

ENGLAND AND WALES / JUDGMENT

# McGann v Bisping

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MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment  
Neutral Citation Number: [2017] EWHC 2951 (Comm) IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS THE LONDON CIRCUIT COMMERCIAL COURT Anthony  
McGann v Michael Bisping Claim No: LM-2014-000190 Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL Date: Friday 15 December 2017 BEFORE: MR RICHARD SALTER  
QC Sitting as a Deputy Judge of the High Court BETWEEN:

- ----- ANTHONY MCGANN
- and - MICHAEL BISPING
- -----
- ----- Claimant Defendant Mr Nigel Lawrence QC and Ms Victoria Roberts  
(instructed by Couchmans LLP) appeared for the Claimant Mr Gabriel Buttimore (instructed  
by Faradays Solicitors) appeared for the Defendant Hearing dates: 26, 27, 28 April, 2, 3, 4, 8,  
10, 15, 16, 17 May 2017
- ----- Judgment Approved MR RICHARD SALTER QC Sitting as a Deputy  
Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping MR  
SALTER QC:

## Introduction

1. 2. 3. 4. 5. The defendant, Michael Bisping (“Mr Bisping”), is a mixed martial arts fighter, who is well-known in that world. The claimant, Anthony McGann (“Mr McGann”), was for a period Mr Bisping’s manager. In this action, Mr McGann claims payment of arrears of commission on Mr Bisping’s earnings, and repayment of expenses alleged to have been paid on Mr Bisping’s behalf. Mr McGann says that these sums are due under the terms of a Management Agreement dated 22 July 2005 (“the Management Agreement”), alternatively on what his closing submissions describe as a restitutionary basis. Mr Bisping denies signing the Management Agreement (though he accepts that he did sign some form of agreement), and denies the authenticity of the invoices and other documents relating to expenses now relied on by Mr McGann, alleging that they have been fabricated for the purposes of this action. Mr Bisping’s fundamental position is that he owes nothing further to Mr McGann. Mr Bisping denies that any further monies are owed by way of commission. In particular: 3.1 3.2 3.3 3.4 He denies that any commission is payable on sums deducted at source by the US

and Australian tax authorities He denies that any commission is payable to Mr McGann on the value of two Range Rover motorcars which Mr Bisping received from Zuffa LLC (“Zuffa”) following his appearances in the reality television series The Ultimate Fighter (“TUF”), on the basis that those cars were a gift. He denies that any commission is payable to Mr McGann on monies received by Michael Bisping Limited and/or Royal MMA Inc. He denies that Mr McGann has any contractual right to commission following the ending of their relationship in May or July 2011 Mr Bisping also denies that any further payment for expenses is due from him, asserting that he has already paid all that it was agreed that he should pay. It is in any event Mr Bisping’s case that the claims now put forward by Mr McGann are (like the invoices relied upon to support them) invented or (at least) exaggerated. Mr Bisping also relies on settlements of account which he says were reached between him and Mr McGann in 2007 and December 2010. Finally, Mr Bisping says that at MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping least some of Mr McGann’s claims are statute-barred. Mr Bisping also counterclaims for an account of monies received by Mr McGann on his behalf. The course of the hearing 6. 7. 8. 9. The Claim Form in this action was originally issued on 18 February 2013 in the Warrington County Court. The proceedings were first transferred to the Chester County Court, then (by order dated 25 November 2013 of HH Judge Halbert) to the Central London County Court, and finally to The London Mercantile Court. The action was originally listed for trial in March 2015 before HH Judge Mackie QC. However, on 26 February 2015 HH Judge Mackie vacated that trial date and adjourned the matter to come on not before 1 October 2015, on the grounds of what he described as “a deplorable failure by [Mr Bisping] regarding disclosure”, resulting in the case being in “a state of disarray”. HH Judge Mackie gave directions for mediation and/or a without prejudice meeting between the parties and their respective solicitors “with a view to seeing what steps can be taken to settle the case or at least narrow the issues in dispute between the parties”. Regrettably, no settlement was achieved, and the action was then re-listed for trial before HHJ Waksman QC on Monday 5 October

2015. Unfortunately, Mr McGann was injured in a road accident shortly beforehand, and that trial date also had to be vacated. The trial was then re-listed before me, to begin on Wednesday, 26 April 2017. It eventually occupied 11 court days, during which I heard evidence from Mr McGann, from Mr Bisping, and from 11 other witnesses (one of whom gave evidence by video link from the USA). A number of video extracts were played during the trial. Closing submissions were then made in writing. At trial, Mr McGann was represented by Mr Nigel Lawrence QC and Ms Victoria Roberts. They were not the counsel who had been instructed for the October 2015 trial date. Mr Bisping was represented throughout by Mr Gabriel Buttimore. I am grateful to all counsel for their assistance. The 59-page Written Opening Submission served by Mr Lawrence and Ms Roberts on Monday 24 April 2017, less than two days prior to the start of the trial, took two preliminary points. First, it argued that Mr Bisping was precluded from disputing the authenticity of the Management Agreement and the invoices, because he had not served notice under CPR 32.19 in relation to those

documents. Secondly, it argued that Mr Bisping was precluded from relying upon any witness evidence of fact at trial by paragraph 11 of the order dated 28 August 2014 of HHJ Mackie QC (“the August 2014 Order”), as a consequence of Mr Bisping’s failure to comply with the conditions of the August 2014 Order. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 10. I ruled against both of these contentions, for reasons which I expressed briefly at the time and which I set out at greater length below. CPR 32.19 11. Paragraph 2 of the Defence & Counterclaim served on 5 April 2013 responded to Mr McGann’s reliance upon the Management Agreement in his Particulars of Claim as follows:

2. The Claimant relies on [the Management Agreement]. In this respect: (a) no admissions are made as to whether the [Management Agreement] was signed by the Defendant and the Claimant is required to prove this; (b) at all material times the Defendant understood that he was managed not by the [Claimant] personally, but by Wolfslair Promotions Ltd .. with which company the Defendant believes he signed a management agreement in or around May 2005. The Claimant is accordingly put to strict proof that the Claimant is the proper claimant for any management fees .. It has therefore been plain since April 2013, on the face of the Statements of Case, that the authenticity of the Management Agreement was in issue, and was a matter which Mr Bisping required Mr McGann to prove. 12. The Management Agreement was disclosed in Mr McGann’s first disclosure list served on 15 November 2013. The witness statements thereafter served by the parties reflected the fact that the authenticity of this document was in dispute. Mr McGann gave evidence about the execution of the Management Agreement in his first witness statement dated 25 March 2014, and served witness statements from Mr Lee Gwynn (dated 6 March 2014) and Mr Mike Wood (dated 16 March 2014) to the effect that they had witnessed the execution of the Management Agreement. Mr Bisping’s first witness statement, dated 31 July 2014, contained evidence (in paragraphs 20 to 23 and
- 49) supporting his pleaded case that he had not signed the Management Agreement in July 2005, but had signed a different agreement with “Wolfslair” in May 2005. 13. On 8 September 2014, Mr Bisping served a Re-Amended Defence and Counterclaim, which contained the following additional paragraph relating to the Management Agreement: 7A. .. It is not admitted that the Management Agreement was signed by the Defendant and it is also not admitted that the Management Agreement in the form relied upon was presented to the Defendant for signing and accordingly it is not admitted that any of the acts MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping relied upon amount to acceptance of the offer said to be contained in the Management Agreement by conduct .. 14. As to the invoices and other documents relating to expenses, Mr Bisping’s Re- Amended Defence & Counterclaim was even more blunt, pleading in terms in paragraph 30A that the letters that were alleged to have enclosed the invoices “are recent fabrications made in support of these proceedings and were not created or sent at the time they purported to have been” .. “A number of the supporting documents are patent fabrications” .. “The remainder of the supporting documents have been recently created by

or at the request of the Claimant for the purposes of these proceedings” .. “The claim for expenses herein against the Defendant is bogus and without foundation”. Again, the witness statements served on behalf of the parties amply demonstrate that both sides considered that the authenticity of these documents was a live issue.

15. Mr Graeme McPherson QC (the leading counsel then instructed on behalf of Mr McGann) prepared a 53-page Written Opening Submission dated 4 October 2015 for use at the trial listed to begin on 5 October 2015. It is plain from the terms of that document that the case then being put forward on behalf of Mr McGann was that the authenticity of the Management Agreement and of the various invoices and supporting documents relied on by Mr McGann was in dispute, and that these matters were issues that the court would have to resolve on the evidence at trial. Mr McPherson QC’s Written Opening Submission made no reference to CPR 32.19. 16. It therefore seems clear that, until the moment that Mr Lawrence and Ms Roberts served their Written Opening, both sides had been preparing for trial on the shared assumption that the authenticity of these documents was in issue. 17. CPR 32.19 provides as follows: Notice to admit or produce documents
- (1) A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial.
- (2) A notice to prove a document must be served:
- (a) by the latest date for serving witness statements; or
- (b) within 7 days of disclosure of the document, whichever is later. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 18. 19. 20. 21. 2 4 Unlike its predecessor, RSC Ord 27 r 41, CPR 32.19 contains no proviso dis-applying the rule in the case of any document “the authenticity of which the party has denied in his pleading”. Nor does it expressly say that the rule applies only “unless the Court otherwise orders”. I accept the submission of Mr Lawrence that this is a mandatory provision, the purpose of which is to ensure that the parties and the court know, beyond question, whether the authenticity of any given document is a matter in dispute. Merely putting the other party to proof in a Statement of Case of the authenticity of a document does not satisfy the requirements of the rule: see *Mumford v HMRC*<sup>2</sup>. Nor are those requirements satisfied simply by a challenge made in a witness statement. Such a challenge would, in any event, be likely to come after the date specified in CPR 32.19 for the giving of notice, and so be too late for the issue to be dealt with satisfactorily in the witness statements of the other party. Since it is common ground that any notice under CPR 32.19 ought to have been served at the latest by 29 August 2014 (the latest date for serving witness statements) and that no notice complying with this rule has been served at any point, it follows that CPR 32.19 now deems Mr Bisping to have admitted the authenticity of these documents, despite both his pleading and evidence to the contrary, and despite the assumption shared by both parties until very recently that these matters were to be in issue

at trial. In Mr Lawrence's submission, that is the end of the matter. Under CPR 3.8(1), the consequences prescribed by CPR 32.19 have effect unless and until Mr Bisping applies for and obtains relief; and Mr Bisping has neither applied under CPR 3.2(2)(a) for an extension of time for service of notice under CPR 32.19, nor made any application under CPR 3.9 for relief from sanctions. The logic of Mr Lawrence's submissions cannot be faulted. However, in my judgment, the justice of the present case requires a different result. Applying the three-stage approach laid down in *Mitchell v News Group Newspapers Ltd*<sup>3</sup>, as explained in *Denton v TH White Ltd*<sup>4</sup>: 21.1 I must first consider the seriousness and significance of Mr Bisping's failure to give the required notice. In my judgment, it was neither serious nor significant, on the particular (and perhaps unusual) facts of the present case. "(1) Subject to paragraph (2), and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of any provision of Order 24 shall, unless the Court otherwise orders, be deemed to admit: (a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been; and (b) that any document described therein as a copy is a true copy. This paragraph does not apply to a document the authenticity of which the party has denied in his pleading."

[2017] UKFTT 019 (TC) at [50], per Tribunal Judge John Clark.

[2013] EWCA Civ 1537, [2014] 1 WLR 795, CA

[2014] EWCA Civ 906, [2014] 1 WLR 3926 MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping Mr McGann and his advisers were not misled by the failure, nor did the failure had any material effect on the orderly progress of the action. The parties, very sensibly, treated the pleading in paragraph 2 of the Defence as a sufficient indication that the authenticity of the Management Agreement was in dispute, and shaped their evidence on that basis in accordance with the timetable laid down by the court. They acted similarly in relation to the invoices and other documents relating to expenses, when these were eventually disclosed. 21.2 I must then consider why the default occurred. It seems to me to be plain that it occurred because of ignorance of the rule (an ignorance apparently shared by Mr McGann's legal team, at least until the instruction of Mr Lawrence and Ms Roberts) rather than because of any deliberate default. 21.3 Finally, I must consider all the circumstances of the case, giving particular weight (in accordance with the guidance given in *Denton*<sup>5</sup>) to the need for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and orders. 22. 23. 24. In considering all the circumstances of the case, it seems to me to be of particular significance that both parties prepared for trial, both in 2015 and 2017, on the basis that the authenticity of these documents was in issue, and that Mr Bisping was not precluded from challenging their authenticity by any deemed admission. It follows that all of the costs in relation to those issues (except for those relating to time spent on the point at the hearing itself) had already been incurred by the time that Mr McGann's legal team took this point. In my

judgment, to permit them to do so now would be unjust, and contrary to the overriding objective set out in CPR 1.1 of dealing with cases justly and at proportionate cost. CPR 1.3 requires the parties to help the court to further the overriding objective. As the Court of Appeal stated in *Denton*<sup>6</sup>: “Litigation cannot be conducted efficiently and at proportionate cost without .. cooperation between the parties and their lawyers”. That is particularly so in the Commercial Court (of which The London Mercantile Court forms part) where, as is stated in paragraph A1.6 of *The Admiralty and Commercial Courts Guide* “The Court expects a high level of co-operation and realism from the legal representatives of the parties”. There is, of course, no general duty on parties to point out to their opponents the procedural mistakes that those opponents have made. However, where a party intends to take a procedural point which, if correct, will mean that costs are being wasted by the other side, the duty of cooperation under CPR 1.3 requires that party to 6 At [31] to [38]

