

ENGLAND AND WALES / JUDGMENT

# John Textor v Iconic Sports Eagle Investment LLC

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Neutral Citation Number: [2026] EWCA Civ 355 IN THE COURT OF APPEAL (CIVIL DIVISION) ON APPEAL FROM THE BUSINESS AND PROPERTY COURTS COMMERCIAL COURT (KBD) His Honour Judge Pelling KC

[2025] EWHC 2620 (Comm) Case No: CA-2025-002771 Royal Courts of Justice Strand, London, WC2A 2LL Date: 25/03/2026 Before : LORD JUSTICE POPPLEWELL LORD JUSTICE PHILLIPS and LORD JUSTICE MILES

- ----- Between : JOHN TEXTOR Appellant
- and - Respondent ICONIC SPORTS EAGLE INVESTMENT, LLC
- -----
- ----- David Davies KC and Ellen Tims (instructed by Reynolds Porter Chamberlain LLP) for the Appellant Andrew Green KC and Ryan Perkins (instructed by Kirkland & Ellis LLP) for the Respondent Hearing date: 21 January 2026
- ----- Approved Judgment This judgment was handed down remotely at 10.30am on Wednesday, 25 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. .... Judgment Approved by the court for handing down. Textor v Iconic Sports Eagle Investment Lord Justice Phillips: 1. 2. 3. 4. 5. 6. This appeal gave rise to a straightforward issue as to the interpretation of contract terms governing the completion of a sale of shares. The appellant (“Mr Textor” or “JT”) contended that, on the proper interpretation of such terms in a Put Option Agreement, he was under no obligation to pay the price for shares that he had agreed to purchase from the respondent (“Iconic”) unless and until Iconic had delivered to him all documents required for the transfer of title in the shares. This was because, Mr Textor contended, his payment obligation was expressed as being “subject to” Iconic’s delivery obligation. Iconic disputed that contention, asserting that, on a true interpretation, the respective obligations of delivery and payment were not sequential but concurrent. That dispute had been tried as a preliminary issue before HH Judge Pelling KC, sitting as a Judge of the Commercial Court (“the Judge”), in the context of Iconic’s claim for specific performance of Mr Textor’s payment obligations under the Put Option Agreement. In a reserved judgment dated 17 October 2025 the Judge found in Iconic’s favour on the issue. On the same date he granted a

declaration that, on a true construction, the obligations imposed by clauses 3.2 (the delivery obligations) and 3.3 (the payment obligations) were concurrent conditions. I granted Mr Textor permission to appeal on this issue (ground 1) and also on a second preliminary issue that the Judge had decided in Iconic's favour, relating to Mr Textor's further defence that Iconic was not, in any event, ready willing and able to perform its delivery obligations on the date fixed for completion (the "Repayment Date") (ground 2). After hearing from Mr Davies KC for Mr Textor, we announced our decision to dismiss ground 1 of the appeal, with judgment to follow. I set out below my reasons for joining in that decision. After hearing from both parties we adjourned ground 2, with liberty to restore, and remitted the case to the Commercial Court for the determination of further questions which might render the ground academic or otherwise affect its determination. The essential facts 7. 8. Pursuant to a subscription and shareholders agreement dated 16 November 2022, Iconic invested £75 million in Eagle Football Holdings Limited ("Eagle") and was allotted 8,520 of its shares (about 15% of Eagle's total share capital). Mr Textor was the founder of Eagle and was and remains the majority shareholder, Chairman and Chief Executive. Eagle owns several football clubs and, until July 2025, owned Crystal Palace FC. The common intention was that Eagle would be taken public by means of a "De- SPAC" transaction (the details of which are not relevant for present purposes), thereby generating a significant return for Iconic on its investment. It was recognised, Judgment Approved by the court for handing down. Textor v Iconic Sports Eagle Investment however, that that plan might fail, with the result that Iconic would be unlikely to recover its outlay with interest. 9. Accordingly, also on 16 November 2022, Mr Textor and Iconic entered the Put Option Agreement whereby Mr Textor granted to Iconic the right to require him in specified circumstances (an "Option Trigger Event"), mainly relating to the De-SPAC transaction not proceeding, to purchase some or all of the 8,520 shares allocated to Iconic (the "Option Shares") on the "Transfer Terms". 10. The Transfer Terms were defined as follows: "(a) that the entire legal and beneficial interest in all the Option Shares is sold and purchased with full title guarantee free from any Encumbrance and together with all rights attaching to them as at the Exercise Date...or at any time after that; and

