016 an offer to buy out Trilam Developments' shares in Class 1 Form and in the Akena and Steadiform companies for \$2,000,000.
2. On the afternoon of 13 July 2016, Mr Rod Barnett, a Senior Consultant with the firm Legal on London, sent an email to Mr Leedman attaching what Mr Barnett described as a first draft of a Deed of Dissolution, Separation and Release.
3. That first draft named Mr Taleb, Ms Chahhoud, Mr Leedman and Mrs Leedman as the parties to the proposed deed.
4. The Recitals to the first draft stated:

"A. Both the Continuing and Retiring Entities have hitherto acted in association in carrying on business of structural formwork systems within the Australian Capital Territory and environs under the firm or style name Class 1 Form (the Firm) within the building industry.

B. Both the Continuing and Retiring Entities are desirous of dissolving their association in the joint-enterprise of the firm and to that end have come to an agreement between them as to provisions relating to the Retiring Entities and their disassociation with the Continuing Entities.

C. Both the Continuing and Retiring Entities are desirous of having their dissolution recorded in writing in accordance with the Operative Provisions set out hereunder."

1. The "Continuing Entities" were defined as Mr Taleb, Ms Chahhoud, Class 1 Form, Steadiform, Steadiform Holdings, C1F Investments Pty Ltd, and Elias Pty Limited As I have already mentioned, Ms Chahhoud was the sole director and shareholder of Elias Pty Limited. The first draft of the deed described Elias Pty Limited as a 50 per cent shareholder in each of Steadiform and Steadiform Holdings.
2. The "Retiring Entities" were defined in the first draft of the deed as Mr Leedman, Mrs Leedman and Trilam Developments Pty Ltd.
3. Clauses 3 to 6 of the first draft of the deed provided for the Continuing Entities "collectively" to pay the "Settlement Amount" of \$2,000,000 to the Retiring Entities "either collectively or severally" within 21 days from the date of the deed, in consideration for which the Retiring Entities were required to transfer to Mr Taleb their shares in Class 1 Form, Steadiform, Steadiform Holdings and C1F Investments, and to transfer to the Continuing Entities their units in the Steadiwall Intellectual Property Trust.
4. On Friday, 15 July 2016, Mr Leedman sent an email to Mr Barnett expressing his disagreement with some "fundamental principles" reflected in the first draft of the deed, and requesting that it be redrafted. Mr Leedman stated that, whilst he was content to execute the proposed deed once all of its terms were agreed, he would not agree to the dissolution of the business relationship, and the share transfers and unit transfers, taking effect before the Settlement Amount had been paid in full. Mr Leedman requested that the Continuing Parties provide confirmation on signing the proposed deed that they have the funds to pay the \$2,000,000. Mr Leedman concluded by reiterating his requirement, previously communicated to Mr Taleb, that the terms of the deed must be finalised to his satisfaction by Friday, 22 July 2016 so that settlement could occur on Monday, 25 July 2016, including payment of the \$2,000,000.
5. Mr Barnett replied to Mr Leedman's email that same morning, stating:

"Whilst the writer has not received confirming instructions from Elias at this stage, he does not find your requirements to be particularly controversial. Hence I will come back to you with regard to the amendments which you require."

1. Mr Leedman sent a further email to Mr Barnett on Monday, 18 July 2016 pressing for the amended draft deed and advising that he had engaged Mr Simon Brown of Ashurst to act on behalf of the Retiring Entities.

2. Mr Leedman sent a further follow up email to Mr Barnett on Wednesday, 20 July 2016. That elicited a response from Ms Radhika Reddy, a partner of Legal on London. Ms Reddy advised that they were working towards finalising the deed, but awaiting "confirmation that loans to settle the matter have been approved". Ms Reddy also referred to other (unspecified) issues that required clarification in order to finalise the deed.
3. Mr Brown pressed Mr Barnett for a revised draft of the deed on Monday, 25 July and again on Friday, 29 July 2016. Mr Barnett replied to Mr Brown on the afternoon of Friday, 29 July 2016: [CB2/167]

"I apologise for not having responded earlier. Elias Taleb is finalizing the arrangements for finance which are expected to be in place by the middle of next week. We will contact you then."

1. There is no evidence that Legal on London produced any revised draft of the deed.
2. In ongoing correspondence between Ashurst and Legal on London during October 2016, Ashurst reiterated that Mr and Mrs Leedman and Trilam Developments required payment of the agreed sum of \$2,000,000 on settlement, and that they would not accept payment in instalments over an extended period after settlement.

Ms Chahhoud's purchase and sale of property in Harrison in September and October 2016

1. Ms Chahhoud purchased an apartment in a residential block in Harrison, a suburb of the Australian Capital Territory, in September 2016, which she then sold in October 2016. The stamped transfer to Ms Chahhoud dated 13 September 2016 records the consideration paid by Ms Chahhoud as \$260,000. Ms Radhika Reddy of Legal on London witnessed the signature of Ms Chahhoud (as transferor) on the transfer of the property which was registered on 1 November 2016. That stamped transfer records the consideration paid to Ms Chahhoud as \$330,000.
2. In her affidavit affirmed on 12 March 2024, Ms Chahhoud gave the following account of her purchase and sale of the Harrison property. Ms Chahhoud wanted to buy a large block of land, and to buy animals for the land, for her daughters to enjoy. She wanted the land to be in her own name, because she wanted something of her own in Australia and she wanted to be able to keep the land in the family for her daughters. Mr Taleb took charge of searching for a property that fit Ms Chahhoud's description. In 2016, he told her that he had found a property which he had bought in her name. When Mr Taleb took Ms Chahhoud to see the property, she saw that it was an apartment. She told Mr Taleb: "Get rid of it, I don't want it. I'm not moving here". Mr Taleb then made the arrangements to sell the property. According to Ms Chahhoud's evidence, it was not until late 2018 or early 2019 that Mr Taleb approached her again about her proposal to acquire a property. That led to Ms Chahhoud acquiring the Peak View property, as referred to later in these reasons.

3. In cross-examination, Ms Chahhoud denied meeting with lawyers about the sale of the Harrison property. Ms Chahhoud said that, if she had met with lawyers, then she did not know they were lawyers, that Mr Taleb had been with her, and that "Elias acted on everything, not me".
4. Ms Chahhoud's signature on the transfer of the Harrison property that was registered on 1 November 2016 was witnessed by Ms Radhika Reddy, solicitor, of Legal on London. After being shown that transfer document bearing her signature as transferor and the signature of Ms Reddy as the witness, Ms Chahhoud gave evidence that "I never had a, a lawyer under this name". Ms Chahhoud did not deny meeting Ms Reddy, saying "probably I met her, but I don't remember". Ms Chahhoud was firm in her evidence that "I did not engage lawyer. No. I left it with Elias. I don't know what Elias did". Ms Chahhoud denied that any lawyer ever sought instructions from her in relation to the Harrison property.
5. The plaintiffs tendered a copy of a retainer letter issued by Ms Reddy of Legal on London and addressed to Ms Chahhoud dated 14 October 2016. The letter is unsigned, but was produced by Legal on London in response to a subpoena issued by the plaintiffs in these proceedings. The letter contains a heading referring to the sale of the Harrison apartment, and the opening paragraph reads: "We refer to your recent conference with us relating to the above matter". Ms Chahhoud denied that she had received the letter, and denied that she had ever seen it before it was shown to her in cross-examination. The plaintiffs also tendered a copy of an invoice on the letterhead of Legal on London addressed to Ms Chahhoud for professional fees and disbursements in respect of the sale of the Harrison property. The invoice names Ms Reddy as the "Person Responsible". In cross-examination, Ms Chahhoud denied receiving the invoice.
6. I accept the plaintiffs' submission that the retainer letter and the invoice, together with Ms Reddy's signature as witness to Ms Chahhoud's signature as transferor on the transfer of the Harrison property that was registered on 1 November 2016, is objective evidence that points overwhelmingly to the likelihood that Ms Reddy of Legal on London acted for Ms Chahhoud on the sale of the Harrison property, and that Ms Chahhoud did confer with Ms Reddy and provide instructions to Ms Reddy in relation to that transaction. It is highly improbable that Ms Reddy acted on the sale of a property registered in the name of Ms Chahhoud without taking instructions directly from Ms Chahhoud. I find that those things did happen.
7. The plaintiffs relied on these matters as relevant to Ms Chahhoud's credibility. They are matters that have contributed to my rejection of Ms Chahhoud's evidence about the nature of her relationship with Mr Taleb, and the dynamic between them, and to my overall assessment of the credibility of Ms Chahhoud. [32]
8. The plaintiffs also relied on Ms Reddy's meeting with Ms Chahhoud about the sale of the Harrison property in October 2016 as giving rise to an inference that Ms Reddy would have discussed with Ms Chahhoud the two letters that Ms Reddy received from Ashurst on or about 17 October 2016 in relation to the proposed deed of dissolution, and a proposed sale of

units in the Steadiwall Intellectual Property Trust. Ashurst were acting on behalf of Mr and Mrs Leedman and Trilam Developments. In cross-examination, Ms Chahhoud denied that she had seen those letters, and denied that Ms Reddy (whom she said she could not recall meeting) had discussed their contents with her.

9. The inference for which the plaintiffs contend is bound up with their submission that Legal on London were in fact acting for Ms Chahhoud as well as for Mr Taleb in relation to the deed the subject of these proceedings that was under negotiation in the latter half of 2016 and which was ultimately signed on 16 June 2017. I have rejected that submission for the reasons explained at [190] below. The terms of Ashurst's two letters addressed to Ms Reddy dated 17 October 2016 provide no support for an inference that Ms Reddy showed those letters to Ms Chahhoud or discussed their contents with her. The letters refer to correspondence that Ashurst had received from Legal on London on 13 October 2016. That earlier correspondence would be likely to be relevant to the plaintiffs' contention that Legal on London was acting for both Mr Taleb and Ms Chahhoud in relation to the proposed deed in October 2016. For reasons that were not explained, the plaintiffs failed to tender that earlier correspondence, which must form part of Ashurst's file, and which it was therefore within the power of the plaintiffs to procure and tender in these proceedings. I decline to draw the inference for which the plaintiffs contend.

Further negotiations concerning the dissolution of the business relationship from early 2017

1. By early 2017, Mr and Mrs Leedman and Trilam Developments had relaxed their requirement for payment of the \$2,000,000 Settlement Amount in full on settlement. Mr Leedman wrote to Mr Taleb on 9 January 2017 in the following terms:

"It appears once again the whole exit process has stalled.

I have a proposition for you. You want me gone, and I want to be gone. You want clear space to develop your products for local and overseas markets, and I want the same thing for you. I'm going to make it easy for you.

I will sign out of everything – all of our shared companies and my Directorships and shareholdings and walk away – no Escrow. I will do this upon receipt of a \$600,000 deposit and the balance of \$1,500,000 payable over 2 years. (Yes that's \$2.1m). I will not set a payment schedule at all, you can have the full 2 years to pay the balance, however to encourage you to pay instalments when you can, the debt will grow by 1% per month (compounding) on any outstanding balance month to month. Paying regular instalments will save money compared to paying it all at the end.

The other part of the deal is that I will have the right to seek recourse after 2 years against the company(s) and you personally if you do not pay the balance by then. Simon Brown (my lawyer) will write this or add it to the Deed of Dissolution that your lawyer has (or will prepare) detailing my exit.

...

I want this done in the next 4 weeks. Please have your lawyer prepare the Deed of Dissolution along those lines. Your insistence on a valuation may result in unwelcome attention from other parties, and will require a lot of work to produce and be quite costly, however I am prepared to go through with it if we can't agree on an amicable Deed of Dissolution. It's fairly safe to assume you have not assembled any documentation to support the valuation process as per my email to you on 16th of December 2016, and to be frank I don't think you had any intention to do this anyway."

1. Mr Leedman sent a further email to Mr Taleb on 17 January 2017 in the following terms:

"Please let me know your thoughts on my proposition in my email below. I would be happy to exist with an agreeable Deed of Dissolution, and this is our preference, and probably yours also. However, if you are unable to or unwilling to follow this path, then I will pursue the valuation if you would rather that. Vincents are perfectly capable and properly accredited to provide a valuation, so I don't think there would be any issues with the outcome once they have been engaged."

1. There is no evidence of any reply from Mr Taleb.

2. Mr Leedman sent a further email to Mr Taleb on 29 January 2017:

"Would you please reply to my email. Are you going to agree with my proposal below, or are we going to get the valuation done?

If I don't hear from you by Wednesday 1/2/17 I will presume that you won't be providing me with a Deed of Dissolution. Instead I will appoint Vincents to value the Steadiform IP, and then I will continue with the pre-emptive process of offering my shares for sale to you or anybody."

1. Mr Taleb replied on 9 February 2017:

"I only opened this email today and I saw your email last night come thru, my lawyer has been over seas all this time only landed in Australia on Sunday, and yet to catch up with him, I am trying to catch up with Him this week, as I mentioned to you before I wanted you to accept the terms that you have proposed in the deed maybe not entirely as I agree with maybe, I will meet with him this week or early next week honestly he has not been answering so will let you know shortly"

1. There is no evidence of any further communication between Mr Taleb and Mr Leedman until 8 March 2017, when Mr Taleb sent an email to Mr Leedman stating that he agreed to pay \$500,000 "up front" and a further \$1,500,000 over a period of two years on the terms outlined by Mr Leedman, subject to the interest not beginning to accrue until 45 days after

the date of settlement. Mr Leedman replied on 14 March 2017, reiterating that his offer was to accept \$2,100,000 in return for "me signing out of everything and handing the shares back to you 100%", with \$600,000 to be paid on settlement and the remaining \$1,500,000 to be paid within two years with interest accruing at the rate of 1% per month.

2. Mr Leedman sent an email to Mr Taleb on 5 April 2017 outlining the key terms to be included in the proposed deed. That email was not tendered in evidence.
3. On 7 April 2017, Mr Taleb sent an email to Mr Leedman seeking clarification about various matters concerning the proposed deed, and stating "if all good then we get Simon to draft this". Mr Taleb also asked how long Mr Brown would need to prepare the deed "so I get my lawyer to go they it [sic – through it]". However, Mr Taleb requested that the deed be sent directly to him, and not Abdullah, "as I would or may like to give this one to someone cheaper to go thru it". Other contemporaneous documentary evidence identifies a person named Abdullah as a solicitor at Legal on London.
4. There is no evidence of any reply by Mr Leedman to that email from Mr Taleb.
5. On 27 April 2017, Mr Leedman sent an email to Mr Taleb attaching what Mr Leedman described as a revised deed of dissolution prepared by "my solicitors" and containing "the key terms outlined in my email of 5 April 2017". Mr Leedman proposed settlement on 5 May 2017. Mr Leedman's email was copied to Ms Rebecca Roach, a Senior Associate at Ashurst who I infer was assisting Mr Brown in relation to the draft deed.
6. It will be recalled that the first draft of the deed prepared by Legal on London on 13 July 2016 had defined the "Continuing Entities" as Mr Taleb, Ms Chahhoud, Class 1 Form, Steadiform, Steadiform Holdings, C1F Investments, and Elias Pty Limited, the "Retiring Entities" as Mr Leedman, Mrs Leedman and Trilam Developments. In the revised draft deed prepared by Ashurst on 27 April 2017, the definition of Continuing Entities was changed by removing C1F Investments and adding Akena Pty Ltd and Akena Installations Pty Ltd. There was no change to the definition of the Retiring Entities. All of the Continuing Entities and the Retiring Entities were named as parties to the revised draft deed. Mrs Leedman continued to be named as a party even though, by reason of the removal of C1F Investments, she was no longer the owner of any shares that were the subject of the transactions proposed to give effect to the dissolution of the business relationship.
7. The Recitals to the revised draft deed recorded that:

"(A) The Continuing Entities and the Retiring Entities have carried on the Business through the Association.

(B) The Continuing Entities and the Retiring Entities are desirous of dissolving their Association on the terms outlined in this document.

(C) The Retiring Entities wish to cease their involvement in the Business. The Continuing Entities intend to continue carrying on the Business."

1. The revised draft deed defined "Association" as meaning:

"Association means all agreements that are either formal (written) or informal (oral) or both, legal relationships, and commercial relationships between the Continuing Entities and the Retiring Entities, whether formally or informally constructed and in their capacities as:

- (a) individual legal persons;
- (b) shareholders of the Affected Entities;
- (c) directors or officers of the Affected Entities;
- (d) trustees of any trust which holds shares in the Affected Entities;
- (e) agents for other individual legal persons;
- (f) agents for the shareholders of the Affected Entities; or
- (g) any other legal, personal or commercial agreement or relationship between the parties.

For an abundance of clarity, the reference to Association does not mean or imply that a formal Association has been agreed or been executed by the Entities mentioned in this document."