[2014] EWCA Civ 906, [2014] 1 WLR 3926 at [40] MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 25. 26. take the point promptly. On the facts of the present case, the high level of realism and co-operation required of parties to commercial litigation should have involved Mr McGann’s legal team in giving notice of this point (if it was to be taken at all), either in correspondence or at one of the many case management hearings which took place, at a time well before the significant costs of dealing with these issues had already been incurred on both sides. I do not think it likely that Mr McGann’s legal team were alive to this point from an early stage, and deliberately held back from taking it in the hope of procedural advantage. On the contrary, it seems to me to be probable that, prior to the instruction of Mr Lawrence and Ms Roberts, they shared the ignorance of CPR 32.19 displayed by Mr Bisping’s legal team. Nevertheless, for Mr McGann’s legal team to take the point at this very belated stage, in the hope of obtaining a “windfall” advantage in the litigation, is in my judgment contrary to the spirit in which commercial litigation should be conducted. No useful purpose would have been served by requiring Mr Bisping to serve notice under CPR 32.19 after the start of the trial. It was, however, desirable (for the sake of good order) for Mr Bisping to identify precisely those documents (other than the Management Agreement) whose authenticity was the subject of challenge. For these reasons, when I ruled on this issue, I exercised of my own motion the very wide powers conferred by CPR 3.1(2)(m) to make an “order for the purpose of managing the case or furthering the overriding objective”.. and by CPR 3.10 “where there has been an error of procedure such as a failure to comply with a rule .. [to] make an order to remedy the error”, by dispensing with service of a notice under CPR 32.19 in relation to the challenged documents identified in the list which I then required Mr Bisping’s legal team to produce. The August 2014 Order 27. 28. 29. I now turn to consider the effect of the August 2014 Order which, according to Mr McGann’s legal team, precludes Mr Bisping from relying upon any witness evidence of fact at trial. It is right that I should begin that consideration by noting that there can be no doubt that the performance by Mr Bisping of his disclosure obligations in this case has repeatedly been found to be inadequate. The parties were

ordered to give standard disclosure by District Judge Conway in his Order dated 7 October 2013. Mr Bisping served his List of Documents on 14 November 2013. Mr McGann's solicitors drew attention in correspondence to a number of deficiencies in that list. When Mr Bisping failed to remedy those deficiencies voluntarily, Mr McGann's solicitors issued on 10 April 2014 an MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping application for specific disclosure. That application came on for hearing on 28 August 2014 before HH Judge Mackie QC, together with an application by Mr Bisping for directions and for relief from sanctions in relation to his failure to file witness statements by the date specified in HH Judge Halbert's Order dated 25 November 2013. 30. Judge Mackie made the August 2014 Order in response to those applications. In the August 2014 Order, he gave a number of directions, including one requiring Mr Bisping to give specific disclosure of 14 categories of document. He granted Mr Bisping's application for relief from sanctions, but only subject to certain conditions, including the condition that:

- (b) The Defendant must fully comply with all further orders of the Court hearing, including this Order. In the event of his failing to comply with any paragraph of this Order or any further order of the Court, he may make an application for relief but such application shall be made to HH Judge Mackie QC .. In the event of the Defendant failing to comply with any of these conditions (and subject to any order for relief pursuant to an application under sub-paragraph (b) above), the Defendant shall not be entitled to rely on any witness evidence of fact at trial. 31. Thereafter, Mr Bisping provided a small number of documents, purportedly in compliance with the August 2014 Order, and sought an extension of time to comply with certain other elements of that order. In response, Mr McGann's solicitors issued further applications for disclosure. These resulted in another order made by HH Judge Mackie QC on 16 October 2014. Judge Mackie found that Mr Bisping had not complied with the August 2014 Order, but permitted Mr Bisping an extension of time and ordered him to provide witness statements, one made by himself, and one made by his accountant, Mr Farnsworth. Those witness statements were to list the disclosable documents which were no longer in Mr Bisping's control, and were to explain what had become of those documents, and to set out the extent of the searches that have been made to locate those documents.
32. Mr Bisping served witness statements on 6 November 2014, purportedly in compliance with the order made on 16 October 2014. However, Mr McGann's solicitors remained dissatisfied with Mr Bisping's response and, on 19 December 2014, issued an application for an order that Mr Bisping should not be entitled to rely upon any witness statements at trial alternatively that his Amended Defence should be struck out. On 30 January 2015 HH Judge Mackie QC made an Order on that application. In it, he granted Mr Bisping a yet further extension of time (to 23 February 2015) to provide the specific disclosure required by the August 2014 order, MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping but ordered Mr Bisping to file a further witness statement and to provide further documents. 33. In purported compliance with that Order, Mr Bisping provided a further witness statement and disclosed a further

1500-odd documents. That resulted in Mr McGann's solicitors making the application to adjourn the trial which resulted in the order of HH Judge Mackie QC referred to in paragraph 7 above, in which Judge Mackie commented on the "deplorable failure by [Mr Bisping] regarding disclosure".

34. Mr Bisping served a further witness statement from Mr Farnsworth in April 2015, together with a further file of documents. Again, Mr McGann's solicitors expressed the view in correspondence that Mr Bisping's disclosure remained inadequate. On 30 July 2015, they applied to strike out Mr Bisping's re-Amended Defence on the grounds of his continuing non-compliance with his disclosure obligations. That application was accompanied by a Schedule of Deficiencies, identifying where Mr Bisping had failed to give disclosure and remained in breach of previous Orders.
35. Mr Bisping provided 400-odd pages of new and duplicate documents and a response to the Schedule of Deficiencies purporting to explain why he was not able to comply fully with the various orders that have been made against him. Mr McGann's application came before HH Judge Waksman QC on 2 September 2015. Judge Waksman made a number of orders against Mr Bisping for specific disclosure and for the filing of further witness statements. These were expressed as final orders, accompanied by the sanction that Mr Bisping's Re-Amended Defence and Counterclaim should be struck out in the event of failure to comply. 36. 37. In purported compliance, Mr Bisping provided further documents and further witness statements. However, yet again these did not satisfy Mr McGann's solicitors. On 24 September 2015 they issued an application for a declaration that Mr Bisping's Re-Amended Defence and Counterclaim stood struck out as a result of his failure to comply with Judge Waksman's Order of 2 September 2015. In response, on 1 October 2015 Mr Bisping served an application for relief from sanctions. Those applications came before HH Judge Waksman QC late on Thursday, 1 October 2015, only four days before the date listed for trial. Judge Waksman gave a short extempore judgment, refusing Mr McGann's application on the basis that there had been substantial compliance with (or at least "no material breach" of) his Order of 2 September 2015, save in one minor respect (which he referred to as the "Drop Box emails") in relation to which he made a further order requiring provision of a further witness statement by 4 pm the following day, in readiness for trial to begin on the following Monday. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping
38. Ms Roberts, who argued this aspect of the case on behalf of Mr McGann, submitted that the effect of Mr Bisping's repeated failure to comply with the various Orders recited above was, by the express terms of the August 2014 Order, to prevent him from relying upon any witness evidence of fact at trial. That was not a matter adjudicated upon by Judge Waksman on 1 October 2015, because that hearing was concerned only with the issue of whether Mr Bisping's Re-Amended Defence and Counterclaim stood struck out.

39. Mr Buttimore's response, for Mr Bisping, was that Judge Waksman had already determined that there had, at least by 1 October 2015, been substantial compliance with all relevant Orders that had been made, and that it was not possible for Mr McGann now to seek to re-open that finding before me. The various Orders made by Judge Mackie and Judge Waksman after the August 2014 Order had impliedly superseded the sanctions provided in the August 2014 Order: and the parties and the court had proceeded on that basis. This was shown, inter alia, by the fact that Mr McGann's 24 September 2015 applications sought only a declaration that the Re- Amended Defence and Counterclaim stood struck out, and made no reference to Mr Bisping being debarred from relying upon witness evidence. Had Mr McGann wished to rely upon this point, he should have raised them, and his attempt to do so now is *prima facie* an abuse<sup>7</sup>. It was also shown by the fact that Mr Graeme McPherson QC's 53-page Written Opening Submission for the trial listed to begin on 5 October 2015 assumed that there would be factual evidence called behalf of Mr Bisping. In any event, it would be just to grant Mr Bisping relief from sanctions, for the reasons set out in the fourth witness statement of Mr Symeou. 40. 41. 8 As with the submissions made by Mr Lawrence in relation to CPR 32.19, the logic of Ms Roberts' submissions cannot be faulted. As the Court of Appeal explained in *Marcan Shipping (London) Ltd v Kefalas*<sup>8</sup>, the sanction prescribed in an Order takes effect automatically as a result of a failure to comply with its terms. Unless the party in default has applied for a relief, or the court itself decides for some exceptional reason that it should act of its own initiative, the question whether the sanction ought to apply does not require a judicial determination<sup>9</sup>. However, in my judgment, Mr Buttimore again has the better of the argument on this aspect of the case. Judge Waksman's 2 September 2015 Order implicitly dealt with all the consequences of Mr Bisping's earlier non-compliance, including those specified in the August 2014 Order: and his decision on 1 October 2015 that there had been substantial compliance with his 2 September 2015 Order is, in my judgment, implicitly determinative of the present application. In this connection, Mr Buttimore referred me to *Woodhouse v Consignia Plc* [2002] EWCA Civ 275,

[2002] 1 WLR 2558; and to *Aldi Stores Ltd v WSP Group Plc* [2007] EWCA 1260, [2008] 1 WLR 1260.

[2007] EWCA Civ 463 See at [34], per Moore-Bick LJ MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 42. I think that Mr Buttimore probably put his case too high in saying that this further application is strictly an abuse on *Henderson v Henderson*<sup>10</sup> principles. However, the issue of whether Mr Bisping was entitled to call any evidence of fact was (for all the reasons explained in paragraphs 23 and 24 above) plainly a matter which, in the interests of effective case management, ought to have been raised at the hearing on 1 October 2015 (if not at the hearing on 2 September 2015, or even earlier), and which should not have been left to be dealt with at the outset of the trial before me. It would be contrary to the Overriding Objective to permit such a fundamental objection to the basis upon which both parties have prepared for trial to be raised so belatedly, in the absence of any evidence giving a reasonable explanation as to why the point was not raised earlier. For that further reason, also, it seems to me that this application by Mr McGann must fail. 43. Had it been

necessary, I would have exercised the court's powers (inter alia, under CPR 3.1(2)(m) and/or CPR 3.9 and/or CPR 3.10) to produce that result, because that is what the overall justice of the case requires. Mr McGann's own disclosure 44. As I have said, Mr Bisping's approach to his disclosure obligations was highly unsatisfactory: but there was also a strikingly unsatisfactory aspect to Mr McGann's disclosure.

45. Mr McGann served his list of documents on 15 November 2013. In that list, Mr McGann's solicitors listed a series of letters, one for each bout, concerning camp expenses. Each of these bore a date shortly after the bout to which it related. The copy of each of these letters produced on inspection contained wording indicating that it attached an invoice for training camp expenses in relation to the particular fight concerned. Following on behind each invoice were copies of documents which appeared to be further attachments to the letter. 46. The series of documents disclosed in relation to the Hayes and Schafer fights were broadly similar. For example in relation to the Hayes fight in June 2006: 46.1 The letter was dated 1 July 2006 and stated "please find attached invoice of camp expenses including flights, hotels, per diems etc. Also included UK camp expenses. As agreed expense payment will lie on file and will be settled at a later date, when you are more financially comfortable".

- (1843) 3 Hare 100. For more modern statements of the relevant principles, see *Johnson v Gore Wood & Co* [2002] 2 AC 1; and *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2014] AC 160. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment *Anthony McGann v Michael Bisping* 46.2 46.3 46.4 Immediately behind that letter was a "Training Camp Expense Invoice", also dated 1 July 2006 with columns for "Flights US", "Hotels", "P/D", "Taxi", "Flights UK", and "Timesheets". The amounts in these columns totalled £32,397. Immediately behind that was a page ruled in columns with numbered rows, as if from a ledger or account book, which had been filled in in manuscript. This was headed "Client: Michael Bisping", "Subject: UFC TUF Finale", "Prepared by A McGann Date April", "Reviewed by [blank space] Date: July 2006". This page provided a breakdown of the figures in the Invoice, including a list of "Time Sheet Totals". Immediately behind that were 4 printed "Employee TimeSheet" forms, again filled in in manuscript. The printed columns, which were headed "Date", "Start Time", "End Time", "Regular Hours", "Overtime Hours" and "Total Hours", had all been completed, apparently week by week, in manuscript. At the bottom was a printed certificate that "these hours are a true and accurate record of all time worked during the pay period", followed by a "Supervisor Signature" from Mr McGann, "Date: 30th June 06". 46.5 The final document was an undated receipt signed by Francisco Netto. 47. 48. The impression given by the way that these copy documents were produced on inspection, and by the way that they had been filled in, was that they were all contemporary documents, produced at the time and attached to the letters which they followed. This impression was strongly reinforced by the fact that Mr McGann's signatures to the various "Employee TimeSheet" documents were dated in manuscript "30th June 06" (in relation to the Hayes fight) and "4/1/07" (in relation to the Schafer fight). However, closer inspection revealed that that impression was misleading. Each of the Employee TimeSheet documents bore in the

bottom right-hand corner in small print the words “©2011 Redcort Software, Inc, <http://www.redcort.com>”, indicating that it had been printed using an online software package. This package (as investigations by Mr Bisping’s solicitors in January 2014 discovered) was not available prior to June 2011, and so could not have been used to produce a document that was filled in or signed in 2006 or 2007, as these time sheets purported to have been.