- (b) that the consideration for the Option Shares is the Aggregate Option Price." 11. 12. 13. The Aggregate Option Price was the purchase price paid by Iconic for the Option Shares, plus 11% interest per annum from the date on which notice of exercise of the option was given (the "Option Notice"). Provided an Option Notice was delivered within 3 months of an Option Trigger Event, the purchase of the Option Shares was to occur no later than 12 months from receipt of the Option Notice (the "Repayment Date"). "Completion" was defined in the Put Option Agreement as "the performance by Iconic and JT of the obligations assumed by them respectively under clauses 3.2 and 3.3". 14. Clause 3 of the Put Option Agreement provided as follows: "Completion 3.1 Completion shall take place at the registered office of the Company (or at such other place as may be agreed in writing between the parties) on such date as agreed between the parties or failing such agreement, on the Repayment Date. 3.2 On Completion, Iconic:

- (a) shall deliver to JT:
- (i) a duly executed transfer of the Option Shares in favour of JT; (ii) the share certificate in respect of the Option Shares; (iii) any form of consent or waiver required from Iconic and (so far as it is able) any other member of the Company, to enable the transfer of the Option Shares to be registered in accordance with the Articles; and Judgment Approved by the court for handing down. Textor v Iconic Sports Eagle Investment (iv) a duly executed irrevocable power of attorney (in a form reasonably acceptable to JT) in favour of JT (or such person as may be nominated by JT) generally in respect of the Option Shares and in particular to enable JT (or his nominee) to approve written resolutions circulated and to attend and vote at general meetings of the Company held during the period prior to the name of JT being entered on the register of members of the Company in respect of the Option Shares;
- (b) do such other acts and things and execute such other documents as shall be necessary or as JT may reasonably request to give effect to the sale of the Option Shares on the Transfer Terms. 3.3 Subject to Iconic complying with its obligations under clause 3.2, JT shall, on Completion, pay the Aggregate Option Price to Iconic on or before the Repayment Date. 3.4 If any of the provisions of clauses 3.2 or 3.3 are not complied with on the date agreed for Completion, the party not in default may (without prejudice to their other rights and remedies under this agreement or otherwise) defer Completion to a date not more than 20 Business Days after such date (and so that the provisions of this clause 3.4 shall apply to Completion as so deferred). 3.5 Neither Iconic nor JT shall be obliged to complete the sale and purchase of the Option Shares unless the sale and purchase of all the Option Shares is completed simultaneously, but completion of the sale and purchase of some of the Option Shares will not affect the rights of Iconic or JT with respect to the others.” 15. Clause 4 made extensive provision for default by Mr Textor in purchasing the Option Shares as follows, in so far as relevant: “Default Provisions 4.1 If JT (or his nominee, as applicable) fails to give effect to the Option and purchase Iconic’s Option Shares for the Aggregate Option Price by the Repayment Date in accordance with clause 3.3, the following shall occur:
  - (a) Iconic shall be entitled to specific performance on the terms of the Option to the extent permitted by clause 7. ....
  - (c) Iconic shall be entitled to exercise the proxy set forth in clause 5...
  - (d) Iconic shall be entitled (but not obliged) after consultation with JT to initiate and lead a customary and fair sale process, led by a globally recognised investment bank, which is designed to achieve fair market value for the Option Shares being sold in accordance with clauses 4.2, 4.3 and 4.4 (“Sale Process”). Judgment Approved by the court for handing down. Textor v Iconic Sports Eagle Investment 4.2 If Iconic initiates a Sale Process pursuant to clause 4.1(d), JT shall be closely associated to such Sale Process and Iconic shall take into consideration JT’s reasonable suggestions in relation to the conduct of the Sale Process, which shall include a full range of monetisation options, including but not limited to:

- (a) a sale of all of the Option Shares held by Iconic;
- (b) a sale of the combined Ordinary Shares held by JT and Iconic; and
- (c) any other reasonable options proposed. 4.3 Where preliminary offers are received for one or several of the Sale Process options (whether those set out in clauses 4.2(a) to 4.2(c) above or otherwise) (each a Sale Process Option), Iconic shall consult with JT before deciding which Sale Process Option to pursue provided that it shall not elect to:
  - (a) undertake a Sale Process Option which is unreasonable; or
  - (b) choose a Sale Process Option which falls within the scope of clause 4.2(b) if Iconic is advised that there is a credible and viable alternative Sale Process Option which provides reasonable certainty on realisation of the Aggregate Option Price within a reasonable timeframe. 4.4 Subject always to clause 4.3:
- (a) Where a Sale Process Option which falls within the scope of clause 4.2(a) is elected by Iconic and a third party is willing to purchase the Option Shares at a price which is lower than the Aggregate Option Price, JT shall pay to Iconic in cash an amount equal to the difference between such sale proceeds received by Iconic and the Aggregate Option Price.
- (b) Where a Sale Process Option which falls within the scope of clause 4.2(b) is elected by Iconic, Iconic shall have the right to drag all Ordinary Shares held by JT on the same terms and at the price proposed by the third party... ....” 16. By clause 5 Mr Textor appointed Iconic as his agent and proxy with power to control his Ordinary Shares in Eagle in the event that Mr Textor defaulted under clause 3.3. Events after the execution of the Put Option Agreement 17. Although not relevant to the interpretation of the Put Option Agreement, a brief account of some of the subsequent events is necessary to explain how the issue on this appeal arose. Judgment Approved by the court for handing down. Textor v Iconic Sports Eagle Investment 18. 19. 20. 21. 22. The De-SPAC process did not proceed, resulting in an Option Trigger Event occurring on 26 April 2023. On 26 July 2023 Iconic delivered an Option Notice requiring Mr Textor to purchase all 8,520 shares by 26 July 2024 (which was therefore the Repayment Date). The Judge found that Mr Textor had neither the intention nor the ability to pay the Aggregate Option Price at any material time. He further found that, by 15 July 2024 at the latest, Mr Textor had made it clear to Iconic that he could not and would not be completing the purchase of the Option Shares. Completion did not take place on 26 July 2024. The next day Iconic sent a document entitled “Default Notice” to Mr Textor, outlining the consequences of him being in breach of clause 3.3 of the Put Option Agreement. Iconic stated that it intended to avail itself of the right to lead a Sale Process, including a sale of the combined Ordinary Shares held by Mr Textor and Iconic. Mr Textor did not object to the Sale Process. Nor did he assert that Iconic had itself breached its obligations under clause 3.2 or that, as a consequence, Iconic was not entitled to payment or to do as it proposed. The Sale Process failed, no offers being received either for the Option Shares or for all the shares. Iconic then commenced these proceedings, seeking specific performance of Mr Textor’s obligation to purchase the Option Shares. Mr Textor resisted the claim on the basis

that he was under no obligation to purchase the Option Shares because (a) Iconic failed to comply with its prior obligation under clause 3.2 of the Put Option Agreement and/or (b) Iconic itself was not ready willing and able to perform its obligation on the date for Completion, not having tendered the required documents or even been in a position to do so. The parties agreed preliminary issues to encapsulate those disputes. As indicated above, both issues were determined by the Judge against Mr Textor following a trial. A third preliminary issue, as to whether Mr Textor was ready willing and able to perform his obligations on 26 July 2024 did not require determination as Mr Textor accepted that he was not ready. The Judge's reasons 23. The Judge rejected Mr Textor's proposed interpretation for three reasons [23]. First, it depended on viewing clause 3 of the Put Option Agreement, and the opening words of clause 3.3 ("subject to") in particular, in isolation from the rest of the contract. Secondly, it ignored the factual and commercial context of the Put Option Agreement. And thirdly, the Judge considered it was contrary to business common sense. 24. As for the first reason, based on consideration of the terms of the Put Option Agreement as a whole, the Judge observed as follows: i) The transaction was an entirely straightforward sale of the Option Shares for the Aggregate Option Price. The definition of the Transfer Terms contemplates that there should be a simultaneous transfer of the shares by Iconic in return for and at the same time as payment by Mr Textor. It does not state or imply that there was a condition precedent to the payment of the price on the Judgment Approved by the court for handing down. Textor v Iconic Sports Eagle Investment Completion date at the place at which the parties had agreed Completion would take place [24]. ii) Likewise, clause 2.3 contemplates a single transaction, being the "purchase of the Option Shares". That set out the core obligations of the parties, clause 3 providing what was essentially the machinery for giving effect to them [25]. iii) Where the parties intended to make an obligation conditional, they used language that made that unambiguously clear. The Put Option Agreement was professionally drawn, so if the parties had had the unusual intention for which Mr Textor contended, they could and would have stated that in clear and unambiguous language [26]. iv) v) vi) Mr Textor's interpretation also ignores that clauses 3.2 and 3.3 are premised on there being a single event described as "Completion", contemplating the mutual performance by each party of the obligations assumed by them under clauses 3.2 and 3.3 as part of a single transaction. This is further confirmed by the fact that clause 3.1 contemplates a single event taking place at the registered office of Eagle on the Repayment Date. Further, clause 3.4 contemplates that Completion will not take place if JT defaults [27]. Clause 3.5, whilst primarily concerned with providing that the sale and purchase should be of all the Option Shares rather than some of them, also makes it clear that what is intended is a simultaneous sale and purchase [28]. Mr Textor's interpretation, which entails that the Option Shares would be transferred before Mr Textor could be in default of his payment obligation, would make clause 4.2 unworkable, as there would be no "Option Shares held by Iconic" for Iconic to sell [29]. 25. The Judge then addressed three textual points relied on by Mr Textor: i) ii) First, Mr Textor relied on the fact that the power of attorney granted over his shares in Eagle by clause 5 of the Put Option Agreement would protect Iconic even if the Option Shares were fully transferred to him before he paid, as the Option Shares would then