1. The revised draft deed defined the "Affected Entities" as Class 1 Form, Steadiform, Steadiform Holdings, Akena, and Akena Installations. Elias Pty Limited was not an Affected Entity, but was a 50 per cent shareholder in two of the Affected Entities – Steadifom and Steadiform Holdings – as I have referred to earlier in these reasons. [33]

2. The term "Business" was defined as meaning:

"Business means the commercial or legal relationship carried on by the Association in relation to the activities of the Affected Entities, including the development of the Structural Formwork Systems under the name 'Class 1 Form' and continuing on into 'Steadiform'."

1. It will be recalled that the first draft deed prepared by Legal on London provided for the dissolution to be effective from the date of execution of the deed, with the Settlement Amount of \$2,000,000 to be paid within 21 days thereafter. The transfers of the relevant shares from the Retiring Entities to Mr Taleb, and the transfers of the Retiring Entities' units in the Steadiwall Intellectual Property Trust to the Continuing Entities, were to be undertaken concurrently with the payment of the Settlement Amount.
2. Clause 3 of the revised draft deed prepared on 27 April 2017 provided for the dissolution of the Association on and from the "Effective Date" by the Retiring Entities surrendering (rather than transferring) their interest in the shares and units, assigning to the Continuing Entities their interest in the intellectual property in the product known as Steadiform and Steadiwall and in structural formwork systems carried on by the Business, and surrendering their interest in the other assets of the Business, including goodwill.

3. Clause 4 of the revised draft deed provided that, in consideration for the Retiring Entities dissolving the Association in accordance with clause 3, the Continuing Entities would "collectively" pay the "Settlement Amount" to the Retiring Entities by an initial payment of \$600,000 on the date of the deed and a further amount of \$1,500,000 within two years after the date of the deed.
4. The "Effective Date" for the dissolution provided for in clause 3 was defined as the date on which the Retiring Entities (or any one of them) notify the Continuing Entities (or any one of them) in writing that the "Initial Payment" of \$600,000 has been received.
5. Clause 5 of the revised draft deed contained mutual releases by the Continuing Entities in favour of the Retiring Entities, and by the Retiring Entities in favour of the Continuing Entities, in relation to any claim that they may have in relation to or in connection with the Affected Entities, C1F Investments, the Business or the Assets.
6. Clause 6 of the revised draft deed provided that the Continuing Entities would have the benefit and burden of all contracts of the Affected Entities that remained unsatisfied on the Effective Date.
7. Clause 7.1 of the revised draft deed provided:

"Each Continuing Entity grants a security interest in its present and after-acquired property, including anything in respect of which the Continuing Entity has at any time a sufficient right, interest or power to grant a security interest to each Retiring Entity to secure payment of the Settlement Amount."

1. The first draft deed prepared by Legal on London did not include any governing law clause. Clause 14.5 of the revised draft deed prepared on 27 April 2017 stipulated that the deed was governed by the laws of Queensland.
2. Clause 14.8 of the revised draft deed contained a warranty by each party that "they have received independent legal and financial advice in relation to their rights, duties and obligations under this document and the transactions it contemplates".
3. On the face of the terms of the revised draft deed prepared on 27 April 2017, Ms Chahhoud was one of the Continuing Parties to receive an assignment of the Retiring Parties' interest in the intellectual property in the product known as Steadiform and Steadiwall and in the structural formwork systems carried on by the Business.
4. On 4 May 2017, Mr Taleb informed Mr Leedman by text message that he had sent the revised draft deed "to the lawyer to go over".
5. It will be recalled that Mr Leedman's email to Mr Taleb on 27 April 2017 had proposed settlement on 5 May 2017. Mr Leedman sent a text message to Mr Taleb that day asking "are we settling today?". In a further message sent on 6 May 2017, Mr Leedman asked: "So, what happened? Are you proceeding with this settlement or not?".

6. Mr Taleb responded on 6 May 2017 in the following terms:

"First of all everything does not involve [sic – revolve] just around you, we agreed on couple of points to have in the deed and from what it looked like you kept going back in forth [sic – back and forth] with the solicitor couple of time for couple of weeks to get what you want and you sent it to me on Thursday ... you got your time to prepare things now chill so I can do my part as well and make sure your deed does not have any surprises in it too other than [sic – than] what was agree on, and will notify you shortly with a date so I can sign it if all is well"

The events of 14 June 2017

1. At 8:50am on 14 June 2017, Mr Leedman sent an email to Ms Roach of Ashurst stating:

"Elias has a bank cheque apparently ready to sign the deed. I texted him your number, he wants to meet the lawyers to sign the deed. However he is in Canberra. ...

I asked him to ring you to arrange a meeting. Obviously this will have to take place in the Canberra office of Ashurst. Would it be possible please when he calls if you were able to set up an appointment with someone at the Canberra office to do this today and preferably this morning as he has just texted and wants to meet someone at 9.30am. ..."

1. It appears that the deed had not quite been finalised when Mr Taleb communicated to Mr Leedman that he was ready to sign it. Ms Roach sent an email to Mr Leedman at 10:06am on 14 June 2017 attaching a further revised draft deed, which Ms Roach described as having been amended to include the Steadiwall Intellectual Property Trust as an Affected Entity, and to provide for execution of the deed by Steadiform Holdings in its own capacity and in its capacity as trustee of the Steadiwall Intellectual Property Trust. Ms Roach's email to Mr Leedman continued:

"Please sign the deed and return a signed copy to us to hold until Elias signs the deed. Please do not date the deed.

We will arrange for someone in our Canberra office to be available to meet with Elias. I am still in the process of making those arrangements and will confirm a time as soon as possible. As discussed, there is a risk that even if Elias signs the deed, he may not follow the terms of the deed and may not pay you any further amounts owed under the deed.

As previously discussed, there are a number of resolutions, share transfer forms and ASIC forms that are needed to cancel the shares/units in the various entities. Given the timing, these have not been prepared and they will take some time to prepare given the number of entities involved..."

1. In a further email to Mr Leedman at 10:12am on 14 June 2017, Ms Roach wrote:

"... you should send a copy of the updated deed to Elias.

He should have the deed prior to arriving at our Canberra office. Given that we are not representing Elias (and we understand that he will not have his legal representatives present), it will not be appropriate for our lawyers to explain the terms of the deed to him."

1. The deed in the further revised form attached to Ms Roach's 14 June 2017 email was executed by Mr Leedman in his personal capacity, by Mrs Leedman in her personal capacity, by Trilam Developments, and by Mr Leedman in his capacity as a director of Steadiform Holdings (in its own capacity, and its capacity as trustee of the Steadiwall Intellectual Property Trust). At 10:48am on 14 June 2017, Mr Leedman emailed a copy of the revised draft deed to Mr Taleb, stating:

"Please see attached Deed of Dissolution, Separation and Release for your information. I have signed again today and forwarded a copy to the solicitor. It is undated.

Rob Andersen is available from 11am till noon this morning at his office at Ashurst Solicitors, 12 Moore Street, Canberra City.

You will need to take a signed copy of this Deed (including Chadia's signature and witnesses) to the appointment with the deposit cheque/s."

1. At 4:30pm on 14 June 2017, Mr Leedman sent an email to Mr Taleb responding to questions that Mr Taleb had asked in a text message earlier that afternoon about whether the company minutes required to give effect to the dissolution and the resignation of Mr Leedman as a director of the relevant entities had been signed. Mr Leedman advised that those resolutions and other forms required to give effect to the agreed cancellation of shares had not yet been prepared and would take some time to prepare. Mr Taleb's text message had stated that he was awaiting legal advice on the further revised version of the deed that Mr Leedman had sent to him earlier that morning. Mr Leedman's email stated "[t]hat's fine", and requested the name and contact details of the lawyer. Mr Leedman wrote: "Lawyers need to talk to one another, not the way you are doing it through me which reflects no proper representation and asking questions a lawyer should be advising you on".
2. In a further email sent to Mr Taleb at 4:50pm on 14 June 2017, Mr Leedman informed him that Ashurst had advised that they could prepare the necessary ASIC forms by the morning of Friday, 16 June 2017. Mr Leedman suggested that it would therefore be best for Mr Taleb to defer visiting Ashurst's offices until the afternoon of 16 June 2017.

The events of 16 June 2017

1. At 7:46am on 16 June 2017, Mr Leedman forwarded to Mr Taleb an email that he had received from Ms Roach attaching the relevant company minutes, ASIC forms and similar documents and stipulating the order in which they were required to be signed. Mr Leedman requested Mr Taleb to follow the steps set out in Ms Roach's email.

2. Mr Leedman's email also stated that he agreed to "start the time period from today for \$600K". It appears from other contemporaneous emails and text messages that this was an agreement by Mr Leedman to abandon his previous position that, if settlement did not occur on 5 May 2017, the amount of the initial payment under the deed would increase by \$20,000 for each month thereafter.

3. Finally, Mr Leedman's email stated:

"You will see that Chadia Chahhoud as Sole Director [sic] of Elias Pty Ltd needs to also sign the deed and ancillary documents and will need to be available today."

1. In fact, as Ms Chahhoud personally was named as a party to the deed, she was required to execute the deed in her personal capacity in addition to signing the deed in her capacity as sole director of Elias Pty Limited. Mr Leedman had previously pointed this out to Mr Taleb in his 14 June 2017 email to which I have referred above.
2. In his affidavits sworn on 5 October 2023 and 6 April 2024, Mr Leedman deposed that he did not discuss the terms of the proposed deed directly with Ms Chahhoud at any stage during the negotiations of those terms. Mr Leedman deposed that he assumed that Legal on London were representing Ms Chahhoud in relation to the deed because they had named her as a party to the first draft of the deed which they had prepared in July 2016. Mr Leedman handled all of those negotiations on behalf of Trilam Developments. Mrs Leedman did not participate in the negotiations, and did not have any communications with Mr Taleb or Ms Chahhoud about the terms on which Trilam Developments was to exit from its investment in Class 1 Form, the Akena companies and the Steadiform companies.
3. The email correspondence concerning the first draft of the deed, and the subsequent drafts prepared by Ashurst, refers to Legal on London taking instructions from Mr Taleb. That email correspondence makes no reference to Ms Chahhoud. However, Mr Taleb had emphasised in an email that he sent to Mr Leedman on 12 July 2016, before Legal on London prepared the first draft of the deed, the importance of including in the deed "all the parties involved". [34] I infer that Ms Chahhoud was named as one of those parties in the first draft of the deed circulated by Legal on London by email on 13 July 2016 because Mr Taleb instructed Legal on London that Ms Chahhoud was one of "the parties involved". As I have already observed, it appeared from the first draft of the deed that Ms Chahhoud was involved as one of the Continuing Entities to whom the Retiring Entities were obliged to transfer their units in the Steadiwall Intellectual Property Trust and to assign their interest in intellectual property, and as one of the Continuing Entities collectively obliged to pay \$2,000,000 to the Retiring Entities in consideration for the transfer of those units and for the transfer of shares to Mr Taleb. The email sent by Mr Barnett of Legal on London to Mr Leedman on 13 July 2016 attaching the first draft of the deed was not sent to any other party, and made no reference to the need for the involvement of any other party in the review and negotiation of the terms of the draft deed. In those circumstances, it is readily understandable that Mr Leedman would have assumed that Legal on London were acting for all of the Continuing

Entities defined in the first draft of the deed, including Ms Chahhoud, just as Mr Leedman was negotiating on behalf of himself, Mrs Leedman and Trilam Developments as the Retiring Entities and subsequently retained Ashurst to act on behalf of the all of the Retiring Entities. I accept Mr Leedman's evidence that he did assume that Legal on London were acting for Ms Chahhoud as well as for Mr Taleb in relation to the proposed deed. However, I reject the submission made on behalf of the plaintiffs that Legal on London were in fact acting for Ms Chahhoud in relation to the proposed deed. There is no evidence that the firm acted for Ms Chahhoud in relation to that matter. The fact that they acted for her in relation to the sale of the Harrison apartment in October 2016 does not provide a rational basis for inferring that they also acted for her in relation to the proposed deed. I repeat my observations at [150] above.

4. A series of emails were exchanged between Mr Taleb and Mr Leedman between 8:06am and 9:52am on 16 June 2017 in which Mr Taleb proposed and Mr Leedman agreed to further changes to the deed in relation to "the RGD issue", the removal of "late charges" of \$20,000 month for delay in the initial payment, and the payment of the legal costs associated with the preparation of the deed. Mr Leedman told Mr Taleb that he would have to make those changes by hand, and that Mr Leedman would then initial a scanned copy of the deed containing those changes.
5. At 9:57am on 16 June 2017, Mr Taleb wrote to Mr Leedman: "OK are we good for 11 am or 11:30, which ever works". Mr Leedman immediately replied that he would confirm 11am with Mr Andersen.
6. In 2017, Mr Andersen was working in Ashurst's Canberra office. He was aware that Ashurst was acting for the plaintiffs in relation to the deed, but he was not involved in the day-to-day conduct of that matter. His only involvement in that matter was to meet with Mr Taleb and Ms Chahhoud at Ashurst's Canberra office on 16 June 2017, where he witnessed their signatures on the deed after a series of communications with Ms Roach in Ashurst's Brisbane office concerning proposed changes to the deed, to which I refer in more detail below. Prior to 16 June 2017, Mr Andersen had previously met Mr Taleb in the course of acting for Mr Leedman and LFS in proceedings to which Mr Taleb was also a party. I infer that those are the proceedings that Mr Leedman refers to as the "Arona litigation". [35] Mr Andersen had not previously met Ms Chahhoud.
7. Mr Andersen was copied in to Mr Leedman's email to Mr Taleb at 9:59am on 16 June 2017 stating that he would confirm Mr Andersen's availability at 11:00am on that day. At 10:55am, Mr Anderson received a further email that Mr Leedman sent to him and to Ms Roach: "received confirmation that Elias is on his way to Ashurst 12 Moore St Canberra office for 11:00am meeting to sign Deed etc".
8. In his affidavits affirmed on 29 September 2023 and 10 April 2024, and in cross-examination, Mr Andersen was careful to identify the limited aspects of the events on 16 June 2017 that he can now recall. Mr Andersen's evidence otherwise consists of an account of the order of

events on 16 June 2017 by reference to the contemporaneous documents that he reviewed prior to preparing his affidavits. Those documents comprise: (1) emails sent and received by Mr Andersen immediately before, during, and immediately after his meeting with Mr Taleb and Ms Chahhoud at Ashurst's office on 16 June 2017; and (2) copies of the deed, minutes, and bank cheques that were scanned at Ashurst's office during and immediately after that meeting. Mr Andersen gave evidence about the time at which each such scanned document was created on 16 June 2017, based on his knowledge of the kinds of files created by the scanner that was in use in Ashurst's Canberra office at that time, and the file naming convention used by that scanner which created file names incorporating the date and time of scanning.

9. Mr Andersen gave evidence that he has no independent recollection of the time at which Mr Taleb arrived at Ashurst's Canberra office, but he does recall that Mr Taleb arrived at the office before Ms Chahhoud.
10. At 11:27am on 16 June 2017, Mr Andersen sent an email to Ms Roach and Mr Leedman stating: "Chaddia is here, signing papers now".
11. At 11:42am, Mr Andersen sent an email to Ms Roach attaching a scanned copy of the deed bearing handwritten amendments proposed by Mr Taleb which were consistent with his email correspondence with Mr Leedman earlier that morning. [36] The amended deed attached to that email was unsigned, but the deletion of clause 4.4(a) – which would have required the Continuing Entities to pay the Retiring Entities the sum of \$20,000 per month for any delay in making the Initial Payment – bore the handwritten initials "ET". Mr Andersen gave evidence that the handwriting recording the amendments, and the initials "ET", are not his handwriting. I infer that the handwriting is Mr Taleb's handwriting.
12. At 11:45am, Mr Leedman received an email from Ms Roach attaching that unsigned copy of the deed with Mr Taleb's handwritten amendments. Mr and Mrs Leedman then had a telephone discussion with Ms Roach, following which they made further amendments to the proposed text of Mr Taleb's amendments, and initialled each of the amendments. Mr and Mrs Leedman's further amendments excluded entities related to RGD Constructions Pty Ltd from the definition of "RGD Constructions Pty Ltd" that Mr Taleb had inserted in the deed, and described site locations of "the 3 jobs we did" referred to in one of Mr Taleb's amendments. Ms Roach emailed a scanned copy of that document to Mr Andersen at 12:01pm on 16 June 2017.
13. Before receiving Ms Roach's email at 12:01pm, Mr Andersen had scanned a copy of the deed at 11:53am signed by Mr Taleb in his personal capacity, as the sole director of Class 1 Form, Steadiform, Akena and Akena Installations, and as a director of Steadiform Holdings (in its own capacity, and its capacity as trustee of the Steadiwall Intellectual Property Trust), and signed by Ms Chahhoud in her personal capacity and as the sole director of Elias Pty Limited. The date 16 June 2017 had been inserted on the front page of the deed. The initials "ET" and "CC" had been written beside each of Mr Taleb's handwritten amendments and at

the bottom of each page. Mr Andersen gave evidence that he does not recall observing Mr Taleb and Ms Chahhoud writing the initials "ET" and "CC", but he did not make those markings himself and he does not recognise the handwriting.