49. Mr McGann’s solicitors first provided an explanation for this discrepancy in their letter dated 27 February 2014. This was supplemented by Mr McGann’s evidence in his witness statement dated 25 March 2014: MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping I invoiced [Mr Bisping] for camp expenses after each fight. .. Records of all training camp expenses were kept in various files and ledgers in the office at the Wolfslair gym. I used these records as a reference to prepare the invoices I sent or hand-delivered to [Mr Bisping]. In May 2011, when the first serious problems in my relationship with [Mr Bisping] began to appear I realised for the first time that he might try to get out of repaying me for all the camp expenses over the years and therefore I would need to have clear and ordered documentation showing what expenses had been incurred (especially in terms of spar and coaching fees) so I could show [Mr Bisping] this and not give him an excuse to duck out of paying. The various ledgers and other pieces of paper I had kept over the years were not ideal for this, so when I had time I took them all and where necessary I rationalised them into new orderly timesheets showing the sessions that the coaches and sparring partners had provided at the time. The plan was to sit down and go through them all with [Mr Bisping] but once he cut off all contact with me after the Miller fight in December 2011 I never had the chance to do that. However, the rationalised records I produced were disclosed as part of this litigation. Around this time I sent the rationalised records I had created along with copies of all the letters and invoices I had sent Michael over the years to my accountant, because I intended at some point to go through them all with him as well. Most of my office records were later destroyed in a fire at the Wolfslair gym in November 2011 .. Later in January 2013 I also asked some of the coaches and sparring partners who were involved in Michael’s training camps to provide written confirmation of the amount I paid them on Michael’s behalf to help show the expenses that I had incurred. At the time of preparing my disclosure list in respect of this litigation, my solicitors and I have not discussed in detail the dates on which each individual document evidencing camp expenses incurred by me on [Mr Bisping’s] behalf was produced. As a result, we disclosed documents to [Mr Bisping] (and his solicitors) grouped together on the basis of the camp they related to using the date of the first invoice sent as a reference. When my solicitors and I revisited this evidence in the course of producing this statement, we realise that the manner in which we disclosed the documents may inadvertently have created some confusion around the date of creation of the documents, specifically the internal rationalised records that I produced in mid-2011 but MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping were never sent to [Mr Bisping]. My solicitors wrote to [Mr Bisping’s] solicitors on 27 February 2014 to explain this. 50. 51. The

letters and invoices in relation to subsequent bouts followed different formats. The invoices were typed (or computer printed) rather than handwritten. There are no more “Employee TimeSheet” reports produced using the Redcort software. Instead, for the Sinosis fight in May 2007, a series of “Training Camp Timesheet Report” forms followed a “Training Camp Expense Report”. Each of these documents consists of a printed sheet with spaces to write in “Event”, “Date” and “Fighter” across the top. Below that is a printed grid, 4 columns across and 27 rows deep, which looks as if it has been produced from a computer spreadsheet. The sheets have then been written up in manuscript. For the Hamill fight in September 2007, there is simply a typed “Training Camp Expense Sheet” rather than an invoice. Though this refers to “Time sheet totals”, no timesheets are attached. For the Evans fight in December 2007 the typed “Invoice for Camp Expenses” was followed by a “Timesheet Report” typed in block capitals. For the McCarthy fight in April 2008 and the Day fight in June 2008, the invoices, again typed, were in tabular form, with no reference to timesheets. All subsequent invoices were typed, and none referred to timesheets. Just as the layout of the various documents changed, so too did the format of the Wolfslair logo at the top. Various receipts and other documents followed certain of the invoices. In his oral evidence, Mr McGann explained that he ran a number of businesses from his office at the gym. In the early days, he kept a record of expenses in a notebook, and kept a record of his commissions in the same book. However, when things got going there was a lot more to be recorded, and so he kept “ledgers and whatever” - maybe 30 ledgers, covering several fighters. It became quite a big office, with filing cabinets, computers and photocopiers. The office was run by his sister and he mainly just tidied up. He confirmed that the information relating to Mr Bisping’s camp expenses was “in ledgers” and “came off a ledger sheet or a clipboard” when, in mid-2011, he copied it into the documents which were subsequently produced in this litigation. He said that, back in 2007, he must have had timesheets, but must have lost them. When asked by Mr Buttimore why he had signed and put the dates of 2006 and 2007 on documents which were not produced until 2011 he replied that “that was what the ledger said” and that that was the “relevant” date. He said that he could not remember when he created the various supporting documents, but “some of them were photocopies”.

52. Mr Bisping challenged the veracity of Mr McGann’s explanation in relation to the Redcort documents. Mr Buttimore, on Mr Bisping’s behalf, pointed out that Mr McGann’s explanation that he wrote up all of these supporting documents from his ledgers and other records in mid-2011 does not explain why the supporting documents after the first 2 fights are not in the same format. If they were all created together as MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping part of a single exercise, why are they not all on the same forms and in the same format? Mr Buttimore submitted that the production of these misleading documents is strong evidence in support of Mr Bisping’s case that all the letters and invoices now relied upon by Mr McGann have been produced specifically for the purposes of this litigation, and were not produced or handed to Mr Bisping at the time. 53. I shall return to this issue, and to the significance of these documents, later in this

**judgment.**

The witness statement of Paul Davies 54. I must also mention four other matters which occurred in the course of the trial. 55. 56. 57. First, I allowed Mr McGann's application to serve out of time a witness statement given by Mr Paul Davies. That application was supported by the Second Witness Statement of Nic Couchman, and was opposed, on behalf of Mr Bisping, by the Fifth Witness Statement of Andrew Symeou. Mr Davies was the agent and coach who represented Mr Bisping until, in 2005, Mr Bisping began to train at the Wolfslair gym. I accepted the evidence of Mr Couchman that it had not been reasonably possible to obtain a witness statement from Mr Davies at an earlier stage, because Mr Davies had, because of ill-health, refuse to provide one. However, contact between Mr McGann and Mr Davies in early April 2017 had, unexpectedly, resulted in Mr Davies agreeing to provide a statement. Given that Mr Davies was unwilling on health grounds to give evidence voluntarily, it was reasonable of those advising Mr McGann not to serve a witness summary from Mr Davies at any earlier stage, as they did not then expect to be able to call him as a witness. In my judgment, Mr Davies was able to give relevant evidence, and refusing to admit his statement would cause injustice to Mr McGann which would be substantially greater than any prejudice or injustice caused to Mr Bisping by admitting it. Mr Buttimore did not suggest that it would be difficult for him to take instructions on the contents of Mr Davies' statement, and to cross-examine on it. Nor did he suggest that there was any further witness whom he would wish to call as a result of the admission of Mr Davies evidence. Taking all the circumstances of the case into account, it therefore seemed to me that the justice of the case favoured admitting Mr Davies' statement, and hearing his evidence. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Re-Amendment of the Particulars of Claim Anthony McGann v Michael Bisping 58. It was not clear to me, from Mr Lawrence's opening submissions, quite how he put his case in relation to Mr McGann's claim for commission on earnings paid to Mr Bisping's companies, rather than to Mr Bisping himself. As a result of questioning from the bench, Mr Lawrence applied in the middle of the trial to Re-Amend his Particulars of Claim, to make that aspect of Mr McGann's claim clear.

59. Mr Lawrence's original draft alleged a small number of new facts, to which Mr Buttimore objected. Having regard to the stage at which the application was made, I indicated that I was unlikely to give permission for any amendment raising new factual issues. Eventually, Mr Lawrence produced a version of his proposed amendments which did not introduce any significant new factual issues. 60. 61. Even then, Mr Buttimore maintained his objection on behalf of Mr Bisping to this late amendment, relying upon the principles discussed in cases such as *Swain-Mason v Mills & Reeve LLP*<sup>11</sup>, *Su-Ling v Goldman Sachs International*<sup>12</sup>, and *Re Ralls Builders (No 2)*<sup>13</sup>. I nevertheless permitted the amendment, on the basis that it was largely clarificatory, would therefore assist the court in dealing with the case justly, and would cause no material prejudice to Mr Bisping. I gave Mr Bisping permission to make consequential amendments to his Defence. Mr McGann discusses his evidence

62. Mr McGann began his evidence on the afternoon of Wednesday, 26 April 2017 (the first day of the trial) and was still being cross-examined when the court rose for the weekend at the end of Thursday, 27 April 2017. I gave Mr McGann the usual direction that, while he was giving evidence, he should not discuss the case (or his evidence) with anyone. I specifically instructed him that he should not discuss the case with any members of his legal team or with his wife, other family members or any of his friends. 63. Despite this instruction, Mr McGann did discuss the case and his evidence over the weekend. This was discovered (as I was later informed) in the following circumstances. On Monday evening (1 May 2017), Mr Lee Gwynn, Mr McGann's business partner, sent an email to Mr McGann's counsel and solicitors, copied to Mr McGann himself, to which was attached a document setting out a number of matters that Mr McGann had "recalled" over the weekend about issues that have been dealt with in earlier cross-examination, and about corrections or clarifications that he

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[2011] EWCA Civ 14, [2011] 1 WLR 2735

[2015] EWHC 759 (Comm) at [36] to [38], per Carr J

[2016] EWHC 1812 (Ch), [2016] 1 WLR 190 at [35] to [41], per Snowden J MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping wished to make to his previous answers. Mr Lawrence read that email in the train from Liverpool on his way to court. 64. This set in motion a train of events which resulted in the waste of nearly a complete court day. Mr Lawrence first had to take instructions from Mr McGann. He then (as he told me) had to check with the Bar Council's Ethical Enquiries Service his provisional view that it would not be proper for him to continue without informing the court of what had happened. He then had to obtain Mr McGann's consent to tell the court. That having been done, Mr Lawrence then sought to put before the court (on Mr McGann's instructions) only a redacted version of the email which he had received. Only when, following an objection by Mr Buttmore, I ruled that an un-redacted copy should be provided were the full terms of Mr Gwynn's email disclosed.

65. Mr McGann gave an explanation for his conduct later in his evidence. According to Mr McGann he had become incensed by certain aspects of the cross-examination, particularly in relation to his conduct in relation to the submission of a misleading return to the Australian tax authorities on behalf of Mr Bisping (see paragraphs 103 to 108 below). He had (in his words) been "ranting" about it to his partner, Kristin, over the weekend. Kristin had then, by chance encountered Mr Gwynn in the street (the families living near to each other), and had passed on to Mr Gwynn what Mr McGann had said. Mr Gwynn had then passed the information on in the email to Mr McGann's legal team. According to Mr McGann, he had not discussed his evidence directly with Mr Gwynn.

66. Mr Gwynn made a short supplemental witness statement dated 4 May 2017 which broadly confirmed Mr McGann's evidence about this aspect of the case. He declined to answer questions in cross examination about these events, saying that he had dealt with them in his witness statement and claiming the privilege against self-incrimination.
67. Mr Buttimore challenged the accuracy of the accounts of these events given by Mr McGann and Mr Gwynn, submitting that the contents of Mr Gwynn's 1 May 2017 email clearly showed that Mr McGann and Mr Gwynn had conferred directly about a number of aspects of Mr McGann's evidence. Mr Buttimore did not make any applications or seek any specific relief on the basis of these events. Instead, he simply submitted that these matters reflected poorly upon the credibility of both Mr McGann and Mr Gwynn. That seemed to me to be a proportionate and practical approach. 68. Again, I shall return to this issue later in this judgment. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Scuffles outside court Anthony McGann v Michael Bisping 69. Finally I should mention that, towards the end of the trial, it was reported to me by the security team at the Rolls Building that there had been a scuffle between Mr McGann and Mr Bisping in the waiting area just outside the courtroom. When I mentioned this to the parties, they did not deny that there had been an "incident". I cautioned them that such behaviour in the precincts of the court could not be tolerated, and received and accepted assurances that there would be no repetition. I record this incident only because it indicates the degree of ill-feeling between Mr McGann and Mr Bisping, which was also evident in the way that they conducted themselves towards each other within the courtroom, and in the way that they gave their evidence. The background facts

## Introduction

70. 71. This is a case in which both sides accuse the other, not just of being wrong, but of lying and deliberately fabricating evidence. In forming my views as to which parts of the evidence to accept, and which to reject, I have of course paid close attention to the demeanour of the witnesses in the witness box as they gave their evidence to me. I have borne in mind the fact that the events with which this trial is concerned began some 12 years ago, and that it is inevitable that memories have faded and been made less reliable by the passage of years<sup>14</sup>. I have been careful to test the evidence of each of the witnesses against all the other materials available to me, bearing in mind the helpful observations of Robert Goff LJ (as he then was) in *The Ocean Frost*<sup>15</sup>: .. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth .. The documentary record often provides a tribunal of fact with the most reliable evidence of what actually happened at the time. Unfortunately, Mr McGann and Mr Bisping did not record much of what happened in writing. Many documents are said to have been destroyed in the fire at Wolfslair: and the authenticity of some of the most important documents is itself in question. The documentary record on which I can safely rely in this case is therefore

comparatively limited. In reaching my conclusions, I must therefore pay particularly careful attention not only to those documents whose authenticity is not challenged, but also to the small number of facts that can be 15 See the valuable observations on the fallibility of human memory made by Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at [15] to [22].

- [1985] 1 Lloyd's Rep 1 at 57 MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment *Anthony McGann v Michael Bisping* objectively ascertained, to the witnesses' likely motives, and to the overall probabilities. 72. Before setting out my conclusions of fact, it is therefore necessary for me to explain in some detail the background facts of this dispute and to set out the contentions of the parties in relation to the various disputed points, in order to put my reasoning in relation to the various issues which I have to decide in its full context. I do so in approximately chronological order.
- 2005 - Mr Bisping joins Wolfslair
73. Mixed martial arts ("MMA") is a full-contact combat sport. It allows striking and grappling, both standing and on the ground, using techniques from other combat sports and martial arts. Among the disciplines in which MMA fighters have to be proficient are Brazilian jiu-jitsu (which focuses on grappling and ground fighting), boxing, Thai boxing (Muay Thai, which focuses on stand-up striking and various clinching techniques) and wrestling. Professional MMA fighters have to have a high level of proficiency in all four of these disciplines, and need to be very fit and resilient. 74. Professional MMA worldwide is dominated by Zuffa, a corporation based in the state of Nevada in the USA. Zuffa trades under the name of the Ultimate Fighting Championship ("UFC"), and is the largest promoter of MMA sporting events in the world. Since 2005, it has also been responsible for the production of TUF. At the times that are relevant to this action, TUF (which had its 24th season in 2016) generally featured 16 athletes, in designated weight classes. These athletes would be shown living and training together, and eventually competing against one another to win the title of "The Ultimate Fighter". Established UFC stars were often retained by Zuffa to appear in subsequent series in the role of coach to the competitors.
75. MMA took longer to become popular in the UK. However, it began to gain ground at the start of the 21st century. Mr McGann became a fan of the sport at about that time. In about 2004 Mr McGann and his friend, Lee Gwynn ("Mr Gwynn") decided to build their own MMA gym in Widnes in Cheshire, and to bring in some Brazilian coaches as trainers. They named the gym "Wolfslair" (though Mr McGann assured me that he intended no reference to Adolf Hitler's similarly-named headquarters in World War II). Wolfslair was the first gym in the UK to have a full-size cage, and to have in-house Brazilian coaches (including Francisco Neto, as head coach). Within a couple of years, Wolfslair was already attracting professional MMA fighters.
76. Mr Bisping won his first professional MMA fight in April 2004. By 2005, he was already beginning to make a name for himself, and had won "Cage Rage" and "Cage Warriors" light heavyweight titles. Mr Bisping's manager at the time was Paul Lloyd Davies. Mr Davies,

unfortunately, was away in Thailand in April 2005, at the time MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping when Mr Bisping was preparing for an important fight. Mr Bisping, who was then living in Clitheroe, searched online to find sparring partners, and came across an advertisement from Wolfslair seeking sparring partners. Mr Bisping applied, was accepted by Mr McGann, and began to train there, sparring with Antonio Silva, Henrique Nogueira, and other Brazilian professional fighters staying at the gym.