be included in the shares over which Iconic would have control. The Judge, however, considered that the clause most obviously related to Iconic's need to control Mr Textor's original shares if he did not pay the Aggregate Option Price, and its potential application if Mr Textor's interpretation was correct did not assist in resolving the essential construction issue [30]. Second, Mr Textor also argued that, even if the parties had agreed that Completion would take place before the Repayment Date, he was not required to perform his obligation under clause 3.3 until the Repayment Date, supporting his reading of the clauses as imposing sequential obligations. The Judge rejected that analysis, pointing out that the obligation to pay was expressed in clause 3.3 as being "on Completion". The further reference to "on or before the Repayment Date" was illogical or incoherent in that context [31]. Judgment Approved by the court for handing down. *Textor v Iconic Sports Eagle Investment* iii) Third, Mr Textor relied on the unqualified nature of Iconic's obligation, in contrast with the language used for his obligation, justifying the conclusion that it was intended to be independent. The Judge answered this fundamental aspect of Mr Textor's case at [32] as follows: "Clause 3.2 and 3.3 are to be read together. They could as easily have been arranged in the reverse order to that which has been adopted but the outcome could not have been intended either way to have been anything other than one that required simultaneous performance if Completion was to take place. In any event, if this point is one that creates an ambiguity, it is to be resolved in favour of Iconic for the reasons referred to below." 26. As for the second and third reason, the Judge considered that Mr Textor's proposed analysis was the obviously more uncommercial of the rival constructions because it would leave Iconic with no choice but to do all things necessary to transfer the Option Shares to JT without any guarantee of receiving payment. That, the Judge said, was uncommercial in its own terms but particularly so in the circumstances of this case [34]. The Judge then referred to the purpose of the Put Option Agreement being an "insurance policy" designed to ensure Iconic could get its investment back with interest in the event the De-SPAC transaction did not proceed [35]. Further, it was reasonably foreseeable as a possibility that JT would not be in a position to meet his obligation under the Put Option Agreement, as apparent from the structure of the transaction and the default provisions in clause 4. The Judge concluded at [36] that: "In those circumstances, it is entirely inherently and commercially improbable that the parties could have intended the Put Option Agreement to require Iconic to part with the Option Shares other than simultaneously with the payment by JT of the Aggregate Option Price. To decide otherwise would be to conclude that it had been intended that JT could acquire the Option Shares without paying the Aggregate Option Price. Given the contextual points so far considered, I reject the notion that a reasonable person with all the relevant background information available to the parties would conclude that it had been intended that Iconic could be required to transfer the ownership of the shares and associated rights with them without requiring the simultaneous payment of the Aggregate Option Price." 27. The Judge then turned to the authorities at [38]. He recognised that decisions as to the construction of contracts using different language in different contexts were of no relevance, but considered that earlier decisions of the Court of Appeal (considered below) established a principle that clear language would be required before Mr

Textor's proposed interpretation could be held to be correct. The Judge concluded that that principle further supported his conclusion that the obligations in clauses 3.2 and 3.3 of the Put Option Agreement were concurrent conditions. The ground of appeal Judgment Approved by the court for handing down. Textor v Iconic Sports Eagle Investment