14. In his capacity as sole director of each of Class 1 Form, Steadiform, Akena and Akena Installations, and as a director of Steadiform Holdings, Mr Taleb signed a resolution of each company at 12:15pm on 16 June 2017 referring to the deed, noting that Trilam Developments had agreed under the deed to surrender its shares in the company in consideration for the Continuing Entities paying the Settlement Amount, resolving to seek the consent of shareholders to shorten the 21 day period of notice required for the proposed return of capital by the cancellation of those shares, resolving that the proposed special resolution approving the cancellation of those shares be given to shareholders, and resolving that, subject to shareholder approval, the company reduce its capital by cancelling the shares held by Trilam Developments in consideration for the Continuing Entities paying the Settlement Amount.
15. In his capacity as a director of Steadiform Holdings, Mr Taleb also signed a resolution noting that Trilam Developments had delivered written notice to Steadiform Holdings as trustee of the Steadiwall Intellectual Property Trust surrendering its ten units in the Trust, and resolving to cancel those units and remove them from the unit register. The resolution attached a Unit Register for the Trust which recorded that, following the cancellation of the units issued to Trilam Developments, Elias Pty Limited was the sole unitholder in the Trust.
16. Resolutions of the shareholders of each of Class 1 Form, Steadiform, Akena and Akena Installations, and Steadiform Holdings consenting to short notice of the proposed resolution to cancel the shares held by Trilam Developments in the company were signed by Mr Taleb in his capacity as a shareholder of Class 1 Form, and by Ms Chahhoud as the sole director of Elias Pty Limited which was a shareholder in each of Steadiform, Akena and Akena Installations, and Steadiform Holdings.
17. Scanned copies of those three sets of resolutions were created at Ashurst's Canberra office at 12:25pm on 16 June 2017.
18. At 12:26pm, a scanned copy was created of a version of the deed incorporating Mr Taleb's handwritten amendments, as further amended by Mr and Mrs Leedman as referred to [199] above. In this version of the deed, each amendment bore the initials of Mr and Mrs Leedman, "ET" and "CC". I infer that this version had been created by the initials "ET" and "CC" being added to each amendment on the copy of the deed that Ms Roach had emailed to Mr Andersen at 12:01pm.
19. At 12:34pm on 16 June 2017, Mr Andersen sent an email to Ms Roach attaching the three sets of scanned documents referred to at [200]-[204] – the deed that had been executed by Mr Taleb and Ms Chahhoud and initialled "ET" and "CC" before Mr and Mrs Leedmans' proposed additional amendments had been received, the directors' resolutions and shareholders' resolutions, and the further copy of the deed on which the initials "ET" and

"CC" had been marked on each of the handwritten amendments (including Mr and Mrs Leedman's additional amendments) which had earlier been initialled by Mr and Mrs Leedman.

20. At 12:37pm on 16 June 2017, Mr Anderson sent an email to Ms Roach attaching copies of four bank cheques payable to the order of Fifo Capital totalling \$600,000. It will be recalled that LFS was a Fifo Capital franchisee. [37]
21. Mr Andersen gave evidence that he does not recall very much about the sequence of events on 16 June 2017 other than that which is indicated by the emails attaching scanned copies of the documents to which I have referred above, and the documents attached to those emails. However, he does recall that Mr Taleb arrived at Ashurst's offices before Ms Chahhoud, that he was initially alone with Mr Taleb in Ashurst's conference room, and that he walked out to Ashurst's reception area on level 11 of the building at 12 Moore Street in Canberra to greet Ms Chahhoud when she arrived. Mr Andersen also recalls that Ms Chahhoud had a child with her. Mr Andersen adhered to that evidence, disputing Ms Chahhoud's evidence that she arrived together with Mr Taleb, and that Mr Anderson had met them on the ground floor of the building and accompanied them in the lift up to Ashurst's reception area and conference rooms on level 11. Mr Andersen gave evidence that level 11 of the building was publicly accessible during business hours.
22. Ms Chahhoud accepts that she signed documents at Ashurst's office on 16 June 2017. She accepts that she wrote her signature on the deed in the signature block for herself and in the signature block for Elias Pty Limited. She also accepts that she wrote her signature in the signature block for Elias Pty Limited on the resolutions of the members of Steadiform, Steadiform Holdings, Akena, and Akena Installations. In his affidavit affirmed on 29 September 2023, Mr Andersen candidly deposed that he does not now recall whether Ms Chahhoud read the deed before signing it. Indeed, he no longer has a specific recollection of Ms Chahhoud signing the deed. Nor does he specifically recall witnessing her signature. However, Mr Andersen confirmed that his signature appears on the deed as the witness to Ms Chahhoud's signature. Mr Andersen gave evidence that it is his usual practice when witnessing deeds to place all pages of the deed before the person when they execute it. He cannot think of any reason why he would have departed from that usual practice in this particular case. As I have already mentioned, each page of the deed and each amendment was initialled "ET" and "CC". Ms Chahhoud denies making the markings "CC" on the deed. Mr Andersen does not recall Mr Taleb and Ms Chahhoud initialling the deed, but has given evidence that he did not make those markings himself and he does not recognise the handwriting.
23. Mr Andersen gave evidence that he does not recall anything occurring during the meeting with Mr Taleb and Ms Chahhoud at Ashurst's offices on 16 June 2017 that would have caused him to suspect that Ms Chahhoud did not know what she was signing, or that she was being coerced into signing something that she did not want to sign. Mr Andersen does not recall Ms Chahhoud asking for his advice or asking questions about what she was signing, or

saying that she needed or wanted more time to read the deed, or saying that she had not received legal advice and wanted time to obtain legal advice before signing the deed, or saying or indicating by her conduct that she had any reservations about signing the deed.

24. Mr Andersen also gave evidence that he does not recall Ms Chahhoud or Mr Taleb saying or doing anything which gave him any reason to think that Ms Chahhoud was reliant or dependent on Mr Taleb, or that she was being coerced by Mr Taleb into signing the deed. Mr Andersen deposed that, if he had suspected that Ms Chahhoud was being coerced, he would have reported that to Ms Roach. He has no recollection of making any such report. Mr Andersen also deposed that he believes that, if he had thought at the time that Ms Chahhoud was being coerced or intimidated into signing the deed, he would recall this even today. Mr Andersen has no such recollection today.
25. Mr Andersen does not recall what time Ms Chahhoud left Ashurst's office after signing the deed and circular resolutions. Nor does he recall whether Ms Chahhoud left together with Mr Taleb, or separately.
26. Mr Andersen recalls that, after Mr Taleb and Ms Chahhoud left Ashurst's office, he walked to a Westpac branch together with one of his colleagues and banked the cheques totalling \$600,000. He created a scanned a copy of the Westpac receipt on his return to the office. Based on the file name of that scanned document, Mr Andersen believes that it was created at 1:02pm on 16 June 2017.
27. Ms Chahhoud cross-examined Mr Andersen with a tone that conveyed frustrated disbelief that he can no longer recall very much at all about the occasion when Mr Taleb and Ms Chahhoud attended Ashurst's offices for him to witness them signing documents on 16 June 2017, approximately seven years ago. Mr Andersen patiently and candidly adhered to his evidence in chief that he has only a very limited recollection of some aspects of that attendance, and that he does not recall the process by which they signed the deed, and he has no recollection of observing them signing the deed, although he has no reason to doubt that he did so in accordance with this usual practice.
28. Mr Andersen was cross-examined about why he had brought only one copy of the deed into the meeting room for signature, rather than bringing one copy for each of Mr Taleb and Ms Chahhoud. Mr Anderson answered that his usual practice where more than one party is in attendance to sign a deed is to have each party sign the same document, rather than have multiple copies of the deed in the room.
29. Mr Andersen was also cross-examined about whether he had asked Ms Chahhoud whether she had informed herself about the contents of the deed, or taken any steps to check that she understood what she was doing. Mr Andersen candidly replied that he had not. Mr Andersen had no obligation to do so, as he was not acting as a solicitor for Ms Chahhoud. According to Ms Chahhoud's own evidence, to which I refer below, she understood before attending the meeting that Ashurst were the solicitors acting for Mr Leedman.

30. Ms Chahhoud gave an account of the events of 16 June 2017, including her attendance at Ashurst's Canberra office, in her affidavits sworn and affirmed on 16 March 2023 and 12 March 2024.
31. In her first affidavit sworn on 16 March 2023, Ms Chahhoud gave evidence that the deed had not been provided to her before she was asked to sign it, that she was present at the signing for "a couple minutes", that this was sufficient time for her to sign "the 2 pages provided" but insufficient time for her to read the deed, and that she had not been afforded the opportunity to read or review any part of the deed, or to seek independent legal advice. Ms Chahhoud gave evidence that the whole of the deed was not provided to her, even at Ashurst's offices. Ms Chahhoud deposed that she only signs documentation using her whole name, and that she does not ever sign or mark any documents with her initials. Ms Chahhoud denied that she made the initials "CC" where they appear on the deed. Ms Chahhoud deposed that, at the meeting on 16 June 2017, she felt rushed to sign the two execution pages, being the only pages of the deed that she says were given to her. Ms Chahhoud deposed that she did not receive a copy of the deed after she had signed it.
32. Ms Chahhoud gave a much more detailed account of the events of 16 June 2017 in her second affidavit affirmed on 12 March 2024, which was prepared at a time when Ms Chahhoud had legal representation in these proceedings and which was affirmed after the affidavit was sight translated for Ms Chahhoud in the Arabic language.
33. According to Ms Chahhoud's evidence in her second affidavit, she had gone about her usual morning routine on the day that she attended Ashurst's offices to sign the deed. She had driven her four eldest daughters to school, before returning home with her youngest daughter, who was not yet of school age and who had felt feverish the previous evening. Shortly after arriving back home, Mr Taleb told Ms Chahhoud to get ready because they needed to "go see Kim's lawyer" and that she needed to "sign for a transfer of shares". Ms Chahhoud deposed that she told Mr Taleb: "I don't know what that is. It's not my problem". She told Mr Taleb that she was "not going anywhere", as she had things to do at home and her youngest child was unwell. According to Ms Chahhoud, Mr Taleb then became angry and yelled at her words in Arabic to the following effect: "You don't understand. I need you to come with me. I'm in so much trouble. I just need you to sign a couple of documents". Ms Chahhoud deposed that, to her observation, Mr Taleb was shaking and pacing, and he appeared to her to be "very anxious". Ms Chahhoud deposed that she then began to feel very concerned and panicked herself, and she told Mr Taleb that she would go with him to the lawyers, and did not ask him any more questions. Ms Chahhoud deposed that she was concerned that, if Mr Taleb did not have his way, he was likely to become very angry and either start throwing things, or stop speaking to her. According to Ms Chahhoud's evidence, she had experienced this behaviour in the past, and it unsettled her daughters. She felt the need to shelter them from Mr Taleb's behaviour, "so I did what I could to subdue him".

34. Ms Chahhoud's second affidavit includes a detailed account of precisely where she was standing in the kitchen in her home, and precisely where her youngest child was sitting and what she was doing, when Mr Taleb entered the kitchen and told Ms Chahhoud to get ready to "go see Kim's lawyer".
35. Ms Chahhoud deposed that, after she had changed, Mr Taleb drove her and her youngest child to Ashurst's office. During the drive, Mr Taleb said to her words in Arabic to the effect of: "You don't understand what I'm going through right now. I need money and Kim is going to help me". According to Ms Chahhoud's evidence, she did not respond or ask any questions because, based on past experience, she knew that Mr Taleb would have dismissed any questions by saying to her something like: "Even if I explain it to you, you won't understand". By this stage, Mr Taleb had calmed down. He had stopped shaking, and he was no longer yelling.
36. Ms Chahhoud deposed that she and Mr Taleb arrived at Ashurst's offices together, and walked into the ground floor foyer of the building where they were met by a man who shook hands with them and escorted them into an elevator which they then rode up several floors before arriving at a reception area and going into a conference room on that floor. Once they were in the conference room, the man left for a couple of minutes before returning with a small bundle of papers that he handed to Mr Taleb. Ms Chahhoud deposed that the man sat next to Mr Taleb, who had a pen in his hand, and appeared to look over the pages that had been handed to him. Ms Chahhoud was standing at the window of the conference room, holding her youngest daughter. Ms Chahhoud deposed that the man kept looking and smiling at her, but did not speak to her during the whole of the time she was present at Ashurst's offices other than to greet her when she had first arrived with Mr Taleb.

37. Ms Chahhoud then deposed:

"I was still standing at the window holding Rebecca when Elias looked up and said to me words to the effect of "come here and sign this" (in English). I sat down at a chair next to Elias and I had Rebecca sitting on my lap to one side. I observed Elias to be signing some of the pages and then Elias passed me the individual pages and pointed to where he wanted me to sign and said "sign here" or "here" as he pointed. I recall seeing pages with my name in typed font and I signed my name in full on the line immediately above my typed name. Each time I signed a page, I handed it back to Elias and he then gave me another page and told me where to sign by pointing and saying "sign here" (in English). I do not recall how many pages I signed.

I signed the pages where Elias had indicated that I should sign (as above), while at the same time trying to juggle and soothe Rebecca. I watched Elias gather the pages and then pass the papers to the man who then left the room for a short time. He returned and said words to the effect of "All good" at which time Elias and I rose to leave the room. As we were rising to leave the man said words to the effect of "Can I get you anything – a tea or a coffee?" to which I said "No thank you". We shook hands with the man and thanked him as we walked out.

The meeting lasted for about 15 to 20 minutes in total."

1. Ms Chahhoud deposed that she did not read the pages that she signed, or ask any questions about what they related to. The pages were not explained to her, beyond Mr Taleb's description of them as "share transfer" papers during their conversation at home earlier that morning. The man in the meeting did not identify himself as a lawyer, and did not ask her any questions or talk to her about the documents that she was signing.
2. In her second affidavit, Ms Chahhoud deposed that, when Mr Taleb told her on the morning of 16 June 2017 that he needed her to sign a "share transfer" (in Arabic), "those words were foreign to me and I did not know what they meant", and she did not find out what a share transfer meant until after the commencement of these proceedings. That evidence, to which Ms Chahhoud adhered in cross-examination, is inconsistent with her evidence in her first affidavit about her state of mind at the time she signed the deed at Ashurst's office on 16 June 2017. In her first affidavit, Ms Chahhoud deposed that she was "under the impression that I was signing a transfer of shares, not to warrant legal advice, not to provide any security over property and not to enter any Deed". The inconsistency arises because, if Ms Chahhoud did not know what a share transfer was then, assuming that she was told that she was signing a transfer of shares as she claims, this cannot have caused her to form the impressions that she claims in her first affidavit that legal advice was not warranted, that she was not providing security over any property, and that she was not entering into a deed. For those reasons, and for the reasons explained at [25]-[54] above, I do not accept Ms Chahhoud's evidence about her state of mind when she signed the deed. That includes her evidence that she thought she was signing a share transfer, based on what she claims Mr Taleb said to her on the morning of 16 June 2017. For the reasons explained at [236] below, I have rejected all of Ms Chahhoud's evidence about the conversations and interactions that she claims to have had with Mr Taleb before she went to Ashurst's office on that morning.
3. Ms Chahhoud's account of her attendance of Ashurst's office in her second affidavit is inconsistent with her sparse account in her first affidavit in two further respects. In her first affidavit, Ms Chahhoud deposed that she had only been provided with the two pages of the deed on which she was required to place her signature, and that her attendance at Ashurst's office to sign the deed lasted only "a couple of minutes". In the course of preparing her second affidavit, Ms Chahhoud's solicitors showed her the deed and the resolutions that she had signed. Ms Chahhoud deposed in her second affidavit, that she could not recall how many pages she signed, and that the meeting lasted about fifteen to twenty minutes.
4. In cross-examination, Ms Chahhoud maintained that she was not provided with the whole of the deed, and that she did not write the initials "CC" on the deed. Ms Chahhoud gave evidence that she felt pressure from Mr Taleb to sign the deed, but accepted that this did not come from anything that Mr Taleb said or did in the presence of Mr Andersen at Ashurst's office. Ms Chahhoud said that Mr Taleb "is always protecting their beautiful image". Ms Chahhoud denied that she had arrived at Ashurst's office after Mr Taleb and that she had an opportunity to speak to Mr Andersen alone when he greeted her in Ashurst's reception area

before taking her to join Mr Taleb who was already in the meeting room. Ms Chahhoud agreed that she had not asked to speak to Mr Andersen alone during the meeting, and that she had not said or suggested to Mr Andersen at any time that she had any reservations about signing the documents, that she wanted to obtain legal advice before signing the documents, that she wanted the documents translated into another language, or that she was reliant on Mr Taleb to explain the documents to her. It was put to Ms Chahhoud that she could have said any of those things to Mr Andersen if she had wanted to during the meeting on 16 June 2017. Ms Chahhoud answered: "No, because I have no power, and he's not going to come back home with me, Mr Andersen, to solve the problem that's going to happen between me and my husband".