77. Within a short time, Mr Bisping had decided to leave the management of Mr Davies and to base himself at Wolfslair, which was comparatively near to his home. There is a dispute about precisely when, why and how this happened, and a dispute about when and with what person or entity Mr Bisping signed his new contract. Mr Bisping says that he signed a contract with “Wolfslair” (rather than Mr McGann) in about May
2005. Mr McGann claims (but Mr Bisping denies) that Mr Bisping signed the Management Agreement in July 2005. It is however, common ground that Mr Bisping did in fact sign a new contract sometime in the middle of 2005, under which he ceased to be managed by Mr Davies. It is also common ground that, in practice, Mr Bisping’s management as a professional MMA fighter was thereafter in fact largely in the hands of Mr McGann. It is also common ground that the agreed rate of commission payable by Mr Bisping was 20%. 2005-2007 - The First PAR Agreement
78. Later in 2005, Mr Bisping auditioned in London for a role in season 3 of TUF. He was successful and, as a result entered into a Promotional and Ancillary Rights Agreement dated 6 January 2006 (“the First PAR Agreement”) with Zuffa. This was expressed to last for an initial period of one year from the date of the first fight involving Mr Bisping promoted by Zuffa following the conclusion of season 3 of TUF16, but gave Zuffa options for a further 2 years thereafter. Mr Bisping was required to undertake a minimum number of fights to be promoted by UFC, and was to be entitled to a “Fighter’s Purse” in relation to each of them. The amounts payable depended on whether Mr Bisping won in the final event of season 3. If he won the final, his purse was to rise from USD 12,000 in the initial period, to USD 16,000 in the first option period, and to USD 22,000 in the second option period. The amounts payable if he lost in the final were considerably less, rising only to USD 11,000 in the second option period. In addition, Mr Bisping was to be entitled to a “Win Bonus” of a similar amount for every fight that he won. For the final of the third season itself, the “Fighters Purse” was USD 5,000, with a “Win Bonus” of a similar amount.
79. The First PAR Agreement contemplated that each fight would be the subject of an individual Bout Agreement. Mr Bisping duly participated in season 3 of TUF, and won the light heavyweight final against Josh Haynes in a bout in Las Vegas which was screened on 24 June 2006. That bout was covered by a Bout Agreement also The agreement actually refers to the second series, but that seems to be an error as the second series ran from August to November 2005, and so ended prior to the date of the First PAR Agreement. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping entered into in June 2006. The Term Sheet to that Bout Agreement recorded Mr Bisping’s entitlement to various incidentals including an hotel or

motel room, two round-trip economy class air tickets, and either USD 50 per day or meal vouchers for himself and an “affiliate”. 80. The Bout Agreement for the Haynes fight specified a “Training Commencement Date” of 20 June 2006. It is nevertheless Mr McGann’s case that he organised a five- week training camp in Las Vegas prior to this fight, in order to give Mr Bisping the best chance of victory. Mr McGann asserts that he personally paid expenses for this training camp of £32,379 on Mr Bisping’s behalf, which he says have never been repaid. Again, according to Mr McGann, Mr McGann invoiced Mr Bisping for these expenses on 1 July 2006. In relation to those expenses, it is Mr McGann’s case (as set out in the accompanying letter dated 1 July 2006) that, at that early stage of Mr Bisping’s career, “As agreed expense payment will lie on file and will be settled at a later date, when you are more financially comfortable”. In other words, it was agreed that Mr McGann would initially pay and fund the cost of these training camps, but that Mr Bisping would repay Mr McGann at some unspecified point in the future (to be agreed), when Mr Bisping’s earnings were sufficient.

81. Mr Bisping’s case is that there was no such agreement. According to Mr Bisping, there was no question of his paying any camp expenses for the Haynes fight, and that the figures claimed are in any event absurdly high, given the small amounts that he was likely to receive from that bout. Mr Bisping also asserts that he did not receive any invoice from Mr McGann for these expenses, and that the letter, invoice, and other documents now produced by Mr McGann in support of his claim are recent fabrications. According to Mr McGann, Mr Bisping earned USD 25,000 from the Haynes fight. Mr McGann accepts that Mr Bisping paid in full the 20% commission due on his “Fighter’s Purse”, “Win Bonus” and sponsorship income in relation to this fight.
82. Mr Bisping took part in a number of further bouts under the First PAR Agreement. The detailed particulars of each of these fights were contained in specific Bout Agreements between UFC and Mr Bisping: 82.1 On 30 December 2006, Mr Bisping fought Eric Schafer in Las Vegas in “UFC 66”. Mr McGann asserts that he organised a training camp in California run by Kazeka Muniz, and sent an invoice for £12,490 to Mr Bisping on 7 January 2007 in relation to camp expenses. Mr Bisping denies receiving the invoice, and disputes that the expenses claimed were ever incurred, asserting (inter alia) that he trained in Las Vegas, not in California. Mr Bisping won the fight and, according to Mr McGann, was paid an Event Bonus of USD 101,000 and Sponsorship of USD 15,000 in addition to his “Purse Fee” and “Win Bonus”. Commission at 20% on the total of USD 140,000 would have MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping been USD 28,000. Mr Bisping paid Mr McGann USD 22,000 shortly after the fight, leaving a balance of USD 6,000 which Mr McGann now claims. This sum forms part of Mr McGann’s claim for commission on sums withheld (at least initially) by overseas tax authorities from payments made to Mr Bisping. 82.2 On 21 April 2007, Mr Bisping fought Elvis Sinosic in Manchester. Mr McGann asserts that, although the training for this fight took place at Wolfslair, using Wolfslair’s in-house Brazilian coaches, he incurred and paid expenses of £12,180 on behalf of Mr Bisping, for which he invoiced Mr Bisping on 1 May

2007. Mr Bisping denies receiving the invoice, and disputes the incurring of the expenses. According to Mr McGann, Mr Bisping received USD 169,000 from this fight. Mr McGann accepts that all commission in relation to this fight was duly paid. 82.3 On 8 September 2007 Mr Bisping fought Matt Hamill in London. Mr McGann's case is that Mr Bisping was invited to attend the training camp of Quinton "Rampage" Jackson (another MMA fighter managed by Mr McGann) in Big Bear, California, and in return agreed to provide and pay for training facilities when Quinton Jackson came to the UK to train. According to Mr McGann, he paid expenses of £17,300 on behalf of Mr Bisping in relation to Quinton Jackson's training facilities, and invoiced those expenses to Mr Bisping on 20 September 2007. 82.4 This is all disputed by Mr Bisping, whose evidence on this point is supported by the evidence of Juanito Ibarra, who used to be Quinton Jackson's manager. Mr Ibarra confirmed that Mr Bisping had trained with Mr Jackson in California, and that Mr Jackson had then travelled to England, had trained at Wolfslair, and had been accommodated by Mr McGann. No payment passed in either direction. However, according to Mr Ibarra, "At no point was it discussed or agreed that [Mr Bisping] would be responsible for the expense of our accommodation. At no point was it agreed or discussed that [Mr Bisping] would be responsible for any expenses of 'Team Rampage' during our stay in England". According to Mr McGann, Mr Bisping earned USD 149,000 from this fight. Mr McGann accepts that all relevant commission in relation to this fight was duly paid. 82.5 On 17 November 2007, Mr Bisping fought Rashad Evans in Newark, New Jersey in the USA. Mr McGann's case is that the training camp for this fight took place at the Wolfslair and at a temporary facility created by UFC in Newark. Mr McGann claims to have paid expenses of £11,200 on behalf of Mr Bisping, and to have invoiced those sums to Mr Bisping on 1 December

2007. All of this is disputed by Mr Bisping. Mr McGann's case is that Mr MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping Bisping's total earnings from this fight were USD 212,000, on which commission would have been USD 40,000, but Mr Bisping paid only USD 32,400. The balance of USD 7,600 forms part of Mr McGann's claim for commission on sums withheld (at least initially) by overseas tax authorities from payments made to Mr Bisping. End 2007 – The meeting in the Wellington Arms 83. On Mr McGann's case, Mr Bisping had by the end of 2007 accumulated a debt to Mr McGann in relation to training camp expenses of some £85,549, a sum slightly greater than the amount that Mr McGann had earned by way of commission on Mr Bisping's earnings over the same period. According to Mr McGann, he regarded this as "a significant debt", and he told Mr Bisping that he would have to look at reducing it soon. Again, according to Mr McGann, Mr Bisping fobbed him off, saying that he still couldn't afford to pay back anything yet, but would do so soon. On Mr McGann's case, Mr Bisping had by then earned a total of about USD 695,000 gross, USD 556,000 net of commission, over the previous two years. At the then current exchange rates, that would have been roughly equivalent to about £330,000. Mr McGann would, of course, have had to pay expenses and then tax from that sum.

84. Mr Bisping's account of what happened at the end of 2007 is very different. According to him, he received a telephone call from Mr McGann, in which Mr McGann told him that he wanted 20% of all the "locker room bonuses" that Mr Bisping had received. When Mr Bisping challenged Mr McGann about this, Mr McGann's response was that "it's in the contract". When Mr Bisping asked to see a copy of the contract, Mr McGann asked Mr Bisping to meet him at the Wellington Arms pub (which was about halfway between Mr Bisping's home and Mr McGann's). Mr Bisping and his father, Jan, attended the meeting, at which Mr McGann produced the contract for another fighter, Lee Dixon, rather than Mr Bisping's contract. When Mr Bisping and his father asked why Mr McGann was not producing Mr Bisping's contract, Mr McGann responded that Mr Bisping's contract was "locked in a safe at Lee Gwynn's property in Liverpool", and offered to drive to collect it, if that was what Mr Bisping wanted.
85. Mr Bisping's case is that, after a discussion, he reluctantly agreed to pay commission on all his bonuses to date, and wrote a cheque for around USD 70,000. However, he accepts that he cannot provide any documentary corroboration to show that he paid that particular amount. According to Mr Bisping, two other important things happened at that meeting. First, it was agreed that Mr Bisping's payment "wiped the slate clean", and that no further monies were due from Mr Bisping. Secondly, Mr Bisping and his father told Mr McGann that, when the current contract had run its course, Mr Bisping would not be staying with Wolfslair, and would not be renewing his contract MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping on its expiry. In relation to what happened at the meeting with Mr McGann, Mr Bisping's case is supported by the evidence of his father, Jan Bisping.
86. Mr McGann accepts that he did meet Mr Bisping and Jan Bisping at about this time. However, according to Mr McGann, Mr Gwynn was also present. Mr McGann also accepts that, at the meeting, there was a discussion about the amounts that Mr Bisping owed. However, Mr McGann denies that there was any talk of "wiping the slate clean", or about anything to do with what was to happen at the end of the Management Agreement. It was Mr McGann's evidence that "this meeting had no particular importance; it was one of many meetings I had with [Mr Bisping] over the years arguing over unpaid expenses and commission". 2008 – Further Bouts 87. Following this, Mr Bisping fought two further bouts under the First PAR Agreement: 87.1 On 19 April 2008, Mr Bisping fought Charles McCarthy in Montréal, Canada. According to Mr McGann, training for this fight took place at Wolfslair, then for several weeks in California, before the team went to Montréal. Mr Bisping accepts that he trained for the fight at Tiki's Gym in Huntingdon California with Paul Kelly and later with Dave Jackson. However, he asserts that he paid for Paul Kelly's flight himself, and paid directly any other expenses for which he was liable. He disputes Mr McGann's claim for expenses of £12,420 and says that he never received the invoice dated 1 May 2000 on which Mr McGann relies. According to Mr McGann, Mr Bisping earned USD 149,000 from this fight, entitling him to commission of USD 29,800. Mr McGann accepts that all commission due in relation to this fight was paid. 87.2 On 7 June 2008, Mr Bisping fought Jason Day in London.