28. Mr Textor's ground of appeal was that the Judge erred in concluding that the parties' obligations under clauses 3.2 and 3.3 were simultaneous and concurrent with each other. By way of specific criticism, he asserted: i) ii) In a commercial contract drafted by professional lawyers, the clear wording of clause 3.3 ("subject to") must be given effect, that is to say, Mr Textor's obligation under clause 3.3 was conditional upon Iconic's performance of its obligations under clause 3.2; The Judge erred in (i) failing to give effect to the above express wording; (ii) relying on other clauses that did not directly concern the order of performance by the parties; (iii) drawing a distinction between clauses expressed as "subject to" (clause 3.3) and those expressed as "conditional upon" (such as clause 2.4); (iv) concluding that reading clause 3.3 as conditional was uncommercial; and (v) concluding that clear words were necessary to prevent the obligations being concurrent and/or that the words "subject to" were insufficiently clear. The relevant legal principles Contractual interpretation generally 29. The Judge set out at [21] a comprehensive and detailed account of the principles governing the construction of a contract, extending to ten sub-paragraphs and citing 11 authorities, including six from the Supreme Court and one from the House of Lords. Whilst that account is admirable and valuable, it is important not to lose sight of the wood for the trees. As the Judge recognised, the core principle, identified by Lord Hamblen and Lord Leggatt JJSC in *FCA v Arch Insurance (UK) Ltd* [2021] UKSC 1 [2021] at [47], is that a contract: "... must be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean". Interpretation of delivery and payment obligations 30. 31. The Judge was right to emphasise that, in any sale and purchase agreement, the parties are free to agree whatever terms they wish as to their respective obligations of delivery and payment, including their conditionality on each other and/or their sequence. As a consequence, terms must be interpreted and given effect on a contract- by-contract basis. However, the Judge was also right to recognise that there is a presumption that delivery and payment will be concurrent conditions, reflecting the fact that such a transaction is essentially an exchange, with neither party being required to perform first and take the risk of non-performance by the other. In the case of the sale of goods that is made express by section 28 of the Sale of Goods Act 1979, which provides: "Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange Judgment Approved by the court for handing down. Textor v Iconic Sports Eagle Investment for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods." 32. The equivalent presumption has long been recognised in relation to a sale of land. Thus in *Heard v Wadham* (1801) 1 East 619 Lord Kenyon CJ said at 629: "I never expected to hear it said that

these were independent covenants; where one man agrees to pay a certain sum of money on a given day, and another covenants to convey an estate to him on the same day; can it be contended for an instant, that though the one has not conveyed he may call upon the other to pay the money. Common sense revolts at such a proposition ..." 33. The principle is now reflected in the Standard Conditions of Sale published by the Law Society. The principles above were expressly recognised and applied to a contract for the sale of shares in *Doherty v Fannigan Holdings Ltd* ["FHL"] [2018] EWCA Civ 1615,

[2018] BPIR 1266. FHL had agreed to transfer tranches of shares "subject to" payment by Mr Doherty for the relevant tranche, and further provided that the transfer would be "on receipt" of each respective payment. The issue was whether, on Mr Doherty's failure to pay £2m due for a tranche of shares, FHL was entitled to claim that sum in debt as an independent prior obligation, or whether it was limited to claiming specific performance on the basis that the obligations of delivery and payment were dependent. Sir Colin Rimer (with whom Patten and Coulson LJ agreed) stated at [33] that the obligations were intended to be dependent because the intention of the parties was that completion of the sale and purchases was to take place at the same time. He concluded at [36] that it was an irresistible inference that the parties' objective was to achieve what would in practice be a simultaneous exchange. Sir Colin added: "To attribute to the parties the intention that either should perform his or its completion obligation except against the performance of the other's is to fix them with unlikely, and uncommercial, intentions. No purchaser of the shares is going to part with £2m to the vendor except against the receipt of the share transfer documents, any more than the vendor is going to part with the documents except against the receipt of the £2m." 34. At [37] Sir Colin saw no substance in the point that FHL's document delivery obligation arose only upon, and therefore after, the payment by Mr Doherty of £2m. The sequential timing arrangements were no different from those applying to an ordinary domestic sale of land governed by the Standard Conditions of Sale in which: "[t]here is no doubt that the intention of the parties... is that there will in practice be a contemporaneous exchange of money for documents at completion; and also no doubt that the parties' obligations are dependent ones. There is a presumption to that effect. In *Heard v Wadham*... the price had to be paid 'at or upon the execution of the conveyance'. On one view, that meant immediately following such Judgment Approved by the court for handing down. *Textor v Iconic Sports Eagle Investment* execution, yet Lord Kenyon had no doubt that the obligations were dependent." 35. 36. At [41] Sir Colin concluded that the mutuality of the obligations of parties to a sale of land was compelling guidance as to the nature of the obligations in the essentially analogous circumstances in the share sale agreement under consideration. There was no sound basis for drawing any relevant distinction. It follows that the Judge was right to hold that clear words would be needed to rebut the presumption that the parties to a share sale contract, with a fixed completion date and place, intended that the obligations of delivery and payment would be dependent and concurrent. The proper interpretation of the Put Option Agreement