5. As I have already mentioned, Ms Chahhoud's detailed account of these events first emerged in her second affidavit affirmed on 12 March 2024, almost seven years after the day in question. In cross-examination, Ms Chahhoud claimed that her memory of that day was the same at the time of her second affidavit as it had been when she swore her first affidavit, but said that the solicitors who were acting for her in these proceedings by the time she affirmed her second affidavit had "refreshed" her memory. Ms Chahhoud said (in English):

"... the lawyers in 2024, they asked question that brought memories and memories back that – I don't know how they asked me the question when I was with them but they refresh it. They tried to refresh it, refresh it, refresh it and then it becomes clearer."

1. What Ms Chahhoud there described is a process of repeatedly going back over events in order to reconstruct an account of them many years later. The resulting account is unreliable for the reasons explained by McLelland CJ in Eq in *Watson v Foxman*: [38]

"... human memory of what was said in a conversation is fallible for a variety of reasons, and ordinarily the degree of fallibility increases with the passage of time, particularly where disputes or litigation intervene, and the processes of memory are overlaid, often subconsciously, by perceptions or self-interest as well as conscious consideration of what should have been said or could have been said. All too often what is actually remembered is little more than an impression from which plausible details are then, again often subconsciously, constructed. All this is a matter of ordinary human experience."

1. The factors referred to by his Honour require primary emphasis on the objective surrounding facts that are either undisputed or established by contemporaneous documents, and the inherent probabilities and improbabilities. [39]
2. Whilst witness testimony may still be of value and importance, including by providing evidence of the context in which relevant contemporaneous documents and events must be understood, it is the contemporaneous documents that "generally furnish the most reliable source of evidence as to what occurred or, at the very least, provide a generally reliable reference point from which to assess the reliability of witness testimony". [40]

3. In the present case, Ms Chahhoud claimed in cross-examination that she does have a clear and accurate memory of the events of 16 June 2017 because those events concern her family and her children, and because her young daughter was with her at the time. I do not accept that this exempts Ms Chahhoud from the fallibility described in *Watson v Foxman*. Ms Chahhoud's account in her first affidavit is contrary to the objective facts that she signed more than two pages, and her attendance lasted much more than a couple of minutes, as discussed below. On Ms Chahhoud's own evidence, her "memory" has been reconstructed through the work that she has done with the solicitors who were acting for her at the time she prepared her second affidavit.
4. The reconstructed account of the events of 16 June 2017 in Ms Chahhoud's second affidavit begins with her evidence that she drove her daughters to school that morning in accordance with her "usual morning routine". That is contrary to a submission that Ms Chahhoud made to the Court on the second day of the hearing when seeking to tender medical records which she contended would prove that she was medically incapable of driving at the time when the deed was signed in 2017, and would therefore disprove that she arrived at Ashurst's offices separately from Mr Taleb on 16 June 2017. Ms Chahhoud submitted that:

"In 2017 when Elias and I signed the deed, I was very sick, I was taking injections, Clexane injections, and it shows how, how much I used to go to the doctors. I had blood transfusion, I used to be dizzy in the morning. So Eli used to take the kids to school and yesterday when the, when the solicitor said that Eli arrived before me and I arrived after him, this report shows that I could not drive because I used to be very dizzy. So I cannot be, I cannot drive and go there. This shows that I did not go to the solicitor by myself without Eli."

1. After reviewing the contents of the documents that Ms Chahhoud was seeking to tender, I rejected them on the grounds of relevance because, contrary to Ms Chahhoud's submission, they did not contain material that could have a rational bearing on the question whether she was capable of driving at the relevant time. However, that submission made during the hearing on 24 July 2024, and Ms Chahhoud's account about how her day began on 16 June 2017 in her affidavit affirmed on 12 March 2024, cannot both be true. Viewed in the most favourable light for Ms Chahhoud, this inconsistency further highlights the unreliability of the memory that she claims to have of the events of 16 June 2017. Given that Ms Chahhoud has been willing to give false evidence about several matters in these proceedings where she thought that it would assist her defence and cross-claim, [41] it is possible that either Ms Chahhoud's evidence that she drove her daughters to school on the morning of 16 June 2017, or Ms Chahhoud's submission that she could not drive at all at the time when the deed was signed in 2017, was deliberately false. I do not find it necessary to reach a concluded view about whether this particular inconsistency is the product of the unreliability of Ms Chahhoud's reconstructed memories, or a deliberate falsehood.
2. The whole of Ms Chahhoud's evidence about what occurred on the morning of 16 June 2017 before she attended Ashurst's office, including the interactions that she claims to have had with Mr Taleb prior to arriving at Ashurst's office, is an uncorroborated and unreliable

reconstruction. I reject that evidence. As I have already explained, I am not prepared to accept Ms Chahhoud's uncorroborated evidence about any contentious matter unless it is contrary to her own interests, inherently probable, or consistent with undisputed objective facts. [42] Ms Chahhoud's evidence of the events of the morning of 16 June 2017 lacks any of those qualities, and lacks credibility due to the fine level of detail in which Ms Chahhoud implausibly claims in her second affidavit to be able to recall those events and interactions seven years ago. Moreover, the evidence is closely connected with Ms Chahhoud's evidence about the nature and dynamics of her relationship with Mr Taleb, which I have rejected for reasons explained earlier. [43]

3. Ms Chahhoud's evidence about her arrival at Ashurst's office, and what occurred while she was present there on 16 June 2017, is equally unreliable because it was reconstructed by the same process undertaken by Ms Chahhoud with her solicitors, and because it is contradicted by the contemporaneous documents referred to at [197]-[207] above. For those reasons, and for the reasons explained at [23]-[54] above, I reject Ms Chahhoud's evidence and I prefer the evidence of Mr Andersen.
4. On the basis of Mr Andersen's evidence, I find that Ms Chahhoud arrived at Ashurst's office separately from, and after, Mr Taleb, on 16 June 2017. I note that Mr Andersen's evidence about Ms Chahhoud's arrival is consistent with the contemporaneous email correspondence which recorded Mr Taleb's expected arrival at 11:00am, and which reported Ms Chahhoud's arrival separately at some time prior to 11:27am. [44] The fact that Mr Taleb had an opportunity to mark his proposed amendments to the deed at some time before 11:42am is also broadly consistent with Mr Taleb having arrived at Ashurst's office earlier than Ms Chahhoud. [45]
5. I accept Mr Andersen's evidence that he left Mr Taleb in the meeting room and went to greet Ms Chahhoud in Ashurst's reception when she arrived. I find that Ms Chahhoud had an opportunity then to raise with Mr Andersen, in the absence of Mr Taleb, any concerns that she now says that she held about signing the documents that she had come to sign. She did not raise any such concerns. Contrary to Ms Chahhoud's submissions, Mr Andersen, who was not acting as her solicitor or as an independent solicitor advising her in relation to the deed, had no obligation to question Ms Chahhoud or take other positive steps to ascertain her proficiency in the English language, or to interrogate her understanding of the deed that she had come to his office to sign and whether she was doing so of her own free will. I accept Mr Andersen's evidence that he has no recollection of noticing anything during Ms Chahhoud's attendance at his office that suggested to him that she did not know what she was signing, she was reliant or dependent on Mr Taleb, or that she was being coerced into signing the deed. I also accept Mr Andersen's evidence that it is likely that he would remember today if he had noticed anything of that nature, as such an occurrence would be an unusual event in the professional life of any solicitor. [46]

6. I find that Ms Chahhoud had joined Mr Taleb and Mr Andersen in the meeting room and commenced the process of signing the deed by 11:27am. [47] I accept Mr Andersen's evidence that it is his usual practice to place all pages of a deed before a party whose signature on the deed he is witnessing. It is inherently probable that Mr Andersen followed his usual practice in this instance, and I so find. I reject Ms Chahhoud's evidence to the contrary.
7. I further find that, by about 11:53am, Mr Taleb and Ms Chahhoud had each initialled each page of the deed and Mr Taleb's amendments, and each of them had signed the execution pages of the deed where required in the presence of Mr Andersen who witnessed their signatures. [48]
8. For the reasons explained at [23]-[54] above, I reject Ms Chahhoud's self-serving evidence denying that she wrote the initials "CC". I reject Ms Chahhoud's submissions that the same individual made the initials "CC" and "ET", based on an analysis that Ms Chahhoud claims in her written closing submissions to have undertaken of the visual characteristics of the two sets of initials and the consistency of the pressure that she alleges was applied by the writer of both sets of initials throughout the whole of the document. To my untrained eye, the features of the two sets of initials do not support Ms Chahhoud's submissions. Ms Chahhoud did not adduce any evidence from a forensic document examiner to support her contention that the initials "CC" were a forgery. The original counterpart of the deed signed by Mr Taleb and Ms Chahhoud and initialled "ET" and "CC" was not in evidence, and Ms Chahhoud does not claim to have it in her possession. It is therefore impossible to conduct any analysis of the pressure of the pen strokes used by the writer of the initials "ET" and by the writer of the initials "CC". This part of Ms Chahhoud's written submissions appears to have been simply cut and paste from a source unrelated to this case and inserted in her submissions without attribution.
9. I reject Ms Chahhoud's submissions that Mr Andersen admitted during cross-examination that he "did not properly act as a witness to a deed". Mr Andersen made no such admission. I reject Ms Chahhoud's submission that the deed is ineffective or invalid because Mr Andersen did not attest the initials "ET" and "CC" where they appear in the document. [49] I reject Ms Chahhoud's further submission that Mr Andersen's role as a witness to her signature on the deed, despite not having been involved in the preparation of the deed, "raises questions about the deed's proper execution". A witness attesting the signature of a party to a deed is not required to have been involved in the preparation of the deed.
10. I find that the period of approximately 25 minutes between Ms Chahhoud commencing the signing process and the signed deed being emailed to Ms Roach in Ashurst's Brisbane office at 11:53am was sufficient time for Ms Chahhoud to review the deed, which was 15 pages in length including the schedules, [50] and to inform Mr Andersen if she wished to have the deed interpreted into any other language, or if she required legal advice, or if she required more time to review the deed, or if she did not wish to sign the deed for any other reason. Because I do not accept Ms Chahhoud's evidence concerning her relationship with Mr Taleb,

[51] and because I have rejected her evidence about how she came to be at Ashurst's office to sign the deed on 16 June 2017, [52] and for the further reasons explained at [25]-[54] above, I reject Ms Chahhoud's evidence that she felt pressure from Mr Taleb to sign the deed. [53] There is no evidence of any other source of pressure on Ms Chahhoud in connection with her signing the deed. There is no evidence of any reason why Ms Chahhoud could not have taken longer than 25 minutes to review the deed, to raise any objections or ask any questions, and to decide whether or not to sign it. There is no evidence of any reason why she could not have declined to sign the deed on that day, and taken time to obtain legal advice. Contrary to Ms Chahhoud's evidence, she had dealt with lawyers previously. I do not accept that Ms Chahhoud can now recall that she did not read the deed before signing it. [54] There is no evidence of anything occurring on 16 June 2017 to prevent Ms Chahhoud from reading the deed. The evidence does not establish that she was not capable of reading the deed in English, [55] and there is no evidence of any reason why she could not have required the deed to be translated into Arabic if she had wished to, in any event. For the reasons explained at [25]-[54] above, I reject Ms Chahhoud's self-serving evidence that she did not read the deed before signing it. It is inherently probable that she did read each page of the deed that was presented to her and which she initialled. I acknowledge Ms Chahhoud's submission that, if she had read the deed and understood that it included the charging clause, she would not have purchased the Peak View property in her own name. I do not consider that Ms Chahhoud's purchase of the Peak View property in her own name in February 2019 gives rise to a probable inference that she did not read or understand the deed in June 2017. As the plaintiffs submitted, it is at least equally possible that Ms Chahhoud simply did not have the charging clause at the forefront of her mind when she purchased the Peak View property 18 months after signing the deed. For the reasons explained at [226] above, I also reject Ms Chahhoud's evidence that she thought she was signing a transfer of shares which did not involve giving any security over any property.

11. On the basis of the contemporaneous documents, I find that Mr Taleb signed the directors' resolutions at about 12:15pm, [56] and that Ms Chahhoud signed the shareholders' resolutions at some time between 12:15pm and 12:25pm. [57] I further find that, at some time between 12:01pm and 12:26pm, Ms Chahhoud wrote her initials on a further copy of the deed against each of the amended clauses that she had initialled when executing the deed earlier that day, which now incorporated minor further amendments made by Mr and Mrs Leedman. [58]
12. On the basis of those findings which are supported by the contemporaneous documents, I find that Ms Chahhoud was present at Ashurst's Canberra office for a period of between 45 minutes and 60 minutes from shortly before 11:27am on 16 June 2017. I reject Ms Chahhoud's evidence that she attended Ashurst's office only for "a couple minutes" (in her first affidavit), or for between 15 and 20 minutes (in her second affidavit).

Terms of the deed executed on 16 June 2017

1. The deed executed on 16 June 2017 by Mr Taleb (in his personal capacity, and in his capacity as a director of Steadiform Holdings and as sole director of Class 1 Form, Steadiform, Akena and Akena Installations) and by Ms Chahhoud (in her personal capacity, and in her capacity as the sole director of Elias) is in the terms of the revised draft deed that I have summarised at [160]–[174] above, amended to include the Steadiwall Intellectual Property Trust as an Affected Entity as referred to at [180] above and further amended by the handwritten amendments made on 16 June 2017 referred to at [198]–[199] and [205] above.
2. The deed defines "the Association" in the same terms as the revised draft deed dated 27 April 2017. [59]
3. The definition of "the Business" in the deed is in the same terms as in the revised draft deed dated 27 April 2017, save that it is expanded by the inclusion of the Steadiwall Intellectual Property Trust in the definition of the "Affected Entities". [60] Thus, the deed defines "the Business" as meaning the commercial or legal relationship carried on by the Association in relation to the activities of the Affected Entities – being Class 1 Form, Steadiform, Steadiform Holdings, Akena, Akena Installations and the Steadiwall Intellectual Property Trust – including the development of structural formwork systems under the name "Class 1 Form" and "Steadiform".
4. Clause 3 of the deed relevantly provides for the dissolution of "the Association" on and from "the Effective Date" by:
 1. the Retiring Entities – Mr Leedman, Mrs Leedman, and Trilam Developments:
 1. surrendering their shares in Class 1 Form, Steadiform, Steadiform Holdings, Akena and Akena Installations;
 2. surrendering their units in the Steadiwall Intellectual Property Trust;
 3. assigning their interest in the intellectual property relating to the product known as "Steadiform and Steadiwall (International Application No. PCT/AU2015/050329)" and relating to the structural formwork systems carried on by "the Business", including the systems known as Stay-In-Place Structural formwork systems, Permanent Insulated Formwork, wall formwork systems and Engineered Formwork Systems, to the Continuing Entities – Mr Taleb, Ms Chahhoud, Class 1 Form, Steadiform Holdings, Steadiform, Elias, Akena and Akena Installations;
 4. assigning to the Continuing Entities their interest in the other assets of "the Business", including plant and equipment and goodwill; and

1. the Continuing Entities – Mr Taleb, Ms Chahhoud, Class 1 Form, Steadiform Holdings, Steadiform, Elias, Akena, and Akena Installations – releasing and discharging the Retiring Entities from all claims in respect of the Business and the Affected Entities, and doing all things necessary to give effect to the Retiring Parties' surrender of their interests in the shares, units and assets referred to above.