According to Mr McGann, training for this fight took place at Wolfslair, and he agreed with Mr Bisping that he would bring in Kazeka Muniz to help. Mr McGann claims to have paid expenses of £9,200 on behalf of Mr Bisping, and to have invoiced those sums to Mr Bisping on 22 June 2008. Mr Bisping disputes this. According to Mr Bisping, he paid £5,000 for the services of Mr Muniz, because he was told by Mr McGann and Mr Gwynn that he had to pay it. "This was a shock, but I paid it under duress". This in turn is disputed by Mr McGann, who claims that he was paid nothing. According to Mr McGann, Mr Bisping was paid a total of \$226,000 for this fight, and accounted to Mr McGann in full for his 20% commission. Mr Bisping also asserts that he had an argument with Mr McGann about whether Mr Gwynn should act as one of his corner men for this fight, and that Mr Gwynn subsequently called Mr Bisping to threaten him when he refused. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment September 2008 - Incorporation of MBL Anthony McGann v Michael Bisping 88. On 10 September 2008, Michael Bisping Limited ("MBL") was incorporated. Mr Bisping and his partner (later his wife) Rebecca Sidwick were the first directors. Although the company's constitution did not say so in so many words, the only activity that it was intended that MBL should carry out was to employ Mr Bisping, to provide his services, and to receive the income thereby produced. October 2008 - The Second PAR Agreement 89. 90. On 13 October 2008 MBL and Mr Bisping entered into a fresh Promotional and Ancillary Rights Agreement ("the Second PAR Agreement") with Zuffa. Under the Second PAR Agreement, "MBL on behalf of Fighter" [ie Mr Bisping] granted to Zuffa the same promotional and ancillary rights as Mr Bisping had granted under the First PAR Agreement. The terms of the Second PAR Agreement provided that it was to be for an initial period ending on 30 December 2008, but granted Zuffa the option of a one-year extension. The provisions relating to "Compensation to Fighter" broadly followed the same format as those in the First PAR Agreement. The "Fighters Purse" for bouts during the initial period was to be USD 16,000 with a "Win Bonus" of another USD 16,000, rising in each case to USD 22,000 during the option period. Under clause 7.3 "The Fighters Purse and Win Bonus, together with the Incidentals (defined below) shall be the sole compensation due to or claimed by MBL and/or Fighter on account of this Agreement, the Rights, and Fighter's participation in any Bout or any activity related thereto". According to Mr McGann this was a "bridging" agreement, pending the negotiation of a significantly more lucrative deal: and only one fight took place under the Second PAR Agreement. On 18 October 2008 Mr Bisping fought Chris Leben in Birmingham. According to Mr McGann, the training camp for this fight took place at Wolfslair, in relation to which he paid expenses of £7,150 which he invoiced to Mr Bisping on 1 November 2008. Mr Bisping disputes this, saying that all the training at Wolfslair was covered by his basic entitlement to use the gym, and that the only outsider was Brian Talbert, whom he paid directly. According to Mr McGann, Mr Bisping earned USD 279,000 from this fight, and paid the 20% commission due in full. 2009 - The Third PAR Agreement 91. The Third Promotional and Ancillary Rights Agreement ("the Third PAR Agreement") was entered into on 5 June 2009. Again, this agreement was between MBL, Mr Bisping (as "Fighter") and Zuffa, and its structure was broadly the same as its two predecessors It was stated to be for eight bouts or a period of 34 months from the first bout

promoted under the agreement. If at the end of the term, Mr Bisping was MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping then the UFC champion, the agreement was automatically to be extended for a further three bouts or one year. Under the Third PAR Agreement, the “Fighters Purse” for the first bout was to be USD 150,000 with a “Win Bonus” of USD 100,000. However, provided that Mr Bisping went on winning his bouts, the “Fighters Purse” would rise incrementally, so that for the eighth bout it would be USD 325,000 with a “Win Bonus” of USD 150,000. In addition, as UFC Champion, Mr Bisping was (in certain circumstances) to be entitled to a “pay per view bonus”, which could be of an even larger amount. As before, the Third PAR Agreement stated that Zuffa would provide incidentals such as transportation, lodging, meals and bout tickets (or payments in lieu), as specified in the particular Bout Agreement. This time however, these included a round-trip business-class air ticket for Mr Bisping as well as a round-trip economy-class ticket for one of his affiliates. It also provided for a Training Commencement Date, which could be up to 8 days prior to the date of the bout, to be specified in the Bout Agreement. 92. It was Mr McGann’s case that he was primarily responsible for negotiating these greatly improved terms for Mr Bisping: and, in support of his evidence, he produced an email dated 8 April 2009 from himself to Zuffa, in which he set out a bargaining position on behalf of Mr Bisping.

93. Mr McGann’s evidence was also that, having secured the Third PAR Agreement, he persuaded Mr Bisping to start paying 50% of the training camp expenses himself. However, Mr Bisping still claimed that he was unable (inter-alia because he had a large tax bill to pay) to afford to repay the expenses previously incurred by Mr McGann on his behalf, and still required Mr McGann to fund 50% of future expenses, again on terms that Mr Bisping would eventually repay Mr McGann for those expenses out of future earnings. Mr Bisping accepts that, from the time of the Henderson fight referred to below, he agreed to meet 50% of training camp expenses. However, his evidence was that this agreement was made in the context not only of the improved terms contained in the Third PAR Agreement, but also of the increased expense of having the camp for that fight in the USA. 94. On 22 March 2010 Mr Bisping signed a Ratification of the Third PAR Agreement. This stated that “I .. hereby represent, warrant and agree that I consent to the execution of the Agreement, and hereby ratify and confirm, in my capacity as an individual and as an employee of MBL, but I shall be bound by and will duly observe, perform and comply with, all of the terms, covenants and conditions of the Agreement which are relevant to the performance of the duties of my employment with MBL, and which are necessary to enable MBL to comply with its obligations under the Agreement”. The Ratification also contained extensive provisions for the assumption of risk and waiver of all claims by Mr Bisping against Zuffa. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Summer 2009 - Season 9 of TUF Anthony McGann v Michael Bisping 95. 96. In June and July 2009, Mr Bisping appeared as head coach of one of the teams in Season 9 of TUF. The evidence of Dana White, the President of Zuffa, was that this appearance was not negotiated through Mr McGann, but with Mr Bisping directly. Mr White confirmed that Mr Bisping did not receive

any compensation for participating in this season, apart from “transportation, housing and a small per diem”. The benefit which he received was “the exposure he received from appearing on the series and the notoriety that came along with it”. It was Mr White’s evidence that “as a way of thanking Michael Bisping for appearing as a coach on season nine of TUF, Zuffa purchased a Range Rover SUV for him as a gift”. An on-line news item at the time recorded that “USD 100,000 custom Range Rovers” had been given to Mr Bisping and to his fellow coach, Dan Henderson. Mr McGann’s case is that he is entitled to commission on the value of this car, because it was an “in-kind contribution” within clause 2.2 of the Management Agreement. Mr McGann claims to have invoiced Mr Bisping for this commission on 27 July 2009: and his evidence was that, when he and Mr Gwynn asked Mr Bisping if he could borrow the car for a funeral, Mr Bisping acknowledged that he was “technically entitled to 20% of the value of the car in commission anyway”. Mr Bisping denies this (although he accepts that Mr McGann did borrow the car for a funeral). His evidence was that “There was no question at the time of McGann getting commission on this and he never raised this with me”. According to Mr Bisping, the first time that Mr McGann ever sought to claim commission on this car was in his email dated 28 May 2011. 2009 – The agreement to split expenses 50/50

97. Mr Bisping lost his first bout under the Third PAR Agreement.: 97.1 On 11 July 2009 Mr Bisping fought Dan Henderson in Las Vegas. According to Mr McGann, the training camp for this fight took place at Wolfslair and at the Zuffa gym in Las Vegas. Mr Bisping specifically requested that the camp should be run by a wrestling expert, Zak Light. Mr McGann therefore arranged for Little Big Man LLC (which owed money for sponsorships) to forward USD 11,900 to Mr Light. In support of this, Mr McGann produced an email dated 24 August 2009 from a Mr Rowlands of MMA Authentics (on behalf of Little Big Man LLC), showing payments to Mr Light at Mr McGann’s request of USD 9,900 on 22 June and USD 2,000 on 8 July 2009. However, the table attached to that email also shows that the funds from which these payments were made included commission of USD 10,000 due to Mr Bisping: and Mr McGann’s evidence did not (in my judgment) satisfactorily explain why at least that part of the money paid to Mr Light MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping belonged to Mr McGann rather than to Mr Bisping. In all, Mr McGann claimed to have paid expenses of £13,800 on behalf of Mr Bisping, and to have invoiced those expenses to him on 21 July 2009. 97.2 Mr Bisping’s evidence was that this was the first time that fight camp issues had arisen. He agreed to Mr McGann’s suggestion that expenses (“ie outside coach sparring partners from overseas, or full camp trips overseas etc”) should in future be split 50/50, but was surprised to be asked for USD 30,000 by Wolfslair for his share of the costs of this camp. That was particularly so since (according to Mr Bisping) Mr Bisping paid for all food when he was present, two of the flights were paid for by Zuffa, and everyone stayed at the Palace Station Hotel owned by Zuffa and so paid a heavily discounted rate. Again, according to Mr Bisping, no supporting documentation was ever provided. Mr McGann’s evidence was that, to the contrary, he paid for all the food and accommodation: and this was certainly not the

first occasion on which issues about payment for fight camp expenses had arisen. 97.3 Mr Bisping lost this fight, so did not receive any “Win Bonus”. However, according to Mr McGann, Mr Bisping’s total earnings from this fight were USD 306,000, meaning that the commission due to Mr McGann was USD 61,200. Mr Bisping paid only USD 46,200. The remaining USD 15,000 forms part of Mr McGann’s claim for commission on monies withheld by overseas tax authorities. September 2009 - Incorporation of Wolfslair Promotions Ltd

98. Wolfslair Promotions Ltd (“WPL”) was incorporated on 24 September 2009. Karl Gwynn was appointed as a director on 26 November 2009, and held office until November 2012. On 22 January 2013 Lee Gwynn became a director of the company. 2009 - Sponsorship monies
99. Mr McGann’s case is that Mr Bisping’s disclosure shows that in the accounting period ending 30 September 2009, Mr Bisping received further sponsorship monies from Ecko, UFC video game, Spike Person Services Appearances, 2 US Series Coaching and tax on a video game. These receipts totalled USD 44,933, and Mr McGann claims 20% of those sums amounting to USD 8,986.60 and/or an account of the sums received.
100. Mr McGann also points out that on 9 November 2009 Mr Bisping entered into a sponsorship agreement with MusclePharm Inc. This was for an initial 3-fight term, with the option to extend for a further year. Further contracts were entered into on 26 February 2011 and 23 April 2015. Mr McGann claims to be entitled to 20% of all MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping sums received by Mr Bisping under these contracts, but asserts that - although it is not clear how much Mr Bisping has in fact received - he has paid no commission on those amounts. Again, this forms part of Mr McGann’s claim for an account. 2009-2010 – Further bouts
101. Continuing the list of bouts under the Third PAR Agreement: 101.1 On 14 November 2009, Mr Bisping fought Denis Kang in Manchester. According to Mr McGann, Mr Bisping requested Mr McGann to arrange for some wrestlers from Canada who had previously trained with his opponent to come to the training camp, which took place at Wolfslair. Mr McGann’s case is that Mr Bisping himself paid approximately 50% of the expenses directly, but that he (Mr McGann) paid £7,299 on behalf of Mr Bisping for which he rendered an invoice on 2 December 2009. 101.2 Mr Bisping’s evidence was that, on this occasion, he was for the first time given a document setting out the amount of the camp expenses: “I was given a breakdown which had fight costs totalling £14,084 .. I was not at all happy with this. I agreed to pay ½ of this (after certain deductions) on that occasion but told them from here on everything must be approved by me as they could not simply spend my money as they wished”. This account is supported by an email dated 4 December 2009 from Mr McGann to Mr Bisping to which a JPG image of a handwritten ledger sheet headed “Mike Camp” was attached. This ledger sheet has at its bottom a final figure of £14,084. 101.3 Mr Bisping’s account is disputed by Mr McGann. Mr McGann’s evidence was that the training camp was very important because of Mr Bisping’s recent loss to Dan Henderson - which meant that a win this time was imperative. According to Mr McGann, he brought in a number of other

specialist sparring partners, and cleared everything with Mr Bisping as he went along. Mr Bisping (in Mr McGann's view) has simply invented his account of saying that "from here on everything must be approved by me". Mr Bisping, in the event, won the fight. According to Mr McGann, his total earnings were USD 346,000, meaning that the commission payable was USD 69,200, and that was paid in full. 2010 - The Agreement to split expenses 80/20

102. On 21 February 2010 Mr Bisping fought Wanderlei Silva in Sydney Australia as part of UFC 110. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 102.1 According to Mr McGann, it was at about this time that he agreed with Mr Bisping that Mr Bisping would pay 80% of camp expenses, only 20% being advanced by Mr McGann. Mr McGann's evidence as to the timing of this agreement was slightly contradictory. In his first witness statement, he initially said that "By the time we reached the Kang fight training camp in September 2009, [Mr Bisping] had agreed to pay 80% of expenses himself and I would cover the remaining 20% on the understanding I would be repaid at a later date". However, in the subsequent passages of the witness statement which deal with individual bouts, Mr McGann says that, in relation to the Kang fight, "at this point [Mr Bisping] was paying approximately 50% of his training camp expenses directly himself". It is only in relation to the Silva bout in February 2010 that Mr McGann says "For this fight and the next 3 fights .. [Mr Bisping] had agreed to pay 80% of his camp costs himself and I would pay 20% on his behalf on the understanding that I would be paid back". 102.2 Mr Bisping in his evidence, accepted that "in the period 20 February 2010 to 27 February 2011 I paid 80% even though this completely went against what we had agreed when I signed with the Wolfslair .. In any event all expenses were squared as we went along. There should no[t] have been any significant outstanding costs at the termination of our relationship". 102.3 According to Mr McGann, the training camp for this fight took place at the Wolfslair gym and then at the Elite Fighting gym in Sydney. Mr McGann sent an email dated 4 February 2010 to Mr Bisping, explaining that he had arranged for him to train at the Elite Fighting gym, to which Mr Bisping replied "Good job mate. Manager of the year!!!". Mr McGann claims that he organised several specialist sparring partners, agreed with Mr Bisping in advance. He asserts that he paid expenses of £4,167 on behalf of Mr Bisping that he invoiced on 27 February 2010. According to Mr McGann "the letter and invoice were sent or delivered by hand to [Mr Bisping] on or around 27 February 2010". 102.4 According to Mr McGann, Mr Bisping earned a total of USD 252,000 in respect of this fight, entitling Mr McGann to commission of USD 50,400. Of this, Mr McGann has paid only USD 44,000, leaving a balance of USD 6,400 which Mr McGann now claims. This sum forms part of Mr McGann's claim for commission on sums withheld (at least initially) by overseas tax authorities from payments made to Mr Bisping. 2010 – Submission of Mr Bisping's Schedule of Tax Deductions and Tax Rates
103. On 20 January 2010, prior to the fight, Zuffa sent emails to all fighters participating in UFC 110 and their managers, giving information about Australian immigration and MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping tax requirements and including a blank Schedule of Tax

Deductions and Tax Rates form. This email stated that UFC/Zuffa had retained (and would pay the fees of) Michael Roseby, an accountant in Melbourne, to assist with the filing of the various documents necessary to fulfil each fighter's tax obligations. Mr Bisping did not receive his copy until the following day, at which point Zuffa were pressing for an urgent response. Mr Bisping forwarded all this to Mr McGann by email dated 24 January 2010.