37. Mr Davies accepted the existence of the “background”, comprising the legal presumptions referred to above and also the way completion meetings, such as that provided for in the Put Option Agreement, take place. He was also unable, when pressed in argument, to identify any rational explanation as to why the parties would have provided for sequential obligations.
38. Mr Davies’ answer was that the express wording of the Put Option Agreement made it clear beyond doubt that delivery and payment were sequential obligations, the latter being conditional on performance of the former. The obligations were set out in two distinct sub-clauses, providing first an unqualified obligation on Iconic to deliver in clause 3.2 and then, separately, an obligation on Mr Textor to pay in clause 3.3, expressly stated to be “subject to” delivery under clause 3.2, words that can only be understood as imposing sequence and conditionality, no less than other conditions in the Put Option Agreement (contrary to the Judge’s view). There was no statement, as there could have been, that there would be an exchange. The fact that the transaction is described in various places as a sale and purchase of shares does not add to the analysis, and the fact that Completion refers to the performance of both obligations says nothing about their sequence and conditionality. 39. 40. Given the clarity of the text in a professionally drafted contract, Mr Davies argued, the Judge should have given effect to it, finding that any presumption had been rebutted by the clear words used. Further, there was no need for Mr Textor to show a rational reason for the sequence the parties had expressly chosen, given that it was perfectly workable. As to workability, Mr Davies stressed that the Put Option Agreement provided extensive protection for Iconic in the event that Mr Textor did not pay the Aggregate Option Price after delivery to him of the documents of title to the Option Shares. The default provisions in clause 4 and the right to appoint a proxy in clause 5 were solely aimed at enabling Iconic to obtain payment by selling the Option Shares and Mr Textor’s pre-existing shares in Eagle. Contrary to the Judge’s reasoning, those provisions were workable because the Option Shares would remain “held” by Iconic (for the purposes of clause 4.2) until registered in Mr Textor’s name, at which point Judgment Approved by the court for handing down. Textor v Iconic Sports Eagle Investment 41. 42. 43. they would become part of Mr Textor’s holding of Ordinary Shares and therefore caught by the proxy granted by clause 5. In my judgement, however, and as the Judge explained, the Put Option Agreement provides for a straightforward sale and purchase of shares, including making provision for the date and place at which delivery and payment would take place, the parties being required to have everything ready to perform at that meeting. The presumption that there would be an exchange, with the respective obligations being performed simultaneously, is particularly powerful in the circumstances of the present case where there were openly expressed concerns as to Mr Textor’s possible inability to meet his payment obligation. The reasoning in Doherty is directly applicable: no vendor of shares is going to part with the share transfer documents except against receipt of the purchase price. Against that background, the wording in clause 3.3 that Mr Textor’s payment obligation is “subject to compliance with” Iconic’s delivery obligation is wholly insufficient to rebut the presumption of mutuality. It

expressly provides that Mr Textor is obliged to pay on receipt of the documents from Iconic, but no reasonable person with background knowledge of the parties would understand that Iconic must deliver even if Mr Textor does not pay at the same time. The words “subject to” were used in Doherty, and were held to be insufficient to rebut the presumption of mutuality in that case, even in combination with further sequential wording: the inference that there would be an exchange was nonetheless irresistible. Indeed, the decision in Doherty is difficult to distinguish and the present case would seem, if anything, an even clearer example of concurrent obligations. That conclusion is further confirmed by the provisions in clauses 4 and 5 of the Put Option Agreement. Although Mr Davies may well be right that they could be utilised by Iconic even if it had delivered documents of title to the Option Shares to Mr Textor, the clear intention behind those provisions is that they would apply in a situation where Mr Textor had defaulted whilst Iconic still held and would continue to hold the Option Shares both legally and beneficially. That could not occur on Mr Textor’s interpretation, further supporting the view that it is not sustainable. 44. It follows that I reach the same conclusion as the Judge on this issue, largely for the reasons he gave. Lord Justice Miles: 45. I agree. Lord Justice Popplewell: 46. I also agree.

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