1. Clause 4.1 of the deed provides:

"4.1 Payment of Settlement Amount

- (a) In consideration of the Retiring Entities Dissolving its Association in accordance with clause 3(a), the Continuing Entities will collectively pay the Settlement Amount to the Retiring Entities on the dates specified in clause 4.1(b) of this document.
 - (b) The Continuing Entities must pay the Settlement Amount to the Retiring Entities as follows:
 - (i) the Initial Payment, by the Initial Payment Due Date; and
 - (ii) the Deferred Payment, by the Deferred Payment Due Date.
 - (c) All payments made by the Continuing Entities to the Retiring Entities under this document are non-refundable."
1. The "Settlement Amount" referred to in clause 4.1(a) is defined in clause 1.1 of the deed as meaning the sum of:
 1. the "Initial Payment", which is relevantly defined as meaning the sum of \$600,000;
 2. the "Deferred Payment", which is defined as meaning an amount equivalent to \$1,500,000; and
 3. "Interest", which is defined as meaning the interest payable under clause 4.2(a) of the deed, which is calculated at the rate of 1 per cent per month on the balance of the Deferred Payment, accruing monthly, until the Deferred Payment is paid in full.
 1. The "Deferred Payment Due Date" by which the Deferred Payment of \$1,500,000 is required to be paid is defined as the date which is two years after the date of the deed – that is, 16 June 2019.
 2. Clause 1.4 of the deed relevantly provides that, if a term is used in the deed to refer to more than one party then, unless otherwise specified, an obligation of those persons is joint and several. Accordingly, the obligation of the Continuing Entities to pay the Settlement Amount under clauses 4.1(a) and (b) of the deed is an obligation of the Continuing Parties jointly and severally.

3. Clause 4.4 of the deed provides for the rights of the Retiring Entities in the event that the Continuing Entities fail to pay any amount due under the deed on the due date, including the right in clause 4.4(c) to commence proceedings to apply for orders by consent against the Continuing Entities for payment of any amount due under the deed as a liquidated debt.
4. Clause 5 of the deed contains mutual releases by the Continuing Entities and the Retiring Entities in the same terms as the revised draft deed. [61]
5. Clause 6 of the deed is also in the same terms as the revised draft deed, and provides for the Continuing Entities to have the benefit and burden of all contracts of the Affected Parties that remain unsatisfied on the Effective Date.
6. Clause 7.1 of the deed provides:

"7.1 Grant of Security Interest

Each Continuing Entity grants a security interest in its present and after- acquired property, including anything in respect of which the Continuing Entity has at any time a sufficient right, interest or power to grant a security interest to each Retiring Entity to secure payment of the Settlement Amount."

1. Clause 7.2 of the deed provides that each Continuing Party agrees to do, and appoints each Retiring Party as its nominee and authorises each Retiring Party to act on its behalf in connection with anything that a Retiring Party may reasonably require for the purposes of, amongst other things, ensuring that the security interest is enforceable and effective, and enabling a Retiring Party to exercise rights in connection with the security interest.
2. Clause 8 of the deed provides:

"8 ASSUMPTION OF LIABILITIES AND INDEMNITY

On and from the Effective Date, the Continuing Entities:

- (a) agree to assume, observe, perform and satisfy all Liabilities and obligations of the Retiring Entities in respect of the Affected Entities, the Business and the Assets; except RGD constructions P/L and all related entities to RGD for the 3 jobs we did and,
 - (b) are responsible for and must indemnify the Retiring Entities against every Claim, debt or Loss incurred in relation to the Affected Entities, the Business and the Assets except RGD constructions P/L and all related entities to RGD constructions for the 3 jobs we did."
1. The italicised words above are two of the handwritten amendments that made to the deed on 16 June 2017 as referred to at [198]–[199] and [205] above.
 2. Clause 14.5 of the deed provides that it is governed and construed in accordance with the laws of Queensland.

3. Clause 14.7 of the deed provides that it may be executed in any number of counterparts, and that executed counterparts may be exchanged by email.
4. The signed counterparts were not identical. The counterpart signed by Mr and Mrs Leedman in their personal and other capacities on 14 June 2017 did not include any of the handwritten amendments that were agreed on 16 June 2017. The counterpart signed by Mr Taleb and Ms Chahhoud in their personal and other capacities on 16 June 2017 did not include the final version of those handwritten amendments. The parties' agreement on the final terms of those amendments is recorded in the third counterpart of the deed on which each of Mr Leedman, Mrs Leedman, Mr Taleb and Ms Chahhoud initialled the final version of the amendments. [62] In my opinion, it is objectively clear from the terms of the documents that the parties signed and initialled, and the order in which they did so, that the parties intended to commit to and exchange deeds on the terms of the document signed on 14 June 2017 as amended by the final version of the handwritten amendments initialled by all parties on 16 June 2017 after Mr Taleb and Ms Chahhoud had earlier signed the deed incorporating only some of those amendments. In those circumstances, contrary to Ms Chahhoud's submissions, the minor discrepancies between the counterparts do not preclude the document from taking effect as a deed. Nor do they render the deed void or liable to be set aside. [63]
5. Clause 14.8 of the deed provides:

"Other

Each party warrants that they have received independent legal and financial advice in relation to their rights, duties and obligations under this document and the transactions it contemplates."

1. As I have already mentioned, the Continuing Entities made the Initial Payment of \$600,000 on 16 June 2017.
2. According to the schedules to the first draft of the deed prepared by Legal on London in July 2016, [64] Elias Pty owned 50 per cent of the shares in each of Steadiform and Steadiform Holdings. It follows that Elias Pty Limited would become the sole shareholder in each of those companies as a result of Trilam Development's surrender of its shares in those companies. Company searches tendered in these proceedings in respect of each of Steadiform and Steadiform Holdings indicate that this is in fact what occurred. In his affidavit sworn on 6 April 2024, Mr Leedman deposed Steadiform and Steadiform Holdings, in which Elias Pty Limited was a 50 per cent shareholder, had been incorporated to own and commercialise the Steadiform formwork products. As referred to at [250] above, the deed also provided for the surrender and cancellation of the Retiring Entities' shares in Akena and Akena Installations and the Retiring Entities' units in the Steadiwall Intellectual Property Trust. Elias Pty Limited was a shareholder in each of Akena and Akena Installations, and so its proportion of the shares in each of those companies increased as a result of the surrender of the Retiring Entities' shares, although it is not clear from the evidence whether Elias Pty Limited become the sole shareholder in each of those

companies. Elias Pty Limited became the sole unit holder in the Steadiwall Intellectual Property Trust following the surrender of the units held by Trilam Developments.

3. As discussed earlier in these reasons, Ms Chahhoud has been the sole director and shareholder of Elias Pty Limited at all times since about October 2015. Mr Leedman knew this from his review of drafts of the deed which provided for Ms Chahhoud to execute the deed in her capacity as sole director of Elias Pty Limited. Mr Leedman deposed that nobody suggested to him that Ms Chahhoud did not stand to receive any benefit from the deed. That aspect of Mr Leedman's evidence was not challenged in cross-examination and I accept it. In addition to the benefit that Ms Chahhoud stood to receive indirectly through Elias Pty Limited, she was entitled, jointly and severally with the other Continuing Entities, to receive an assignment of the Retiring Entities' interest in the intellectual property relating to the structural formwork systems carried on by "the Business". [65]
4. It was put to Ms Chahhoud in cross-examination that, prior to the commencement of these proceedings, she had never raised a concern or complaint with anyone else about having felt under pressure to sign the deed, and that she had not done so because she had not in fact felt any pressure. Ms Chahhoud answered that she had in fact raised such concerns with Mr Roi shortly after signing the deed. Ms Chahhoud had not mentioned this in either of her affidavits. Nor had it been mentioned by Mr Roi in an affidavit sworn by him that Ms Chahhoud had wished to read at the hearing, but which had been rejected because the material that it contained was irrelevant to the pleaded issues in these proceedings. According to Ms Chahhoud's evidence in cross-examination, Mr Roi worked closely with her in helping her prepare to represent herself at the hearing, including reviewing the evidence and identifying documents for Ms Chahhoud to tender. Mr Roi was present in Court during each day of the hearing, and appeared to be taking notes and following the proceedings closely. From time to time, Mr Roi passed documents to Ms Chahhoud which she then sought to tender. On one occasion, Mr Roi sought to interject in the proceedings, asking whether he could assist by answering a question that I had put to Ms Chahhoud. If Ms Chahhoud had mentioned to Mr Roi shortly after signing the deed any concerns about what she had signed, it would have been obvious to Ms Chahhoud and to Mr Roi that this was important evidence to support her allegations that she signed the deed under pressure and without understanding it. The fact that this was not mentioned in Ms Chahhoud's detailed affidavit affirmed on 12 March 2024 suggests that Ms Chahhoud did not raise any such concerns with Mr Roi, and that her claim to have done so was made up in cross-examination. I infer from Ms Chahhoud's failure to adduce evidence from Mr Roi about the alleged conversation that she mentioned for the first time in cross-examination that any evidence that Mr Roi could have given about that issue would not have assisted Ms Chahhoud. [66] For those reasons, I am not persuaded that Ms Chahhoud raised any such concerns with Mr Roi.

5. In his affidavit sworn on 5 October 2023, Mr Leedman candidly deposed that he has never spoken to Ms Chahhoud about the deed, either before or after it was signed. Mrs Leedman gave evidence to the same effect in her affidavit sworn on 6 April 2024.

6. In his affidavit sworn on 5 October 2023, Mr Leedman deposed that:

"Elias has never said anything to me about any discussion he had with Chadia about signing the deed. Elias never said anything, and I never saw anything, which suggested to me that Chadia had been pressured or forced into signing the deed. I also never saw or heard anything that suggested to me that Elias was overbearing or domineering Chadia either in their business dealings with one another or in their marriage. Until the commencement of this proceeding, it was never suggested to me by anyone that Chadia was pressured into signing the deed against her will or against her wishes."

1. Mr Leedman gave further evidence to the same effect in his affidavit sworn on 6 April 2024, adding that he never asked Mr Taleb to put any pressure on Ms Chahhoud to sign the deed.
2. Mr Leedman's evidence that he never saw or heard anything that suggested to him that Mr Taleb was overbearing or domineering over Ms Chahhoud in their personal relationship, or in any business dealings, was not challenged in cross-examination. As I have mentioned earlier in these reasons, [67] Mr Leedman was asked in cross-examination whether he knew that Mr Taleb was controlling and strict with Ms Chahhoud and their children. Mr Leedman answered that he did not know that. Mr Leedman was also asked whether he and Mr Taleb had ever discussed the relationship between Mr Taleb and Ms Chahhoud. Mr Leedman answered that they had sometimes discussed their respective families and that, during such discussions, Mr Taleb had spoken of Ms Chahhoud and their children in a caring, loving and respectful way, and that Mr Leedman "never thought for one time ever that there would be any issues with your, with your marriage or your relationship". Mr Leedman acknowledged that he had not asked Ms Chahhoud about her family relationships. That is understandable, having regard to the very limited contact between Mr Leedman and Ms Chahhoud.
3. I accept Mr Leedman's evidence, and find that he did not know, and that he had not seen or heard anything that suggested to him, that Mr Taleb exerted pressure on Ms Chahhoud, or was overbearing in their relationship. Mr Leedman's evidence is inherently probable, having regard to the very limited contact that he had with Ms Chahhoud. It is also consistent with Ms Chahhoud's own evidence in cross-examination that Mr Taleb was "always protecting their beautiful image".
4. I also accept Mr Leedman's evidence that he did not ask Mr Taleb to put any pressure on Ms Chahhoud to sign the deed. That evidence is consistent with Mr Leedman's contemporaneous email correspondence with Mr Taleb to which I have referred above, in which Mr Leedman refrained from pressuring Mr Taleb to sign the deed without first consulting a lawyer, or even to sign the deed at all. In particular, it is clear from the email correspondence extracted at [151]-[154] above that, if Mr Taleb declined to sign the deed, Mr Leedman was content to move to his "Plan B" and engage a valuer. On 14 June 2017, more

than a year after Mr Leedman had first hoped to have the deed signed, his reaction when told that Mr Taleb was awaiting legal advice was, "[t]hat's fine". [68]

5. In her affidavit sworn on 4 October 2023, Mrs Leedman deposed that:

"Chadia has never told me that Elias has pressured her into signing the deed or any other document. I have never seen or heard anything that suggested to me that Elias threatened or put pressure on Chadia either at all or in connection with the matters referred to in this affidavit."

1. In her affidavit sworn on 6 April 2024, Mrs Leedman deposed that Mr Leedman had handled the negotiations for the deed, and she personally had not communicated with Mr Taleb or with Ms Chahhoud during those negotiations. Mrs Leedman deposed that:

"At no point did Chadia tell me anything about her understanding of the Deed, how it was explained to her, whether she had the opportunity to receive legal advice about the Deed or whether she actually did get legal advice. ... Chadia has never told me about any pressure or duress placed upon her to sign the Deed, and I have never asked Elias to pressure or intimidate Chadia into signing the Deed."

1. I accept Mrs Leedman's evidence that she did not ask Mr Taleb to pressure or intimidate Ms Chahhoud into signing the deed. That evidence is entirely consistent with Mrs Leedman's willingness for Mr Leedman to handle the negotiations for the deed, and with Mr Leedman's approach to the negotiations as indicated in the contemporaneous email correspondence referred to above.
2. Consistently with their candid evidence in chief, [69] each of Mr and Mrs Leedman accepted in cross-examination that they had not discussed the proposed deed with Ms Chahhoud, or communicated with Ms Chahhoud during the negotiation of the deed, or at any time prior to her signing the deed on 16 June 2017. Mr Leedman confirmed that he had assumed that Legal on London were representing both Mr Taleb and Ms Chahhoud in relation to the proposed deed. Mr Leedman said that Mr Taleb had asked him to arrange for Ashurst to finalise the deed after Mr Taleb stopped using Legal on London for some reason. Mr Leedman confirmed that he had not asked Mr Taleb who was representing Ms Chahhoud. Both Mr and Mrs Leedman candidly agreed that Mr Taleb had not told them that he was authorised to speak on behalf of Ms Chahhoud in negotiating the deed. Mr Leedman also accepted that he did not advise Mr Taleb that the same terms and conditions of the deed applied to Mr Taleb and to Ms Chahhoud, and that Ms Chahhoud would be liable to pay the Settlement Amount under the deed if Mr Taleb failed to do so. Nor did he advise Mr Taleb that it was important for Ms Chahhoud to read the deed and obtain legal advice about it.

Ms Chahhoud's acquisition of the Peak View property

1. As mentioned earlier in these reasons, Ms Chahhoud gave evidence that Mr Taleb had purchased an apartment in Harrison on her behalf in July 2016, which she had required him to sell because it did not meet her requirement for land on which she could raise animals

that her daughters could enjoy. [70] In cross-examination, Ms Chahhoud gave evidence that it was "my decision to buy a big farm", and that the funds that she says were available to purchase such a property were hers but that "he has a job to look for this, for this, whatever I am, I want". Ms Chahhoud denied that she and Mr Taleb made the decision together for her to purchase the Peak View property, saying "we don't decide together. I am the one who decide if we buy it or not". Ms Chahhoud also said that the property was "[n]ot for him, I want it to be 100% for me". In her evidence in these proceedings, Ms Chahhoud described it as her "dream" to have a farm in Australia for herself and her daughters. This was a prominent theme in Ms Chahhoud's closing submissions. At the commencement of her oral closing submissions, Ms Chahhoud stated:

"I want to focus on one thing, that this farm is my dream and my, my dream for myself and for my children. And if I knew about this deed, if I had known, I would've non [sic] put the farm under my name. I would've put it under someone else's name to protect it."

1. In her affidavit affirmed on 12 March 2024, Ms Chahhoud gave evidence that Mr Taleb came to her in late 2018 or early 2019 and told her that he had found a property that she would like. According to Ms Chahhoud, they then went together to see a person by the name of Ray Swift, who she described as the listing agent for the property. Ms Chahhoud deposed that she signed documents where Mr Taleb told her to, without questioning him. She did not participate in any discussions with "Ray", which Mr Taleb conducted in English.
2. Ms Chahhoud exchanged contracts to purchase the Peak View property for \$575,000. The transfer was registered on or about 28 February 2019.
3. It will be recalled that Ms Chahhoud returned to Lebanon in October 2019, and lived there for four years before returning to live in Australia in November 2023. In her affidavit sworn on 8 July 2021 that was read in the Helou proceedings, Ms Chahhoud had deposed that she had seen the Peak View property, and that she had stayed in the two-bedroom residence on the Peak View property on two occasions since purchasing it. In cross-examination in the present proceedings, Ms Chahhoud confirmed that the Peak View property is a long drive of about two hours from where she and Mr Taleb were living with their children in 2019. Ms Chahhoud said that she had not had a chance to start growing crops or raising animals on the property before she and Mr Taleb returned to Lebanon to live in October 2019. When it was put to her that she had been to the Peak View property "a couple of times", Ms Chahhoud answered: "Nearly every weekend we would go there. I went more". When the cross-examiner reminded Ms Chahhoud of her evidence in the Helou proceedings that she had been to the property twice, Ms Chahhoud simply asserted that she had been there more than two times, and maintained that she and her daughters went there on weekends before moving back to Lebanon in October 2019. It was put to Ms Chahhoud that her evidence of having been there every weekend was a lie that she had invented in the witness box because she thought it would help her case. Ms Chahhoud denied this.