104. On 25 January 2010, Mr Bisping signed a "Representation Authority" to Mr Roseby's firm, Roseby Rosner & Young Pty Ltd, in connection with his tax affairs in Australia and New Zealand. On about 27 January 2010 this was sent to Mr Roseby, together with the Schedule of Tax Deductions and Tax Rates form, completed in manuscript and signed by Mr Bisping. On this document, Mr Bisping claimed expenses totalling USD 52,460, including sums for the fees and expenses of spars and coaches, plus a 20% deduction from gross earnings for "Wolfslair Management" and a 30% deduction for "Trainer/Coach", split evenly between the three disciplines of Brazilian jiu-jitsu, Muay Thai, and wrestling.
105. When he was cross-examined about this document, Mr Bisping frankly accepted that these claimed expenses were not all incurred. That admission was almost inevitable, given that the schedule of "Foreign Fight Expenses" prepared by Mr Bisping's accountant, Mr Farnsworth, shows verified expenses for this fight of less than £12,000 in total. Mr Bisping's explanation for this attempted deceit of the Australian tax authorities sought to put the blame for that deception squarely on Mr McGann, saying "on the way back from the gym, Mr McGann presented me with the form and said 'sign here' and I did .. [the form is] not my handwriting, but that is my signature. This was all written by Mr McGann".
106. Mr McGann's evidence about this form, in his second witness statement, was that Mr Bisping simply gave it to him to submit on his behalf. However, when Mr McGann was cross-examined about this document his first reaction was to say that "I filled a lot of forms in for [Mr Bisping], so it could be my handwriting but I do not know". When Mr Buttmore returned to the topic after the weekend break, Mr McGann was by then positive that it was not his handwriting and said that it could be that of Mr Bisping's wife. He accepted that he submitted the document by email and said that "I now know that there are things in it which are not true, but I did not know that at the time. I did not read it when I sent it in".
107. On 7 March 2010, Mr McGann sent a letter by email to Mr Bisping about "tax withholdings by IRS". We still haven't made any progress with your accountant concerning reclaiming the outstanding monies withheld by the American IRS .. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping .. Our unclaimed 20% is becoming substantial and is a great concern .. Please make it a priority to get your accountant to make some progress. If it helps with Brads Smuckler at the UFC, he advised that it is a simple act of claiming all your expenses back like I did for you in Australia. I would include the documents for your accountant to review .. 108. In cross-examination, Mr Buttmore put to Mr McGann that his reference in this letter to "claiming all your expenses back like I did for you in Australia" was inconsistent with his evidence that he had played no part, except that of intermediary, in the submission in January 2010 of Mr

Bisping's Schedule of Tax Deductions and Tax Rates form. Mr McGann did not accept this suggestion, and asserted that the letter simply referred to the fact that he had submitted the January 2010 document on Mr Bisping's behalf. 2010 – Further bouts

109. Mr Bisping's remaining bouts under the Third PAR Agreement were as follows: 109.1 On 29 May 2010 Mr Bisping fought Dan Miller in Las Vegas. According to Mr McGann, the training camp for that bout took place at the Wolflair and that the Striking Unlimited gym in Las Vegas. A number of other fighters from the Wolflair team were also fighting, so they all trained and prepared together. Mr McGann's case is that he paid expenses of £4,232 on behalf of Mr Bisping that were invoiced on 7 June 2010 but which were never paid back to him. According to Mr McGann, Mr Bisping's total earnings were USD 400,000, meaning that Mr McGann's commission was USD 80,000. Of this, Mr Bisping paid USD 61,000 some months later, leaving USD 19,000 unpaid. That sum forms part of Mr McGann's claim for commission on sums withheld (at least initially) by overseas tax authorities. 109.2 On 16 October 2010 Mr Bisping fought Yoshihiro Akiyama in London. According to Mr McGann, the training for this fight took place at the Wolflair, and Mr Bisping himself paid the coaching fees. Mr McGann therefore paid only £400 in respect of food and travel for the coaches on behalf of Mr Bisping, which Mr McGann says that he invoiced on 25 October
2010. According to Mr McGann, is to Bisping and a total of USD 412,000 from this fight, entitling Mr McGann to commission of USD 82,400. Mr McGann accepts that this commission was paid in full. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment December 2010 - Meeting Anthony McGann v Michael Bisping
110. Mr Bisping's case is that, during 2010, he made a number of complaints to Mr McGann about Mr McGann's failure to pass on sponsorship income to which Mr Bisping was entitled. This led, according to Mr Bisping, to a meeting in December 2010 between himself, Mr McGann, Lee Gwynn and a friend of theirs who they referred to as "Harry Potter". It was Mr Bisping's evidence that, at that meeting, agreement was reached after lengthy discussions on the amounts due from and to Mr Bisping, and Mr Bisping agreed to make (and did thereafter make) a bank transfer of £49,970 in full and final settlement of all amounts to date. Mr Bisping's bank statement, which he produced, shows that payment being made and it is not denied by Mr McGann: though it is noteworthy that Mr Bisping's original pleading alleged a payment of between £50,000 and £60,000. Mr Bisping's evidence was that he remembers Mr McGann saying in a phone call something like that "don't that feel good we are all completely square". Mr McGann does not dispute that there was a meeting at about that time, but does dispute that there was any agreement on a full and final settlement or that he made the remark attributed to him by Mr Bisping. Mr McGann also disputes that Mr Bisping had any proper grounds for complaining of any failure to pass on sponsorship monies. January 2011 – The second Schedule of Tax Deductions and Tax Rates
111. Thereafter, Mr Bisping had one further bout under the Third PAR Agreement. 111.1 On 27 February 2011 Mr Bisping fought Jorge Rivera in Sydney, Australia. According to Mr McGann, the training camp this fight took place at Wolflair and then, for 3 weeks, at the

Elite Fighting gym in Sydney. Mr Bisping was one of 3 Wolfslair fighters on the card, and he paid most of his expenses. However, according to Mr McGann, he paid expenses of £3,610 on behalf of Mr Bisping that he invoiced on 1 April 2011. Again, according to Mr McGann, Mr Bisping's total earnings from the fight were USD 424,000, entitling Mr McGann to a commission of USD 84,800. However, according to Mr McGann, Mr Bisping paid only USD 74,300. The balance of USD 10,500 forms part of Mr McGann's claim for commission on sums withheld (at least initially) by overseas tax authorities. 112. In January 2011, prior to this fight, Mr Bisping had completed a further "Representation Authority" to Mr Roseby's firm, Roseby Rosner & Young Pty Ltd in connection with his tax affairs in Australia and New Zealand. Mr Bisping had also submitted another Schedule of Tax Deductions & Tax Rates. This was in materially identical (and similarly over-stated) terms to the form which he had submitted in relation to the fight against Wanderlei Silva the previous year. The 2011 form, however claimed only USD 45,460 (disregarding the percentages also claimed as MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping deductions), since it omitted the USD 7,000 claimed in 2010 for "hotel expense for spars and coach".

113. When cross-examined about the 2011 form, Mr Bisping denied seeing it at the time. Mr McGann's evidence, in his second witness statement, was that Mr Bisping gave it to him to submit on his behalf. "I later noticed that [the 2010 and 2011 forms] were exactly the same and therefore in my opinion they are fraudulent". In cross examination, he said that he probably sent this form to Zuffa, but could not remember whether he faxed it, emailed it or handed it in. He vigorously denied that he filled the form in. It was nevertheless part of Mr McGann's case that on 21 April 2011, he sent an email letter to Mr Bisping in pursuit of his claim for commission on overseas withholding tax amounts, which began "Brad Smuckler commented on your obtaining the lowest rate in Australia after the job we did on your expense's sheet. I believe we got it down to 14% .."17. 2011 - The Fourth PAR Agreement
114. According to Mr McGann, Mr Bisping was shown on live television spitting at his opponent's cornerman, and was later filmed drunk in a bar assaulting a fan. As a result, Mr Bisping's relationship with Zuffa was put in jeopardy. In order to put matters right, Mr McGann flew to Las Vegas to meet Dana White to resolve the situation. Mr McGann's evidence was that his meeting with Mr White began with Mr White "showing the video clip from the website TMZ showing [Mr Bisping] drunk and punching fans in the stomach after the fight. From this starting point, I had a lot of work to do to calm Dana down and smooth things over so that we could start to discuss the future". Mr McGann also claims that, while he was there, he also negotiated the new promotional and ancillary rights deal for Mr Bisping, which was eventually signed later in March. It is Mr McGann's case that he is entitled to be reimbursed his flight and hotel costs for the trip, which amounted to £1,500.
115. Mr White did not support this account in his evidence. According to him, he never had any problem with Mr Bisping, never had a bad relationship with him, and mostly dealt with him one-on-one. His dealings with Mr McGann were mostly in relation to Mr Jackson rather than

Mr Bisping. However, Mr McGann drew attention to an online news report dated 28 February 2011 in “MMA Fighting”, which recorded that “UFC middleweight contender Michael Bisping will face disciplinary action for his behaviour following his UFC 127 win, UFC president Dana White told MMA fighting”.

116. At all events, on 22 March 2011 Mr Bisping signed (on his own behalf, as “Fighter”, and on behalf of MBL) a new Promotional and Ancillary Rights Agreement with Zuffa (“the Fourth PAR Agreement”). This (like the Third PAR Agreement) was for 8 Emphasis added MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping bouts or 34 months from the first bout promoted under the agreement. The “Fighters Purse” for each bout under the Fourth PAR Agreement had gone up to USD 275,000, with a “Win Bonus” of USD 150,000. Provided that Mr Bisping was UFC Champion, he was (in certain circumstances) also to be entitled to a “pay per view bonus” for fights in which he defended his title. As before, the Fourth PAR Agreement stated that Zuffa would provide incidentals such as transportation, lodging, meals and bout tickets (or payments in lieu), as specified in the particular Bout Agreement. This time, Zuffa agreed to provide 2 hotel rooms and 2 round-trip economy-class tickets for Mr Bisping’s affiliates for championship fights, as well as a round-trip business-class air ticket for Mr Bisping.
117. Mr Bisping signed the Fourth PAR Agreement at Mr McGann’s house, and a video was made of the occasion. This was played as part of the evidence. Mr Bisping is shown thanking the UFC for keeping him in employment, and saying that “I want to thank the Wolfslair for helping me to get there, the management, the coaches everybody .. Thanks to Dana White, Lorenzo and Anthony at Wolfslair, Lee, everyone”. 118. It is common ground that, at about this time, Mr Bisping again visited Mr McGann at his house and, in the course of that meeting, told Mr McGann that Mr Bisping and his family were intending to move to America. According to Mr Bisping, Mr McGann wanted to discuss the tax implications of that move, outlined a plan of how this thing could avoid paying taxes by laundering his earnings through the Gibraltar bank account used by a company owned by Mr McGann. Mr Bisping’s evidence was that he had now discovered that this company was called Diamond Blue Ventures Limited: and he produced what purport to be three invoices issued by Diamond Blue Ventures Limited in relation to the Evans fight (UFC 114) on 29 May 2010. Mr Bisping also produced what appears to be a certified copy dated 27 June 2014 of an entry dated 5 August 2009 in the Gibraltar Registry of Companies showing McGann as the director of another Gibraltarian company, Bellana Ltd, together with a copy of an invoice from Bellana for “Managerial Fees UFC 114 05/29/10”, claiming 10% of a pay-per-view bonus of USD 1m. Mr McGann accepts that he did own a company called Bellana, but says that it was closed down “years ago”. He denies owning Diamond Blue Ventures Limited, and says that there was no discussion about tax at this meeting. May 2011 – Mr Bisping says he wants to “move on” 119. It is also common ground between Mr McGann and Mr Bisping that, in May 2011, Mr Bisping telephoned Mr McGann to ask him what had happened to some sponsorship monies that Mr Bisping thought he was owed. Mr McGann was in the USA, helping Quinton “Rampage” Jackson, at the time, and said he was too busy to chase these

items up. This led to a heated argument. In their evidence, Mr McGann and Mr Bisping each blamed the other for this. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping

120. According to Mr Bisping, he had told himself that he was not prepared to put up with this kind of behaviour from Mr McGann, and so, having thought it over during the weekend, he decided to call Mr McGann to put an end to their relationship. It is common ground that, on about 24 May 2011, Mr Bisping did telephone Mr McGann and told him that he wanted to “move on”.
121. Mr Bisping followed this telephone conversation up with an email dated 24 May 2011, in which he said: I just want to follow up on the conversation I had with you (Anthony). My decision to move on from the Wolfslair is nothing personal, and I have no problem with you guys or the gym. It simply a case of me moving on with my life. I want to thank you both for everything you have done to me over the years. I signed with you guys in 2005 and it's been a great 6 years that I have thoroughly enjoyed being a loyal member of the Wolfslair team. The contract has now run its course and as I said on the phone I want to do my own thing. I wish you both, the coaches and the team my very best. Obviously we still have some outstanding financial issues from the last fight. I will wire the money in today. I have outlined it below. Fight purse £183,516 Affliction £12,407 20% = £36,703 20% = £2,481 I paid you £20,000 earlier in the year and you have said you have collected the MMA elite and Venum money, which I believe total £8,063, minus your 20% which equals £6,451. I think that leaves a total of £12,733 outstanding to you guys. As I said, I will wire the money in today. Of course there is still the money from Musclepharm and USD 1,800 you mentioned from Tapout. When I receive these I will forward your cut. Thanks again for everything Mike MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping
122. According to Mr McGann, he tried to call Mr Bisping in the days following that email, to find out what was really going on and to attempt to resolve the situation amicably. Emails sent by Mr McGann at the time seem to confirm this. On 28 May 2011, Mr McGann sent a long letter by email to Mr Bisping. The letter was headed with the name and address of WPL, and was written as if from that company rather than from Mr McGann personally. Its terms are important, because they are heavily relied upon by Mr Bisping as being inconsistent in many respects with the claims now advanced by Mr McGann. Despite the length of the letter, it is therefore necessary to set its terms out almost in full. There have been several conversations between you and our agent Anthony McGann in regards to you ending your relationship with the Wolfslair Academy. It is now come to our attention that, even after we agreed to put this issue off till next week, you have already proceeded to inform the UFC of your departure. You requested our position in an email so here it is. Like we discussed at great length the business of Michael Bisping goes beyond the contract. History before the Wolfslair You came to the gym around the time of your Dave Radford fight (4/30/05). At this time you were with your previous manager/trainer Paul Lloyd Davies. We assisted you in this