4. It is inherently improbable, in my opinion, that Ms Chahhoud and her four daughters took a four hour round trip from their home near Canberra every weekend, or nearly every weekend, in order to stay in a two-bedroom home on the Peak View property on which there were no animals or farming activities. I reject Ms Chahhoud's uncorroborated evidence about this, which emerged for the first time in cross-examination and which is irreconcilably inconsistent with her evidence in the Helou proceedings. I find that Ms Chahhoud's claim to have visited the property frequently during 2019 is a lie which she made up in cross-examination because she thought it would be helpful to a central thesis underlying her defence and cross-claim in this case that the Peak View property is her "dream" for herself and for her children.
5. Ms Chahhoud's evidence in these proceedings that Mr Taleb took her to see Mr Ray Swift, who she understood was the listing agent for the Peak View property, contradicted her evidence in the Helou proceedings. In her 8 July 2021 affidavit that was read in the Helou proceedings, Ms Chahhoud had deposed that she had left it to Mr Taleb to make the necessary arrangements for the purchase of the Peak View property, and that she had not been involved in those arrangements "except for attending upon the officers of my solicitor Ray Swift Moutrage and Associates". When this inconsistency was put to her in cross-examination in these proceedings, Ms Chahhoud gave evidence that she had told the solicitor who prepared her 8 July 2021 affidavit that she had been to an agent, but that the solicitor had told her that "it's not possible to go to an agent to buy; it's a lawyer" and that her solicitor had therefore decided to describe Ray Swift Moutrage & Associates as solicitors in her 8 July 2021 affidavit. Ms Chahhoud maintained that she had met a man named Ray Swift, and that he was a listing agent and not a solicitor. Even after being shown information published on the website of Ray Swift Moutrage & Associates describing that firm as a firm of barristers and solicitors, and referring to the appointment of Ms Mona Moutrage as the principal of the firm upon the retirement of Mr Ray Swift in 2001, Ms Chahhoud vehemently adhered to her claim to have met Mr Ray Swift from that firm in 2018 or 2019 in connection with her purchase of the Peak View property, and to her assertion that Mr Swift was not a solicitor but a listing agent. Ms Chahhoud firmly denied ever meeting or instructing Ms Moutrage in relation to the Peak View property, even when shown the transfer of the Peak View property on which Ms Moutrage had witnessed Ms Chahhoud's signature as transferee.
6. It was put to Ms Chahhoud in cross-examination that, when she prepared her affidavit in these proceedings on 12 March 2024, she knew that Ray Swift Moutrage & Associates were lawyers, because she had described them as such in her affidavit sworn on 8 July 2021 in the Helou proceedings. It was put to her that she lied in her 12 March 2024 affidavit by describing them as listing agents, because she thought it would hurt her defence of these proceedings if she had described them as lawyers. In the course of opening her case in these proceedings, Ms Chahhoud stated to the Court that:

"In, in this country, I don't deal with lawyers. It's only my husband who deals with that. My husband is in charge. I don't have any authority over everything – anything in the family and running of the family. It's my husband's responsibility."

1. When reminded about that part of her opening submissions during cross-examination, Ms Chahhoud maintained that she had not dealt with lawyers in relation to the purchase of the Peak View property, and denied that she had lied by describing Ray Swift Moutrage & Associates as listing agents rather than as lawyers.
2. I find that Ms Chahhoud did lie in her 12 March 2024 affidavit in describing Ray Swift Moutrage & Associates as listing agents rather than as lawyers. I reject as utterly implausible Ms Chahhoud's evidence that her solicitor in the Helou proceedings had described Ray Swift Moutrage & Associates as solicitors, in her 8 July 2021 affidavit, contrary to her instructions and on the basis that "it's not possible to go to an agent to buy". A deliberate lie in describing Ray Swift Moutrage & Associates as listing agents in her affidavit affirmed on 12 March 2024 in these proceedings is the only plausible explanation for Ms Chahhoud's refusal to accept that this was in fact a firm of barristers and solicitors, even when shown the information published on the firm's website during cross-examination.
3. I find that Ms Chahhoud lied because she thought that it would not be helpful to her defence and cross-claim in these proceedings that she had engaged the services of solicitors in purchasing property for herself. I find that Ms Chahhoud thought that her defence and cross-claim would have better prospects of success if the Court accepted her contention that "I don't deal with lawyers", because the Court might be less likely to consider that it was open to Ms Chahhoud to defer signing the deed when it was provided to her on 16 June 2017 in order to take the opportunity to seek legal advice, if she had wished to do so. It is highly improbable that Ms Moutrage acted for Ms Chahhoud in relation to the purchase of the Peak View property without taking instructions directly from Ms Chahhoud. Ms Chahhoud told deliberate lies in denying that Ray Swift Moutrage & Associates were solicitors who acted for her in relation to that purchase.

Default in payment of the Deferred Settlement Amount and commencement of these proceedings

1. The Continuing Entities failed to pay the Deferred Settlement Amount of \$1,500,000 on or before the due date of 16 June 2019. As at the date of the hearing of these proceedings, the Continuing Entities had not paid any part of the Deferred Settlement Amount or Interest.
2. In about September 2021, Mr Leedman became aware from his review of the judgment of this Court in the Helou proceedings that Ms Chahhoud had acquired the Peak View property. [71] Prior to reading that judgment, Mr Leedman had not been aware that Ms Chahhoud owned any real property.

3. The Continuing Entities have not complied with their obligations under the deed to pay the Deferred Settlement Amount, together with Interest, to the Retiring Entities. As at June 2023, the total amount of Interest on the Deferred Settlement Amount, compounded monthly since 16 June 2017 at the rate of one per cent per month, was \$1,570,648.97. Thus, the total amount owing under the deed at that time was \$3,070,648.97. The whole of that amount, plus interest that has accrued since June 2023, remains outstanding. Mr and Mrs Leedman gave evidence that the plaintiffs have not recovered any part of the summary judgment that was entered against Mr Taleb in these proceedings on 11 July 2023.
4. Ms Chahhoud's title to the Peak View property is unencumbered, save for the equitable charge that the plaintiffs claim pursuant to the deed. That charge is the subject of a caveat that the plaintiffs registered against the title to the Peak View property on 15 September 2021.
5. The plaintiffs tendered a letter that they received from Mr Graeme Boller, a licensed real estate agent, dated 16 February 2022, in which, Mr Boller expressed the opinion that the Peak View property would realise a price of between \$650,000 and \$700,000 if it were marketed for sale at that time. The appraisal was expressed to be current for a period of four weeks from the date of the letter. No updated appraisal or valuation was tendered, and the plaintiffs did not adduce any evidence from Mr Boller.
6. Mr Leedman gave evidence that, throughout 2022, he and Mrs Leedman received advice from Mr Boller and two other property agents that, in their opinion, a sale of the Peak View property by private treaty is the best method of sale because there is a limited number of potentially interested buyers due to the unique nature and remoteness of the property. According to Mr Leedman's evidence, the agents have advised him that the property is not suitable for farming because it is hilly and covered in natural bushland with shallow shale. The agents consider that the property is suitable for recreational hunting or simply enjoying the wilderness, and that a sale by auction could be detrimental to achieving strong interest amongst buyers with potential interest in such a property.

Consideration and determination

Ms Chahhoud's contention that she did not intend to be bound by the deed

1. As I have explained earlier in these reasons, Ms Chahhoud does not dispute that she signed the deed. Ms Chahhoud's contention that she did not intend to be bound by the deed is founded on her evidence that she believed that she was signing a transfer of shares, and that she did not read the deed prior to signing it. I have rejected that evidence. [72]
2. That is sufficient to dispose of Ms Chahhoud's defence and cross-claim that the deed is ineffective, void or liable to be set aside on the basis that she did not intend to be bound by it.

3. Even if I had accepted Ms Chahhoud's evidence about her subjective state of mind, this would not have rendered the deed ineffective, void, or liable to be set aside on that basis. As the plaintiffs submitted, the question whether a deed or contract is intended to create legal relations is to be determined by "what it is that would objectively be conveyed by what was said or done, having regard to the circumstances in which those statements and actions happened. It is not a search for the uncommunicated subjective motives or intentions of the parties". [73] I accept the plaintiffs' submission that, viewed objectively, Ms Chahhoud's conduct in signing the document, which bore all of the indicia of a deed, conveyed that she intended to be bound by the terms of that document. That is all the more so in circumstances where Ms Chahhoud attended the office of the solicitors acting for the Retiring Entities for the very purpose of signing the deed and having her signatures attested by their solicitor, she proceeded immediately thereafter to execute shareholders' resolutions which were necessary to give effect to Trilam Developments' surrender of its shares and units in the Affected Entities in accordance with the deed, and bank cheques were handed to the Retiring Entities' solicitor before Mr Taleb and Ms Chahhoud left that meeting to discharge the obligation of the Continuing Entities, including Ms Chahhoud, to make the Initial Payment under the deed. Thus, even if I had accepted Ms Chahhoud's evidence that she did not read the deed, and that her subjective intention was to sign a transfer of shares only, this would not preclude the deed from being legally binding on her.

The deed created an equitable charge

1. I accept the plaintiffs' submission that clause 7 of the deed created an equitable charge over any property then owned, or subsequently acquired by, each Continuing Entity, to secure payment of the Settlement Amount that the Continuing Entities were jointly and severally liable to pay under clauses 1.4 and 4 of the deed. The parties' intention that such present and future property is liable to the discharge of the Continuing Entities' obligations to pay that Settlement Amount is clear from the express words of clause 7.1 which provide for the granting of a "security interest" in such property "to secure payment" of the amounts due. It is clear from those words and from the provisions of clause 7.2, that the parties intended that the Retiring Entities would have an immediate right of recourse to present property – and to future property, once acquired – of each Continuing Entity upon the Settlement Amount, or any component of the Settlement Amount, becoming payable under the deed. [74] This satisfies the requirements for an equitable charge. The equitable remedies of the appointment of a receiver, and an order for judicial sale, are available to the Retiring Entities to realise the security. [75]

Alleged illegitimate pressure or duress

1. As the plaintiffs submitted, Ms Chahhoud bears the onus of proving the alleged facts on which each ground of her cross-claim is based, including the ground of illegitimate pressure or duress. I have rejected Ms Chahhoud's evidence about the nature and dynamic of her relationship with Mr Taleb, her evidence of the interactions between them on the morning

of 16 June 2017 before she signed the deed, and her evidence that she felt pressured by Mr Taleb to sign the deed. [76] Ms Chahhoud has therefore failed to discharge her onus of proof in respect of her allegation that Mr Taleb procured her execution of the deed by illegitimate pressure or duress. Those elements of Ms Chahhoud's defence and cross-claim must therefore be dismissed.

2. Even if I had accepted Ms Chahhoud's evidence about those matters, and assuming that I had found that evidence established threatened or actual unlawful conduct by Mr Taleb in connection with Ms Chahhoud's execution of the deed, [77] I would have rejected her defence and cross-claim based on illegitimate pressure or duress. The deed would not have been liable to be set aside on the basis of alleged duress unless the plaintiffs had actual or constructive knowledge of the facts constituting the duress by Mr Taleb, or unless the plaintiffs procured Ms Chahhoud's entry into the deed through the agency of Mr Taleb who had subjected her to duress. [78] I have accepted the evidence of Mr and Mrs Leedman that they were not aware of any pressure exerted by Mr Taleb against Ms Chahhoud, either generally or in relation to the deed. [79] Ms Chahhoud does not contend that Mr Taleb did anything in the presence of Mr Andersen on 16 June 2017, or that Ms Chahhoud said anything to Mr Andersen, that could have alerted him to the pressure that Ms Chahhoud claims to have been subjected to when she signed the deed. [80] Mr Andersen does not recall noticing any signs of coercion or pressure. [81]
3. Further, I do not consider that the plaintiffs procured Ms Chahhoud's entry into the deed through the agency of Mr Taleb. Mr Leedman, on behalf of the plaintiffs, conducted an arm's length negotiation with Mr Taleb for the plaintiffs' exit from the business relationship that they had entered into for the development and commercialisation of structural formwork systems and products, including Trilam Developments relinquishing its shares and units in Class 1 Form, in the Akena and Steadiform companies, and in the Steadiwall Intellectual Property Trust. It was Mr Taleb who told Mr Leedman in July 2016 that "all the parties involved" should be included in a deed being prepared to provide for the plaintiffs to relinquish their shares and units in consideration for \$2,000,000. [82] It was Legal on London who then prepared the first draft of that deed, which included Ms Chahhoud as a party. [83] Mr Leedman reasonably assumed that Legal on London were acting for Mr Taleb and Ms Chahhoud. [84] Mr Leedman encouraged Mr Taleb to obtain such legal advice as he wished, and reasonably assumed that the benefit of such advice would extend to Ms Chahhoud. [85]
4. When Mr Taleb was ready to sign the deed, he requested Mr Leedman to arrange for one of his solicitors to witness Mr Taleb's signature in Canberra. Mr Leedman obliged, reminding Mr Taleb that Ms Chahhoud was also a party to the deed and would therefore also need to sign. [86] I have accepted the evidence of Mr and Mrs Leedman that they did not ask Mr Taleb to put any pressure on Ms Chahhoud to sign the deed. [87]
5. As Mr Leedman candidly accepted in cross-examination, he did not discuss the deed directly with Ms Chahhoud, and did not advise Mr Taleb about how the terms of the deed applied to Ms Chahhoud. Mr Leedman was under no obligation to do so. Nor was there any occasion

for Mr Leedman to advise Mr Taleb that Ms Chahhoud should read the deed and obtain legal advice. He had no reason to think that she had not done so. I have accepted Mr Leedman's unchallenged evidence that he believed that Ms Chahhoud stood to benefit from the deed. [88] Ms Chahhoud did stand to benefit as one of the assignees of the intellectual property, and also as the sole shareholder of Elias Pty Limited, which would have an increased stake in the Akena companies and which would become the sole shareholder in the Steadiform companies and the sole unit holder in the Steadiform Intellectual Property Trust as a result of the plaintiffs' surrender of Trilam Developments' shares and units in consideration for the Continuing Entities' promise to pay the \$2,100,000 Settlement Amount plus interest secured by the charge over the Continuing Entities' present and after-acquired property. [89]

Alleged undue influence

1. The doctrine of undue influence was considered by the High Court in *Thorne v Kennedy*. [90] Kiefel CJ, Bell, Gageler, Keane and Edelman JJ said: [91]

"30. ... undue influence can arise from widely different sources, one of which is excessive pressure. Importantly, however, since pressure is only one of the many sources for the influence that one person can have over another, it is not necessary that the pressure which contributes to a conclusion of undue influence be characterised as illegitimate or improper.

31. In 1836, in a passage which was copied verbatim by Snell thirty years later, Story said that a person can be subjected to undue influence where the effect of factors such as pressure is that the person 'has no free will, but stands in vinculis [in chains]'. He explained that 'the constant rule in Equity is, that, where a party is not a free agent, and is not equal to protecting himself, the Court will protect him'. In 1866, this approach was applied in equity by the House of Lords, recognising undue influence in a case of pressure that deprived the plaintiff of 'free agency'. In 1868, in probate, Sir James Wilde also described undue influence as arising where a person is not a 'free agent'. In *Johnson v Buttress*, Dixon J described how undue influence could arise from the 'deliberate contrivance' of another (which naturally includes pressure) giving rise to such influence over the mind of the other that the act of the other is not a 'free act'. And, in *Bank of New South Wales v Rogers*, McTiernan J characterised the absence of undue influence as a 'free and well-understood act' and Williams J referred to 'the free exercise of the respondent's will'.
32. The question whether a person's act is 'free' requires consideration of the extent to which the person was constrained in assessing alternatives and deciding between them. Pressure can deprive a person of free choice in this sense where it causes the person substantially to subordinate his or her will to that of the other party. It is not necessary for a conclusion that a person's free will has been substantially subordinated to find that the party seeking relief was reduced entirely to an automaton or that the person became a 'mere channel through which the will of the defendant operated'. Questions of degree are involved. But, at the very least, the judgmental capacity of the party seeking relief must be 'markedly sub-standard' as a result of the effect upon the person's mind of the will of another.

33. ...

34 There are different ways to prove the existence of undue influence. One method of proof is by direct evidence of the circumstances of the particular transaction. ... Another way in which undue influence can be proved is by presumption. ... Common experience gives rise to a presumption that a transaction was not the exercise of a person's free will if (i) the person is proved to be in a particular relationship, and (ii) the transaction is one, commonly involving a 'substantial benefit' to another, which cannot be explained by 'ordinary motives', or 'is not readily explicable by the relationship of the parties'. Although the classes are not closed, in *Johnson v Buttress* Latham CJ described the relationships that could give rise to the presumption as including parent and child, guardian and ward, trustee and beneficiary, solicitor and client, physician and patient, and cases of religious influence. Outside recognised categories, the presumption can also be raised by proof that the history of the particular relationship involved one party occupying a similar position of ascendancy or influence, and the other a corresponding position of dependency or trust. In either case, the presumption is rebuttable by the other party proving that the particular transaction or transfer, in its particular circumstances, was nevertheless the result of the weaker party's free will."