and the next fight against Alex Cook (6/18/2005). You decided that we could offer you more in the training and management world, so you left Paul Davies and joined the team. This is now in a legal action being handled by our lawyer Mike Blood. Paul is seeking his 20% for the period of his contract. History since joining the Wolfslair We then took your training to a new level importing Brazilian Black Belts at huge cost to the company. We not only paid for all the travel and expenses but also visa's [sic] and even there [sic] families accommodation and expenses .. At this time .. as you were then 9 wins and no losses we made the move towards the UFC and the Ultimate Fighter show. We flew in a Brazilian manager who was close to Joe Silva and a verbal agreement was made and you entered the show. Josh Haynes This was the final of the Ultimate Fighter 3 reality show, the Wolfslair Academy put a full spread of coaches and sparring partners in Las Vegas for 5 weeks to prepare you for the show. This MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping was a great cost to the company. We realise that you never made much money from the event and never pursed [sic] our costs, from that fight to this day you have constantly tried to put as many expenses as you can on the company. For the next 7 fights over a two-year period. You not only strove for us to pay camp bills, you resisted paying us from any bonuses received. Although it clearly was payment for your fights and is clearly stated in your contract you resisted heavily. A similar position as any gifts received related to the business, you were effectively paid with a Range Rover for TUF9. We eventually got to a position where we were paying 50/50 of bills after the Evans fight in New Jersey (11/17 2007), we were not happy with this but we had invested in you since early 2005. Our position was that we would get you through the relatively [sic] weak Reality show contract and then re-negotiate a better deal with the UFC which we did. The new contract started in July 2009 with the Henderson fight. Because you had visa issues we had to run most of the camp from Las Vegas again at huge cost to the company. We then agreed to drop the camp splits to 80/20 as the contact [sic] was strong and were no longer working on a bonus system .. This continued for another 5 fights, 2 being in Australia and 1 in Las Vegas. After your last fight you upset the UFC by acting inappropriately in Australia. We fixed the problem by travelling to Las Vegas and meeting with them, and secured you a new 8 fight deal for more money. Investment in Michael Bisping April 2005 to December 2005 Radford/Cook/Mehmet/Lovestad/Pointon We paid all coaches wages, living expenses, accommodation, (all expenses free events) Mario Sukata & family Tony Quigley Henrique Nogueira Loquinha Cost to company Total = 32,000 pound December 2005 to December 2006 Haynes/Schafer Again all UK costs for coaches` Plus Las Vegas camp bill (Haynes) 52,000 pound 30,000 pound MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping Plus Las Vegas/UK camp bill (schafer) Cost to Company 12,000 pound Total = 94,000 pound December 2006 to December 2007 Sinosic/Hamill/Evans Again all UK costs for coaches Sinosic camp bill Hamill camp bill Evans camp bill New Jersey Cost to Company December 2007 to December 2008 All UK coaches cost McCarthy/Day/Leben McCarthy Bill Montréal Day camp bill Leben camp bill Cost to Company December 2008 2 December 2009 Henderson/Kang All UK coaches cost Henderson camp bill Las Vegas Kang camp bill (80/20) Costs to Company December 2009 to

December 2010 Silva/Miller/Akiyama All UK coaches cost Silva camp bill Australia Miller camp bill Las Vegas Akiyama camp bill Costs to Company December 2010 to today 52,000 pound 10,000 pound 17,000 pound 12,000 pound Total = 91,000 pound 52,000 pound 12,000 pound 8,000 pound 5,000 pound Total = 77,000 pound 52,000 pound 25,000 pound 2,000 pound 79,000 pound 52,000 pound 3,000 pound 2,000 pound nil Total = 57,000 pound Rivera camp bill Australia not completed yet Agreed all UK costs for coaching isn't just on you but a proportion of it is, this would have to [be] assessed respectfully MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping I believe if we put a figure of 10,000 a year for UK coaching [it] will be adequate for this exercise although I think that is low. So in total we have an investment of 220,000 pound for training and camp expenses Tax Deduction Over the years every time you fought in the US or Australia tax was deducted. Our contract is before tax, once again we could never claim this as it was a problem even getting our camp money never mind withheld tax Evans 2007 Henderson 2009 Silva 2010 Miller 2010 Rivera 2011 Total amount not received 10,000 usd 16,000 usd 6,400 usd 18,000 usd 12,500 usd 62,900 usd Exchange 40,000 pound 50,000 withheld 80,000 withheld 32,000 withheld 90,000 withheld 65,000 withheld Range Rover received from TUF Total amount not received 20,000 pound So Mike although all these figures are not exact they are very close. We have kept all our records for a long time and all can be easily shown by a forensic accountancy. Summary You are taking the position that you have paid your 20% and served your 6 years. If you wish to use the contract in its literal terms then you should never have constantly strove for the company to invest in you. I will give you an example of this. You fought heavily over the Las Vegas camp bill for Henderson. You were paid \$170,000 usd. At 20% we should have received \$34,000 usd as per contract It cost us 12,500 pound which at the time was \$22,000 for camp It cost us another \$7,000 in coaching fees The company had \$5,000 usd left and you kept back the tax deduction. So, if we are to stick to the contract then why are we paying out \$29,000 usd. Why are we paying 50/50 on camp bills and all on coaches when you receive 80% of gross. The contract simply states that we have to make the Wolfslair available to you nothing more. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping You cannot use one agreement to terminate another. If you wished to stick to your contract then that is what you should have done. The company has invested a lot and also hasn't received a lot of monies to the region of 280,000 pounds. We also secured your new 8 fight deal and the term is below; 2.1.2 a sum equal to 15% (fifteen per cent) of all income received from any renewals extensions modifications or variations to commercial contracts entered into for a period of 3 years following the expiry of the term That means for 8 fights or any other UFC contract in the three-year period you owe the company  $15\% \times 8 \times \$425,000 = \$3.4 \text{ million}$  Irrespective of any future pay-per-view \$510,000 at 15% So like I said at the start of this letter, a six-year business doesn't end in an email Mike. So I see as having several ways to proceed (A) We work off the contract literally and all issues are resolved by this. Including outstanding monies in future percentage. If you stick to one path instead of 2 and we recoup our investment in future monies we would be happy with this. (B) We continue in the business as we have 6 years. We continue to resolve the Lloyd

Davies issue. I know Mike Blood told you it went conflict but believe me it will. (C) We turn everything over to the lawyers and our relationship ends quite badly. If there is any issue over the 8-fight deal I also have a video of you praising the company for their acquirement of it and its is contractually solid If your argument is that we have always agreed on all monies then that is correct. However, whatever was agreed was always is an ongoing concern and from the company's perspective and investment in new and future business. The contract that you wish to use to terminate this relationship is no mention of the company investing in you. Thank you MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court  
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123. According to Mr McGann, he wrote this letter while he was away on business in Las Vegas: "I was rushing, I hadn't taken any legal advice at the time, and I didn't have my copy of the Management Agreement in front of me. All the positions I expressed were of constant contention in discussions over the years so I knew them well. My aim was merely to show Michael he couldn't just walk away and clarify a few facts in the hope that he would see sense and we could continue to work together".
124. Mr Bisping responded by email on 28 May 2011, saying "Obviously I will have to look at it closely, but until you forward me a copy of the contract I cannot give you an informed reply". His evidence was that he was "utterly and completely shocked by this letter", and that he saw it "as a massive indication that they were trying to scam some money out of me somehow". According to Mr Bisping, this letter was the first time that Mr McGann had brought up the issue of commission on tax withheld or the issue of commission on the value of the Range Rover. Summer 2011 - TUF 14 and the meeting in Las Vegas 125. 126. In June and July 2011 Mr Bisping appeared as head coach of one of the teams in Season 14 of TUF. As before, Zuffa gave him a customised Range Rover to thank him for his participation. Mr McGann's case is that this was a benefit in kind under the Management Agreement and that, as the car was worth USD 100,000, he was entitled to USD 20,000 commission on its value. According to Mr McGann, he invoiced Mr Bisping for his commission on 13 December 2011. Mr Bisping disputes Mr McGann's entitlement. It is common ground that in about June 2011, while Mr Bisping was in Las Vegas filming for Season 14 of TUF, he had a meeting with Mr McGann at which they discussed their future relationship. According to Mr McGann, Mr Bisping was "charming and friendly" during this meeting. Mr McGann's evidence was that he told Mr Bisping that, if Mr Bisping wanted to remain a part of the Wolfslair team, he (Mr McGann) was happy to stand aside as Mr Bisping's manager, so as not to ruin Mr Bisping's relationship with the team, provided that Mr Bisping paid up what was due. Mr McGann suggested, however, that since Mr Bisping was contractually obliged to carry on paying commission, he "may as well continue to get the benefit of my services and I was happy to carry on doing what I had always done for him but it was up to him".
127. According to Mr McGann, Mr Bisping's response was to say that he was happy to carry on exactly as before, provided that Mr McGann's commission was reduced to 15%. Mr McGann's evidence was that he agreed to a trial period during which his commission would reduce to

15% “subject to [Mr Bisping] now paying on time and MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping starting to pay back all outstanding debts”. According to Mr McGann, Mr Bisping asked for a new management agreement to be drafted, but Mr McGann did not agree to that. Mr McGann said that he confirmed this in his email dated 11 July 2011, which stated “Just to clarify when we met in Las Vegas we agreed to you remaining with the team and continuing with Wolfslair Management for a further 3 years at 15%. The original contract covers this scenario and there is no need to duplicate”. Mr McGann’s evidence was also that Mr Bisping asked at this meeting about whether the outstanding monies could be “wiped away moving forward”, but Mr McGann did not agree.

128. Mr Bisping’s evidence concerning this meeting was rather different. According to Mr Bisping, Mr McGann began by apologising and explaining that the stress of dealing with the affairs of Quinton ‘Rampage’ Jackson had been the cause of his earlier animosity. As he seemed genuine, Mr Bisping agreed to give him another chance. He and Mr McGann talked about what seemed fair, and Mr Bisping suggested 15%, which Mr McGann then agreed. Mr McGann then said that he would draw up a new contract, based on “performance” as an agreed rate of 15%. According to Mr Bisping “it was certainly not agreed that the new arrangement was anything other than temporary”. Mr Bisping accepted that he received Mr McGann’s email dated 11 July 2001, and “didn’t reply to this as I was very busy at the time and also I did not have a copy of the agreement, so I did not know what he was talking about”. 129. In fact, Mr Bisping did respond briefly by email dated 20 July 2011, in which he explained that he was very busy, was only just catching up on emails, and so would call Mr McGann later to catch up. Late in 2011 – Mr Bisping settles into the USA and prepares for his next bout
130. According to Mr McGann from mid-July to October 2011 Mr Bisping was busy house-hunting and doing other things to arrange his permanent move to live in the USA, while McGann was occupied with the affairs of other fighters. These included Quinton “Rampage” Jackson, who had a fight training camp at the Muscledpharm facility in Denver. Mr Bisping came out to visit this camp, and relations between Mr McGann and Mr Bisping remained “very good”.
131. Mr Bisping was due to have his next bout in December 2011. On 7 October 2011, Mr McGann sent an email to Mr Bisping. In it, Mr McGann referred to earlier telephone conversations, in which Mr Bisping had suggested having his training camp for this fight over 4/5 weeks at the Muscledpharm facility in Denver. Mr McGann confirmed that this had been approved by Muscledpharm, and also confirmed details of coaches and sparring partners that he had provisionally booked, and the fees that they would require. The email concluded: MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping .. I think we can probably chip [Mark] Kinney down to 4k with 1k bonus and if we give the same to Mario and Ryan that’s 15k for coaches, the spars are at around 7,400 for three of them. Flights will come in around a couple of grand, so all in all your looking at around 25k for the camp. I have already done a fair bit speaking to

people, they have calendars too, so as I say if you want to change this position then speak to me mate.

132. Mr Bisping replied by email that same day, saying: .. I know you have spoke to Muscledpharm, but I decided I will do my full camp in Orange County. I move into a house the first week of November the timing is just not right to disappear out to Denver for a while. Sorry about that. I know I said otherwise .. So you know I'm training my ass off. Things are going well. Just need to get the Wolfslair coaches and possibly a couple of guys that can bang. I've put some feelers out. I'd like to try and find them local so I don't have to pay for flights, but let's see how that pans out.
133. Two days later, on 9 October 2011, Mr McGann sent an email to Mr Bisping, asking whether he had yet changed his contract with Zuffa from MBL (which is a UK company) to a company incorporated in the USA, to avoid the 30% withholding tax that would otherwise initially be charged. Mr McGann also complained in that email that he no longer received any correspondence concerning Mr Bisping's affairs. "I know that you told the UFC not to send me any correspondence and although we have fixed our situation I think they are unaware of this".
134. Mr McGann also sent a further email that same day, responding to Mr Bisping's 7 October 2011 email about the training camp for his December fight. In that email, Mr McGann complained to Mr Bisping about the way that Mr Bisping was acting independently in making arrangements, rather than through Mr McGann as his manager. We had a situation with your contract with us, we amicably fixed it with the agreement to move forward with you as a member of the team still managed by us. You informed the UFC to stop corresponding with me, this situation remains. I can't do my job if you don't fix this .. I am still speaking to people and waiting your final instructions, then you tell me the plans changed your staying in OC and you have contacted Travis and Tyson yourself and brought them there. Travis and Tyson looked to me to lead the team, how do I look if I don't even know that you brought to them to camp. Now all these things are no big deal really Mike, but put it all together and it's not good business. If we are moving forward in the correct manner Mike then we need to act accordingly. Please inform MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping the UFC that I manage you and to correspond with me, that way I can do my job. If you're, make moves concerning guys that I use please keep me in the loop out of respect .. Do you want me in camp? You fight is very important to us all and I would love to assist. I can stay with Quinton but I would expect you to at least pay for my flight and light expenses (food etc). I can do Cali or Denver, it's been a long journey with you and although your in the states now I would like to see you live your dream .. If you can't call me at least bring me up to speed by covering all my points here, once again I'm trying to do a good job for you mate.
135. Mr Bisping responded by email the following day, saying that he would call Mr McGann to catch up, and continuing: Would love to have you around for the camp, you're always great to have around and bring good energy so of course .. Please apologise to the guys in

Denver for me .. We spoke about Travis in Denver and I ended up having a few drinks with Tyson and talked about training after the fight. So I just called and asked when was the soonest they could come out. I was just being proactive and call them to try and get things moving and they said they would come right away. I see what you're getting at though. Yes, confirm with Kinney for 4k + 1k win. And of course Mario, when is the soonest he can come out? This Fabio sounds interesting, how much would he want you think? .. I'll talk to the UFC and get that sorted straightaway .. Things are coming together, I've got a great new strength and conditioning guy and a great nutritionist which he recommended As I said, once I get the Wolfslair coaches and yourself out here it's all systems go. This is all very formal mate. It does feel a bit weird as this is the first time for the situation. Looking forward to a great camp, call you tomorrow.