1. The marital relationship is not one of the established classes of relationship that gives rise to a presumption of undue influence. I have rejected Ms Chahhoud's evidence that her relationship with Mr Taleb was characterised by his ascendancy or influence over her. [92] There is nothing for the plaintiffs to rebut. Ms Chahhoud bears the onus of proving the alleged undue influence.
2. I have rejected Ms Chahhoud's evidence about the dynamic between her and Mr Taleb within their marital relationship, and about the interactions between them on the morning of 16 June 2017 leading up to Ms Chahhoud signing the deed in her own capacity and as the sole director of Elias Pty Limited. [93] Ms Chahhoud has therefore failed to establish that her will was substantially subordinate to that of Mr Taleb, or that her capacity to assess alternatives and judge between them was "markedly sub-standard" as a result of the effect of Mr Taleb's will on her mind. I have rejected Ms Chahhoud's evidence that she felt pressure from Mr Taleb to sign the deed when they met with Mr Anderson on 16 June 2017. As I have stated earlier in these reasons, there is no evidence of any reason why Ms Chahhoud could not have declined to sign the deed, or deferred that decision in order to obtain legal advice, or an Arabic language translation of the deed if Ms Chahhoud considered that it would assist her to have the deed translated. [94]
3. Ms Chahhoud's undue influence claim fails for those reasons. Even if I had upheld Ms Chahhoud's claim that she signed the deed as a result of undue influence of Mr Taleb, I would have dismissed her claim against the plaintiffs to set aside the deed on that basis because, as the plaintiffs submitted and as I have explained above, the deed benefitted both Mr Taleb and Ms Chahhoud, there is no evidence that the plaintiffs had actual or constructive knowledge or were on notice of the alleged undue influence, and the plaintiffs did not use Mr Taleb as their agent to procure Ms Chahhoud's execution of the deed. [95]

Unconscionability – the "special wives equity"

1. The principle in *Yerkey v Jones*, [96] which was confirmed by the High Court of Australia in *Garcia v National Australia Bank Ltd*, [97] applies to transactions in which a wife acts as surety by guaranteeing the obligations of her husband in a transaction from which the wife herself obtains no financial benefit.
2. The principle "begins with the recognition that the surety is a volunteer: a person who obtained no financial benefit from the transaction, performance of the obligations of which she agreed to guarantee". [98]
3. In a case in which there is actual undue influence by the husband over the wife, the principle holds that "to enforce that voluntary transaction against her when in fact she did not bring a free will to its execution would be unconscionable". [99]
4. In a case in which there is no undue influence, but the husband fails to explain the suretyship transaction adequately and accurately to the wife, the principle holds that "to enforce it against her if it later emerges that she did not understand the purport and effect of the transaction of suretyship would be unconscionable (even though she is a willing party to it) if the lender took no steps itself to explain its purport and effect to her or did not reasonably believe that its purport and effect had been explained to her by a competent, independent and disinterested stranger". [100]
5. What makes it unconscionable, in the second kind of case, to enforce the guarantee against the wife is: [101]

"... the combination of circumstances that: (a) in fact the surety did not understand the purport and effect of the transaction; (b) the transaction was voluntary (in the sense that the surety obtained no gain from the contract the performance of which was guaranteed); (c) the lender is to be taken to have understood that, as a wife, the surety may repose trust and confidence in her husband in matters of business and therefore to have understood that the husband may not fully and accurately explain the purport and effect of the transaction to his wife; and yet (d) the lender did not itself take steps to explain the transaction to the wife or find out that a stranger had explained it to her."

1. The second kind of case does not depend on any presumption of undue influence by the husband over the wife. Nor does it depend on the husband acting as the agent of the creditor in procuring the wife's agreement to give the guarantee. Rather: [102]

"... it depends upon the surety being a volunteer and mistaken about the purport and effect of the transaction, and the creditor being taken to have appreciated that because of the trust and confidence between surety and debtor the surety may well receive from the debtor no sufficient explanation of the transaction's purport and effect. To enforce the transaction against a mistaken volunteer when the creditor, the party that seeks to take the benefit of the transaction, has not itself explained the transaction, and does not know that a third party has done so, would be unconscionable."

1. As the plaintiffs submitted, the principle operates in the second kind of case as a subset of the doctrine of unconscionability which applies only in the context of transactions in which the wife is a surety for the liabilities of her husband, and has obtained no financial benefit from the transaction herself. [103] It is not open to me as a judge of this Court sitting at first instance to extend the principles articulated by the High Court in *Yerkey v Jones and Garcia* to cases outside conventional guarantees given by wives acting wholly as volunteers. [104] I reject Ms Chahhoud's submission that it is critical in all cases "in marital contexts" for each spouse to receive separate and independent legal advice.
2. The principles in *Yerkey v Jones* do not apply to the deed. Ms Chahhoud was not a volunteer. Ms Chahhoud was one of the assignees of the intellectual property and, as the sole shareholder of Elias Pty Limited, she also stood to benefit from the increase in that company's stake in the Akena and Steadiform companies and in the Steadiwall Intellectual Property Trust that would flow from the surrender of Trilam Developments' shares in those companies and units in the Trust. The fact that Ms Chahhoud had no role in the day-to-day management of the Steadiform and Akena companies does not detract from the benefit of increased ownership of those companies through Elias Pty Limited. Ms Chahhoud was not a surety for Mr Taleb's liabilities or the performance of his obligations. She undertook an obligation, jointly and severally with Mr Taleb and the other Continuing Entities, to pay the agreed monetary consideration for the assignment of the Retiring Entities' interest in the intellectual property and for Trilam Developments' surrender of its shares and units. Jointly and severally with the other Continuing Entities, Ms Chahhoud granted an equitable charge over present and after-acquired property to secure the performance of that obligation. [105]
3. Ms Chahhoud's claim to have the deed set aside under the principles in *Yerkey v Jones* fails for those reasons.

Unconscionability

1. As Kiefel CJ, Bell, Gageler, Keane and Edelman JJ said in *Thorne v Kennedy*: [106]

"A conclusion of unconscionable conduct requires the innocent party to be subject to a special disadvantage 'which seriously affects the ability of the innocent party to make a judgment as to [the innocent party's] own best interests'. The other party must also unconscientiously take advantage of that special disadvantage. This has been variously described as requiring 'victimisation', 'unconscientious conduct', or 'exploitation'. Before there can be a finding of unconscientious taking of advantage, it is also generally necessary that the other party knew or ought to have known of the existence and effect of the special disadvantage."

1. These considerations are not to be applied as if they were separate elements of a cause of action. Each case calls for a precise examination of its particular facts, including the relationship between the parties, and the circumstances of the party who is said to have been vulnerable by reason of a special disadvantage. [107] There are no fixed or closed categories of circumstances that might constitute a special disadvantage but, in this context, "special disadvantage" means something that "seriously affects the ability of the innocent

party to make a judgment as to his [or her] own best interests". [108]

2. In determining whether one party has unconscientiously taken advantage of a special disadvantage of the other, it is necessary to consider whether the first party had actual knowledge of, or was wilfully ignorant of, the special disadvantage, or had constructive knowledge of that special disadvantage in the sense that they had knowledge of facts from which they ought to have known that the other party was suffering under the particular special disadvantage. Constructive notice – where the first party is on notice of facts that might lead on inquiry to discovery that the other party has a special disadvantage – will not suffice. [109]
3. As I explained at the outset of these reasons, the special disadvantage on which Ms Chahhoud relies in support of her unconscionability claim in these proceedings is said to have arisen from a combination of the following alleged circumstances: (1) not having been given an opportunity to negotiate any of the terms of the deed, and not having been represented during those negotiations; (2) not having been provided with a complete copy of the deed prior to signing the deed, and at the time of signing; (3) not being afforded the opportunity to review the deed prior to signing it; (4) not being afforded the opportunity to obtain independent legal advice in relation to the deed prior to signing it; (5) the provisions of the deed not being explained to her accurately, or at all, before she signed the deed; (6) the provisions of the deed, which was written in English, not being translated for her in a language that she could understand, before she signed the deed, her first language being Arabic; (7) her lack of knowledge or understanding of the nature or effect of the deed that she was being asked to sign; and (8) her lack of intention to be bound by the deed. Ms Chahhoud alleges that Mr and Mrs Leedman and Trilam Developments knew, or ought reasonably to have known, that they did not allow any time, or did not allow adequate time, for Ms Chahhoud to have the nature and effect of the deed explained to her, or to obtain independent legal advice before signing the deed.
4. Ms Chahhoud was not legally represented in the negotiations for the deed but she was provided with a complete copy of the deed before she signed it at Ashurst's office on 16 June 2017. She had sufficient time to review the deed before signing it while she was present at Ashurst's office on that day. In the absence of pressure to sign the deed there and then, there was no impediment to her taking further time than she in fact took to review the deed, seeking such legal advice and representation as she may have wished, and either declining to sign the deed or negotiating for changes to it before she would sign. Similarly, there was no impediment to Ms Chahhoud deferring signing the deed in order to have it translated into the Arabic language if she had considered that this would assist her, although I do not feel a sense of actual persuasion that Ms Chahhoud lacked the ability to understand the deed written in English and I have rejected her evidence that she did not read it before signing it. I have also rejected Ms Chahhoud's evidence that she did not understand the nature and effect of the deed, believing that she was signing a share transfer, and her contention that she did not intend to be bound by the terms of the deed that she in fact signed. [110]

5. In my opinion, those circumstances, considered as a whole, did not place Ms Chahhoud in a position of special disadvantage by seriously affecting her ability to make a judgment as to her own best interests. Ms Chahhoud might now consider, with the benefit of hindsight, that she acted too hastily in signing the deed on 16 June 2017. That does not constitute a special disadvantage in the requisite sense.
6. Assertions in Ms Chahhoud's closing submissions that she suffered from a general lack of business experience, and that this constituted a special disadvantage in the requisite sense, travel outside the pleaded case. In any event, I have rejected Ms Chahhoud's evidence in these proceedings concerning the extent of her business experience for the reasons explained at [25]-[54] and [68]-[98] above, including because that evidence is inconsistent with Ms Chahhoud's evidence in the Helou proceedings, in which she described her occupation as a company director and deposed that she had been in business for five years as at July 2021.
7. Even if I had held that Ms Chahhoud was suffering from a special disadvantage by reason of the circumstances described at [322] above, I would not have set aside the deed. I would have held that the evidence did not establish that Mr and Mrs Leedman had actual or constructive knowledge of the special disadvantage, much less that they took unconscientious advantage of any such special disadvantage. I would have rejected Ms Chahhoud's submission that the plaintiffs "actively exploited" the alleged special disadvantage. As I have already stated, Mr Leedman, who negotiated the deed on behalf of the Retiring Entities, reasonably assumed that Ms Chahhoud was legally represented. [111] The plaintiffs did not rely on Mr Taleb to procure Ms Chahhoud's execution of the deed. [112] I have accepted Mr and Mrs Leedman's evidence that their limited interactions with Ms Chahhoud did not cause them to think that she had any difficulty understanding and communicating in the English language. [113] I have accepted Mr Leedman's unchallenged evidence that he believed that Ms Chahhoud stood to benefit from the deed. [114] As I have already explained, she did stand to benefit directly as the assignee of intellectual property rights, and indirectly through her ownership of Elias Pty Limited. [115] As I have already explained, Ms Chahhoud has not established that Mr Taleb pressured her into signing the deed. [116] In any event, as I have stated above in relation to Ms Chahhoud's duress claim, I have accepted Mr and Mrs Leedman's evidence that they were not aware of any pressure exerted by Mr Taleb against Ms Chahhoud, either generally or in relation to the deed. [117] Ms Chahhoud does not contend that Mr Taleb did anything in the presence of Mr Andersen on 16 June 2017, or that Ms Chahhoud said anything to Mr Andersen, that could have alerted him to the pressure that Ms Chahhoud claims to have been subjected to when she signed the deed. [118] Mr Andersen does not recall noticing any signs of coercion or pressure. [119]
8. Ms Chahhoud's claim to set aside the deed on the grounds of alleged unconscionability fails for those reasons.

Statutory unconscionability

1. As noted at the outset of these reasons, Ms Chahhoud relies on ss 12CA and 12CB of the Australian Securities and Investments Act.

2. Section 12CA provides:

"12CA Unconscionable conduct within the meaning of the unwritten law of the States and Territories

(1) A person must not, in trade or commerce, engage in conduct in relation to financial services if the conduct is unconscionable within the meaning of the unwritten law, from time to time, of the States and Territories.

(2) This section does not apply to conduct that is prohibited by section 12CB."

1. Ms Chahhoud's claim relying on s 12CA fails for the same reasons that I have explained above in relation to her claim of unconscionability at general law. [120]

2. Section 12CB applies only in relation to conduct in connection with the supply or acquisition, or the possible supply or possible acquisition, of "financial services". I accept the plaintiffs' submission that s 12CB therefore does not apply to their conduct in connection with Ms Chahhoud's entry into the deed. The deed did not involve the supply or acquisition of "financial services" as defined in s 12BAB(1). Whilst s 12BAB(1) provides that a person provides a financial service if they "deal in a financial product", such as shares, the plaintiffs' were not "dealing" in Trilam Developments' shares and units by negotiating and entering into the deed because their promise to surrender those shares and units was merely a dealing on their own behalf: see s 12BAB(7) and (9).

3. Ms Chahhoud's claim relying on s 12CB fails for that reason.

4. Even if s 12CB had been applicable, I would have held that, having regard to all of the circumstances in which Ms Chahhoud signed the deed, including the matters referred to in s 12CC to the extent that they are applicable to the present case, the conduct of the plaintiffs was not "outside societal norms of acceptable commercial behaviour [so] as to warrant condemnation as conduct that is offensive to conscience". [121] I would have reached that conclusion for the reasons that I have already canvassed extensively above in addressing Ms Chahhoud's claims of duress, undue influence, and unconscionability at general law.

Contracts Review Act

1. As the plaintiffs submitted, s 17(3) of the Contracts Review Act provides that the Act applies to a contract only if the law of New South Wales is the proper law of the contract, or if the law of New South Wales would be the proper law of the contract but for a provision of the contract that stipulates the law of another place as the proper law of the contract.

2. As the plaintiffs submitted, the parties to the deed expressly selected the law of Queensland as the proper law by providing in clause 14.5 that the deed is governed by the laws of Queensland. [122] Neither the nature and terms of the deed, nor the circumstances in which

it was entered into, support the view that the law of New South Wales would have been the proper law of the deed but for clause 14.5. [123] Mr and Mrs Leedman were resident in Queensland. Mr Taleb and Ms Chahhoud were resident in New South Wales. The deed concerned the surrender of shares by Trilam Developments (a company registered in South Australia) in the Akena and Steadiform companies (which were registered and conducted business in Queensland) and in Class 1 Form (which was registered in New South Wales, but which conducted business in the Australian Capital Territory and in Queensland). [124] It follows that the Contracts Review Act does not apply to the deed by reason of s 17(3) of the Act, and Ms Chahhoud's claim for relief under the Act must be dismissed.

3. If I had held that New South Wales was the proper law of the deed, I would have dismissed Ms Chahhoud's claim for relief under the Contracts Review Act for two further reasons. First, I would not have held that the provisions of the deed were unjust in the circumstances in which the deed was entered into, for all of the reasons that I have already canvassed above in addressing Ms Chahhoud's claims of duress, undue influence, and unconscionability. Second, as the plaintiff's submitted, Ms Chahhoud would not be entitled to relief in any event by reason of s 6(2) of the Act, because the deed was entered into for the purpose of the business carried on by Ms Chahhoud as sole director and shareholder of Elias Pty Limited by investing in the Akena and Steadiform companies that were developing and commercialising structural formwork systems and products.

Judicial sale

1. The plaintiffs have established that they have an equitable charge over the Peak View property by reason of clause 7.1 of the deed, that the charge is enforceable, and that there has been default in the payment of the full Settlement Amount plus interest under the deed by the chargor Ms Chahhoud, as one of the Continuing Entities who is jointly and severally liable to pay the full Settlement Amount plus interest by 16 June 2019. The outstanding principal is \$1,500,000, being the Deferred Payment component of the Settlement Amount.
2. As the plaintiffs submitted, judicial sale is the standard remedy of an equitable chargee upon default by the chargor. [125] In the present case, there is no registered mortgagee or caveator with an interest in the Peak View property who might be adversely affected by an order for judicial sale. I note that Ms Chahhoud made no submission against an order for judicial sale in the event that she did not succeed in her claims to set aside the deed, or to have it declared void or ineffective, and in the event that the Court did not uphold her contention that the deed does not create an equitable charge over the Peak View property, once acquired.

3. I am satisfied that an order for judicial sale is appropriate, subject to the question of the terms on which the order should be made, including who should have the conduct of the sale, whether that person should be authorised to sell the property by public auction, by an expression of interest campaign, or by private treaty, and what reserve price should be fixed in the event that the sale is to be by public auction.
4. Ordinarily, the Court gives the conduct of the sale to the party with the greatest interest in maximising the sale price. When the value of the property is insufficient to cover the debt secured by the charge, the conduct of the sale will typically be given to the chargee because it has an interest in maximising the amount that will be recovered from the sale of the property. [126]
5. In the present case, there is no evidence of the current value of the Peak View property. The only evidence adduced by the plaintiffs is evidence of opinions expressed to the plaintiffs by a real estate agent in 2022 that the likely selling price of the Peak View property was, at that time, in the range of \$650,000 to \$700,000. [127] No objection was taken to that evidence, but it carries no weight beyond the mere fact that the agent expressed that opinion in 2022. The plaintiffs did not adduce evidence of the reasons for the agent's opinion, which would have been required if the Court were to accept the opinion as substantially based on the agent's specialised knowledge or experience. Nevertheless, I consider that the evidence of the agent's opinion, together with the evidence of the price of \$575,000 that Ms Chahhoud paid to purchase the Peak View property in 2019, [128] provides a sufficient basis to conclude on the balance of probabilities that the value of the property is materially less than the principal sum of \$1,500,000 owing under the deed, even before taking into account the interest on that principal sum which has been compounding monthly at the rate of 1% per month since 16 June 2017. I am therefore satisfied that the plaintiffs have the greatest interest in maximising the price achieved for the Peak View property, and that the terms of the order for judicial sale should appoint the plaintiffs to conduct the sale.
6. A judicial sale is ordinarily conducted by public auction in order to ensure that the market is fully tested and the best price is obtained. However, the Court may order a sale by public tender or by private treaty. [129] As referred to at [295] above, the plaintiffs have adduced evidence that they were advised by three real estate agents in 2022 that a sale by auction would not be likely to obtain the best price for the Peak View property, and that a sale by private treaty would be the preferable method of sale for this particular property. For the reasons explained above, that evidence carries no weight beyond the mere fact that the agents expressed those opinions in 2022. The plaintiffs have not adduced any evidence that provides a sufficient basis for the Court to determine what directions should be made as to the method of sale and, if the sale is to be by public auction, the reserve price. Contrary to the plaintiffs' submissions, I do not consider that it would be an appropriate exercise of the Court's discretion in this case to circumvent this evidentiary deficiency by ordering judicial sale on terms that leave it to the plaintiffs to make those determinations as they see fit in the process of conducting the sale under the auspices and pursuant to the authority of the

Court, subject only to a requirement that they consult with and obtain advice from a real estate agent as to the method of sale, and a valuer as to the reserve price (if the plaintiffs determine to conduct the sale by public auction), and without any requirement for any contract for the sale of the property by private treaty to be on terms that it is subject to the approval of the Court. [130]

7. For those reasons, orders will be made for judicial sale of the Peak View property on terms that the plaintiffs (jointly and severally) are appointed to effect the sale, but requiring the plaintiffs to obtain directions from the Court as to the method of sale and, if the sale is to be by public auction, as to the reserve price to be fixed, before proceeding with the sale. There will be an ancillary order for Ms Chahhoud to deliver up vacant possession of the Peak View property to the plaintiffs. As the plaintiffs submitted, vacant possession is an incident of judicial sale. [131]

Costs

1. The plaintiffs seek an order that Ms Chahhoud pay the whole of the plaintiffs' costs of these proceedings to date on an indemnity basis, relying on clause 4.4(c)(B) of the deed, which in terms relates to commencing proceedings for payment of any amount owing under the deed as a liquidated debt, but which the plaintiffs construe as a contractual entitlement to indemnity costs in respect of their claim in these proceedings for declaratory relief, an order for judicial sale, and the judgment for a monetary sum (being the claim that the plaintiffs have deferred, as explained at [16] above). I did not have the benefit of any submissions from the plaintiffs in support of that construction of clause 4.4(c)(B) of the deed. In the circumstances, the most appropriate and efficient course is to defer determining the costs of the proceedings until the proceedings have been concluded.

Conclusion and orders

1. For all of the foregoing reasons, the orders and directions of the Court are as follows:
 1. DECLARE that the plaintiffs hold an equitable charge (the Charge) over the whole of the land identified as [redacted] in Deposited Plan [redacted] (the Peak View Property), which secures all money owing by the first defendant to the plaintiffs pursuant to the deed entered into between the plaintiffs, the first defendant, the second defendant and others on or about 16 June 2017 (the Deed).
 2. ORDER that the Peak View Property be judicially sold.
 3. ORDER that the plaintiffs (jointly and severally) be appointed the Court's agent in order to effect the judicial sale of the Peak View Property.
 4. ORDER that the first defendant deliver up vacant possession of the Peak View Property to the plaintiffs within 14 days of the date of these orders.

5. ORDER that the Peak View Property be sold by the plaintiffs in such manner and on such terms as the Court directs on the application to be filed in accordance with order 6 below, and in accordance with such other directions as the Court may make from time to time, and otherwise in accordance with the duties that a mortgagee owes when selling mortgaged land.
6. ORDER that the plaintiffs are to make an application for directions concerning the sale of the Peak View Property, including the manner of sale and any reserve price, by filing and serving a notice of motion, together with all supporting evidence and an outline of the plaintiffs' submissions in support of the directions sought, within 42 days after the date of these orders, and direct that the notice of motion be returnable before Williams J five business days after the date of filing for directions in the first instance.
7. ORDER that, in the event of the sale of the Peak View Property in accordance with these orders, and in accordance with the directions to be made by the Court pursuant to orders 5 and 6 above, the plaintiffs are to pay the proceeds of sale in the following order:
 1. first, payment of all of the plaintiffs' proper costs and expenses relating to the sale (including any commission to be paid and expenses to be reimbursed to any real estate agent retained for the purpose of the sale);
 2. second, payment to the plaintiffs of the amount secured by the Charge, subject to the plaintiffs providing 14 days' notice in writing to the first defendant of the amount which the plaintiffs contend is secured by the Charge as at the date of completion of sale of the Peak View property; and
 3. third, payment of any remaining proceeds of sale into Court.
1. ORDER that, in the event of any dispute in relation to the amount referred to in order 7(b) above, the plaintiffs are to pay the disputed monies into Court.
2. ORDER that, in the event of the sale of the Peak View Property in accordance with these orders, and in accordance with the directions to be made by the Court pursuant to orders 5 and 6 above, the plaintiffs are appointed to transfer the Peak View Property to the purchaser.
3. ORDER that the cross-claim is dismissed.
4. Without limiting order 6 above, GRANT LIBERTY to the parties to apply on five business days' notice, including liberty to the plaintiffs to apply to move on their claim in prayer 11 of the statement of claim for judgment against the first defendant in the amount owing under the Deed.
5. ORDER that all questions of costs are reserved.

Endnotes

1. [Redacted] in deposited plan [redacted].
2. Abdallah v Baygan [2019] NSWSC 1507, especially at [17] (Ball J); Abdallah v Baygan (No. 4) [2020] NSWSC 1075.
3. (19393) 63 CLR 649; [1939] HCA 3.
4. The plaintiffs' written and oral opening submissions, Ms Chahhoud's oral opening submissions, all parties' written and oral closing submissions, and all parties' further supplementary closing submissions made in writing, with leave.
5. See [193]–[216] below.
6. See [279] below.
7. See [226]–[227] below.
8. See [76], [78] and [92]–[97] below.
9. See [76], [142]–[147] below.
10. See [79]–[82], [87], [235] below.
11. See [86] below.
12. See, for example, [78], [86] and [96] below.
13. Proceedings 2020/89187.
14. See [34] above.
15. Jones v Dunkel (1959) 101 CLR 298; [1959] HCA 8.
16. MSPR Pty Ltd v Advanced Braking Technology Ltd [2013] NSWCA 416 at [53]–[54] (Macfarlan JA, Ward and Gleeson JJA agreeing).
17. ACN 167 892 953, now called Thermal Cladding Solutions Pty Ltd.
18. ACN 169 530 661, now called Tranquility Construction Group Pty Ltd.
19. ACN 169 965 351.
20. ACN 119 822 132.
21. ACN 605 375 568.
22. See [66] above.
23. See [40]–[50] above.
24. See [142]–[147] and [280]–[289] below.
25. See [78] above.

26. See [280]–[289] below.
27. See [65] above.
28. See [266] below.
29. See [42] above.
30. See [123]ff below.
31. See [83]–[84] and [89]–[98] above.
32. See [25]–[54] and [84]–[98] above.
33. See [132] above.
34. See [127] above.
35. See [119] above.
36. See [191] above.
37. See [56] above.
38. (1995) 49 NSWLR 315 at 319.
39. *Fox v Percy* (2003) 214 CLR 118; [2003] HCA 22 at [28]–[31] (Gleeson CJ, Gummow and Kirby JJ); *Moubarak by his tutor Coorey v Holt* (2019) 100 NSWLR 218; [2019] NSWCA 102 at [77] (Bell P, as the Chief Justice then was, with the agreement of Leeming JA and Emmett AJA).
40. *ET-China.com International Holdings Ltd v Cheung* (2021) 388 ALR 128; [2021] NSWCA 24 at [25]–[29] (Bell P, as the Chief Justice then was, with the agreement of Bathurst CJ).
41. See [25] above.
42. See [54] above.
43. See [98] above.
44. See [194] and [197] above.
45. See [198] above.
46. See [210]–[211] above.
47. See [197] above.
48. See [200] above.
49. Property Law Act 1974 (Qld), s 45 (as in force as at 16 June 2017). Clause 14.5 of the deed nominates Queensland as the proper law of the deed.
50. Excluding the cover page and execution pages.

51. See [98] above.
52. See [236] above.
53. See [228] above.
54. See [225] above.
55. See [29]-[53] above.
56. See [201]-[202] above.
57. See [203] above.
58. See [199] and [204] above.
59. See [163].
60. See [164]-[165] and [180] above.
61. See [170] above.
62. See [182] and [200]-[206] above.
63. See N Seddon, *Seddon on Deeds* (2nd ed, 2022, The Federation Press) at [5.9].
64. See [129]-[134] above.
65. See [250] above.
66. *Jones v Dunkel* (1959) 101 CLR 298; [1959] HCA 8.
67. See [108] above.
68. See [183] above.
69. See [270] above.
70. See [143] above.
71. *Helou v Chahhoud* [2021] NSWSC 878.
72. See [226] and [237]-[244] above.
73. *Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95; [2002] HCA 8 at [25] (Gaudron, McHugh, Hayne and Callinan JJ); *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165; [2004] HCA 52 (*Toll v Alphapharm*) at [38] (Gleeson CJ, Gummow, Hayne, Callinan and Heydon JJ); *Stellar Vision Operations Pty Ltd v Jills Health Solutions Pty Ltd* [2023] NSWCA 102 at [64] (Bell CJ, Hammerschlag CJ in Eq, Adamson JA).
74. See [258]-[259] above.

75. Roberts v Investwell Pty Ltd (in liq) (2012) 88 ACSR 689; [2012] NSWCA 134 at [25]-[31] (Bathurst CJ, as his Honour then was, with the agreement of Beazley JA, as Her Excellency then was, and Tobias AJA).
76. See [98] and [236]-[244] above.
77. Australia and New Zealand Banking Group Ltd v Karam (2005) 64 NSWLR 149; [2005] NSWCA 344 at [66] (Beazley, Ipp and Basten JJA); see also Thorne v Kennedy (2017) 263 CLR 85; [2017] HCA 49 at [26]-[29] (Kiefel CJ, Bell, Gageler, Keane and Edelman JJ) and [70]-[73] (Nettle J)
78. Dunwoodie v Teachers Mutual Bank Ltd [2014] NSWCA 24 at [51]-[60] (McColl JA, with Basten JA and Ward JA, as her Honour then was, agreeing); Braam v BBC Hardware Ltd [2020] VSCA 164 at [81]-[84] (Tate and Osborn JJA).
79. See [115] and [271]-[278] above.
80. See [228] above.
81. See [210]-[211] above.
82. See [127] above.
83. See [129]-[140] above.
84. See [190] above.
85. See [183] and [279] above.
86. See [179]-[182] and [185]-[187] above.
87. See [271]-[278] above.
88. See [268] above.
89. See [250], [267]-[268] and [279] above.
90. (2017) 263 CLR 85; [2017] HCA 49.
91. Ibid at [30]-[34] (omitting references).
92. See [70]-[98] above.
93. See [236]-[244] above.
94. See [244] above.
95. See [267]-[268] and [304] above; J D Heydon, M J Leeming, P G Turner, Meagher Gummow & Lehane's Equity Doctrines & Remedies (5th ed, 2015, LexisNexis) at [15-150].
96. (1939) 63 CLR 649; [1939] HCA 3.
97. (1998) 194 CLR 395; [1998] HCA 48 (Garcia).

98. Ibid at [31] (Gaudron, McHugh, Gummow and Hayne JJ).
99. Ibid.
100. Ibid.
101. Ibid.
102. Garcia at [33] (Gaudron, McHugh, Gummow and Hayne JJ).
103. Ibid at [23]-[32] (Gaudron, McHugh, Gummow and Hayne JJ); Elkofairi v Permanent Trustee Co Ltd (2002) 11 BPR 20,841; [2002] NSWCA 413 (Elkofairi) at [41]-[49] (Beazley JA, as Her Excellency then was) and [89]-[96] (Santow JA, Campbell AJA agreeing); Narain v Euroasia (Pacific) Pty Ltd (2009) 26 VR 387; [2009] VSCA 290 at [43]-[45] (Nettle JA, as his Honour then was, Bongiorno JA and Byrne AJA agreeing); Rogers v Rogers [2020] NSWSC 392 at [73] (Darke J).
104. Elkofairi at [92] (Santow JA, Campbell AJA agreeing).
105. See [65], [250]-[268], [299] and [304] above.
106. (2017) 263 CLR 85; [2017] HCA 49 at [38] (citations omitted).
107. Stubbings v Jams 2 Pty Ltd (2022) 276 CLR 1; [2022] HCA 6 at [39] (Kiefel CJ, Keane and Gleeson JJ).
108. Ibid at [40] (Kiefel CJ, Keane and Gleeson JJ), referring to Commercial Bank of Australia Ltd v Amadio (1983) 151 CLR 447 at 462.
109. Nitopi v Nitopi (2022) 109 NSWLR 390; [2022] NSWCA 162 at [4]-[10] (Bell CJ) and [197]-[199] (White JA). Whilst it may be arguable that constructive knowledge is sufficient, it would not be open to me as a trial judge to accept such arguments as I am bound by the Court of Appeal's judgment in Nitopi: Wakim v Senworth Capital Pty Ltd [2024] NSWCA 102.
110. See [51], [190], [226], [238]-[246] and [296] above.
111. See [190] above.
112. See [302] above.
113. See [106] above.
114. See [268] above.
115. See [304] above.
116. See [244] above.
117. See [115] and [271]-[278] above.
118. See [228] above.

119. See [210]-[211] above.
120. See [318]-[326] above.
121. Productivity Partners Pty Ltd (trading as Captain Cook College) v Australian Competition and Consumer Commission [2024] HCA 27 at [50]-[60] (Gageler CJ and Jagot J, Gleeson and Beech-Jones JJ agreeing at [310] and [340]), at [97]-[105] (Gordon J), at [282] (Steward J).
122. See [262] above.
123. Akai Pty Ltd v People's Insurance Co Ltd (1996) 188 CLR 418 at 440-442; [1996] HCA 39 (Toohey, Gaudron and Gummow JJ).
124. See [56]-[67] above.
125. King Investment Solutions Pty Ltd v Hussain (2005) 64 NSWLR 441; [2005] NSWSC 1076 at [81] (Campbell J); Sood v Christianos (2008) 14 BPR 26,101; [2008] NSWSC 1087 (Sood) at [16] (Brereton J); Ghannam v BB&B Penrith Pty Ltd [2022] NSWSC 1588 at [23]-[24] (Peden J).
126. Sood at [23] (Brereton J).
127. See [294] above.
128. See [282] above.
129. Sood at [20] (Brereton J).
130. See Sood at [20]-[22] and the authorities there referred to.
131. Boutros v Nationwide Capital Pty Ltd [2013] NSWCA 246 at [43] (Gleeson JA); Morris Finance Ltd v Free (2017) 18 BPR 37,223; [2017] NSWSC 1417 at [124] (Ward CJ in Eq, as her Honour then was); Retirement Village Bargo Pty Ltd v Anwar (2023) 21 BPR 44,177; [2023] NSWSC 209 at [138] (Peden J).

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