136. Mr McGann responded on 11 October with an email of advice about the coaches and sparring partners needed for Mr Bisping's forthcoming fight, to which Mr Bisping responded on 12 October saying "you make a lot of good points, which I'm taking on board", but indicating that he wanted to carry on with the plans that he had already made for the moment, and to "play it by ear for now". Mr McGann also entered into email correspondence with third parties about Mr Bisping's US tax position. He copied this to Mr Bisping, who replied on 20 October to say that his US corporation was being set up on Monday (24 October). Mr McGann also corresponded with UFC MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping by email about Mr Bisping's travel arrangements, and entered into email discussions about clothing designs, sponsorship and similar matters. October 2011 - The fire at Wolfslair
137. On 30 October 2011, there was a serious fire at the Wolfslair gym. This caused significant damage, including melting the fibreglass roof panels, leaving the gym exposed to the open air. According to Mr McGann's evidence "the fire (a suspected arson attack) began on the wooden roof which bordered the office. As a consequence, the office suffered huge smoke and water damage. Within days we also had instances of vandalism on the wrecked premises and much of our computer equipment and business records were destroyed". October and November 2011 - The incorporation of RMI and the Fifth PAR Agreement
138. Mr Bisping had arranged for a Californian corporation, Royal MMA Inc ("RMI"), to be incorporated in October 2011 to take over the contract with Zuffa from MBL. Since Mr Bisping himself was now resident in California, the intention was that using a Californian company would enable Mr Bisping to avoid the 30% withholding tax that he had hitherto incurred. Mr McGann's evidence was that he worked hard with Zuffa to get this switch from MBL to RMI sorted out and documented for Mr Bisping's December fight. A number of emails sent by and to Mr McGann during November 2011 bear this out.
139. The Fifth PAR Agreement was signed on 2 December 2011. It was in materially identical terms to the Fourth PAR Agreement, except that RMI was now a party in place of MBL. December 2011 - The Miller fight

140. Mr Bisping's first fight under the Fifth PAR Agreement was against Jason Miller on 3 December 2011 in Las Vegas. Mr Bisping won the fight. Mr McGann accepts that Mr Bisping paid all the training camp expenses in relation to this bout himself. 140.1 Mr Bisping received a Purse Fee of USD 275,000 and a Win Bonus of USD 150,000, a total of USD 425,000. Commission at 15% on that sum would be USD 63,730 and (in circumstances which I shall explain below) WPL invoiced Mr Bisping for that amount on 13 December 2011. 140.2 According to Mr McGann, sponsorship and other receipts would have meant that Mr Bisping would have earned at least another USD 6,700. Mr Bisping admits that he received USD 6,500, on which commission at 15% would be USD 975. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 140.3 McGann's present case, however, is that he is entitled to commission at 20% on all Mr Bisping's earnings from this fight, because "any variation [Mr Bisping] and I had agreed to in May 2011 was conditional upon [Mr Bisping] paying on time and beginning to repay the historical amounts which of course he never did". December 2011 - The 3 invoices
141. Mr McGann did not go to Mr Bisping's training camp for this fight, or attend the fight itself. According to Mr Bisping he "took this 'no show' as a failure by Wolfslair and/or Mr McGann to fulfil their managerial obligations and as confirmation they could not did not want to honour the new 'proposed' verbal agreement". On 11 December 2011 Mr McGann sent an email to Mr Bisping headed "This is ridiculous", and complaining of Mr Bisping's refusal to take Mr McGann's calls or to respond to his texts: I understand that you like to relax after a fight and I appreciate that, but ignoring 23 phone calls and a stack of text is quite insulting, you have excepted [ie accepted] a fight on short notice over the Xmas holidays, this is your choice, but how can I do my job in the circumstances if you don't speak to me ... I am assuming you are displeased that I wasn't there. If you would have spoken to me I would have explained the problem. My ESTA was cancelled as soon as I booked my flight, they told me I have spent too much time in the USA on the visa waiver and have to go into the embassy and do a business visa ... As you know I have greatly supported you throughout the past six years .. You know I have had a fire at the gym and it is causing many problems that I had to deal with here, the Visa issue came out of the blue and was a pain in the arse. I am done with my visa and Lee got his three days ago. All I ask is that you at least respect that problems occur and you support and understand this. I've always gone way beyond the call of duty for you Michael, I used my home like a hotel for many years for your benefit. I even helped out with problems connected to your family ... The last year has been quite strained. We went through the renegotiation issue and I thought we would move forward and here I am again being ignored and disrespected ... Okay and finally, let's not mess about here. If you have a problem, then let's just get on with it, you have your business and I have mine, and I can't be arsed calling you all the time and being ignored. However if you haven't got a problem, then put 20 mins aside for me and let's do what we do.

142. Mr Bisping replied on 13 December 2011 as follows: MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping .. As you guessed, I was annoyed that you didn't turn up for the fight. Initially you were supposed to be there four weeks before the fight. You never showed, and didn't contact me for around two weeks later. You then assured me you would be there week of the fight, in the end you text me the day of the weight cut to say you won't wouldn't be there, asking me to call, I didn't call as I was cutting weight. I was annoyed as I say, if felt like you didn't care to be honest. I know you had issues back home, and I do respect that. Things happen. After the fight I was annoyed as I said, and I [j]ust wanted some time away from everything. I also had to go to Chicago. I didn't want to talk about my next. I just need some time off from it all.
143. Mr McGann's response the same day was, in effect, a demand for payment. Mike, let me just say that I'm not obliged to attend any camp and for that matter any event. I do not need to allow my house to be used as an hotel or financially assist fighters throughout their career. I do so at no benefit to myself, I am not paid any extra money for this and in your case do not even recover my travel expenses. I do all the above as I care about my fighters, every one of them, and in your case I have cared and sacrificed for many years at considerable cost. My gym was burnt down in this game is a big problem to me, and also my Visa was refused at the same time. I find it difficult to accept that all the above which I do because of friendship and the will for the guys to win, be chunked up in my face and I have my own unavoidable problems. Just so you know, I am forwarding my Expedia flight and hotel reservation so you can believe my intentions to still attend even though I had problems I drew the attached paperwork up today in relation to our position, we would like for you to deal with this as quickly as possible especially monies owed from the recent fight. I have kept the sums within reason. However, if you wish to discuss any of the issues involved, Lee will be in Orange County for the whole of Quinton's and Kongo's camps and will happily meet you to resolve any problems you have. This situation has caused a lot of problems between me and him, as it was me who has allowed the various non- payments over the years to mount up. I always allowed you a lot of slack Michael and I am finally repaid by you insulting me like this. But it's not the first time either. You have my invoices and you have my number, you also have the opportunity to discuss anything with Lee in person. Everything I have included doesn't cover my total investment in you and I do this because as per contract these figures MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping cannot be a[r]gued. If you decide that you won't be paying me then I will see this as you are robbing me and will act accordingly.
144. Attached to that email (in addition to copies of Mr McGann's travel booking documents) was a copy of a letter to Mr Bisping signed by Lee Gwynn on behalf of WPL, and three invoices. 144.1 The first of these invoices, addressed to Mr Bisping and "also" to MBL was given the Invoice Number "BISPING 1". It was described in Mr Gwynn's letter as follows As discussed when we renegotiated in Las Vegas in June, there are several large amounts not paid to us by you over the term of your contract. The contract states you pay us 20% although from December 2005 till February 2011 (14 fights from Hayes to Riviera [sic]) we never received

20% not once. The first invoice will be for these outstanding amounts The heading to the invoice was in similar terms: Outstanding Monies from the following fights as per contract at 20% However, the figures given in this invoice were not for the amounts of commission which Mr McGann claims were outstanding in relation to the overseas withholding tax elements of Mr Bisping's income. Those sums were claimed in the next invoice, "BISPING 2". Instead, they were for round figure sums which were similar - though not identical - to the sums which Mr McGann claims that he had previously invoiced to Mr Bisping for training camp expenses paid on Mr Bisping's behalf. In each case, the sum invoiced in "BISPING 1" is a little lower than the amount which Mr McGann says he had previously invoiced. For example: for the Haynes fight, Mr McGann says that he originally invoiced £32,397, but only £30,000 was claimed in "BISPING 1"; for the Schafer fight, the equivalent sums were £12,490 and £12,000; for the Sinosis fight, £12,180 and £10,000. The total claimed in "BISPING 1" was £128,500. The invoices which Mr McGann says that he had previously given to Mr Bisping in relation to these fights totalled £147,845. 144.2 The second of these invoices, again addressed both to Mr Bisping and MBL, was given the Invoice Number "BISPING 2". Like "BISPING 1" it was headed "Outstanding Monies from the following fights as per contract at 20%". This invoice covered two sets of claims: first, commission amounting to £40,000 on the two Range Rovers received as gifts in respect of Mr Bisping's participation as a coach in TUF 9 and TUF 14; secondly, unpaid commission amounting to USD 62,900 (converted at USD 1.5 = GBP 1 to produce £41,933) on the withholding tax amounts. The amounts claimed MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping under this heading in "BISPING 2" do not precisely correspond with those presently claimed by Mr McGann. "BISPING 2" does not include the USD 6,000 now claimed in relation to the Schafer fight: and only one of the other amounts (in relation to the Silva fight) is an exact match for the amount now claimed. 144.3 The third of these invoices was addressed to Mr Bisping and RMI, and was given the Invoice Number "BISPING 3". It was for commission at 15% on the Fighters Purse and Win Bonus received by Mr Bisping in relation to the Miller fight on 3 December 2011, and stated at the bottom "Sponsorships still not collected but invoiced for and will forward to [RMI]".

145. Mr McGann's explanation in his witness statement for the apparent discrepancies between the amounts claimed in these invoices and the amounts which he now claims was that they were prepared for him by Mr Gwynn and "contained estimates of figures because we didn't have enough information about his earnings to be exact and also contained other errors regarding commission percentage because we haven't properly considered a contractual position at that time". In oral evidence, he accepted that the heading to "BISPING 1" was a mistake, and that the invoice was for camp expenses. He explained that these documents were all put together without the benefit of the original paperwork, which was with his accountant. The figures given were therefore "as close as I could remember". It was put together in the last 12 days before Christmas at the end of his busiest ever year. Mr Bisping's affairs were only a small part of his job and there was "a lot of to-ing and fro-ing the time". When asked why he did not refer to the letters and invoices on which he now relies, his

answer was that “I did not need to”.

146. Mr Bisping responded by email on 14 December 2011, saying: Let me start off by saying I am not trying to rob you guys and if money is owed that you know that I have always paid what is due when we square up. .. I know we have to square up on the Mayhem fight I am confused by the Invoices, for example the Josh Haynes fight you say there is still £30,000 outstanding, but if I remember correctly, the entire purse was for only around £12,000. If you recall, we sat down after the Akiyama fight and squared everything up. I need a copy of the agreement between us to see if I owe you any money for the Range Rovers .. So from my side we are pretty squared up except for the Mayhem fight. Obviously as soon as the cheques clear, I will forward you your 15% .. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping
147. According to Mr McGann, he thereafter called Mr Bisping 26 times to try to discuss the situation, but received no response. He also delivered copies of the 13 December 2011 invoices by hand to Mr Bisping’s mother’s house. Mr McGann’s evidence was that this was at about 8 pm. Mr Bisping’s mother answered the door, he passed the documentation “very politely” to her and they exchanged best wishes for Christmas and the New Year. Mr McGann’s explanation for doing this, as well as sending the invoices by email, was that Mr Bisping’s mother’s house was the address specified for service in the Management Agreement, Mr Bisping himself still owned and use the property, and all other attempts at communication had failed.
148. On 16 December 2011 Mr McGann emailed to Mr Bisping: Here I am again requesting a time for you to be able to speak to me, is this so difficult? Mr Bisping responded: Unfortunately, the reality is that, yes, it is a little difficult to speak to you now. You have sent me through bogus invoices, cc’ing Mike Blood in every email, said that you would “take it that I’m robbing you” and finally decided to visit my mother’s house late at night. Because of this I am advised to keep all contact by email or through legal representation. As I said, when the cheques clear in a few days I will forward the money that is owed from the Mayhem fight
149. Mr McGann replied to that email within the hour: Okay so it’s all by email and legal representation. Can you provide me with your legal counsel in the USA and also your counsel in the UK so we can get things moving along. I haven’t provided any bogus invoices, I merely consolidated the document sent to you by email on 28 May 2011 at 20.32pm. Within that document I provided a breakdown of outstanding monies not collected by us and monies invested in you over the period of your career building stage. I also showed you that on average this investment by us reduced our pay from 20% to around 7%. When we met in Las Vegas recently we discussed this situation/document and after renegotiating our future position and you declaring that you wished to remain a Wolfslair team fighter then these issues we [sic] no longer pursued at that time. The invoices provided relate to monies not paid because of tax being withheld and the benefit going to you, our contract is gross not net. Also any gift seen as payment is subject to the contract, and falls in the 20%. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment

Anthony McGann v Michael Bisping Also invoiced are the monies expended by us solely on you (not the team) for UFC fight camps, in reality we invested a hell of a lot more but this becomes a grey area as the team were also present. Once again, these are not bogus, you have two range Rovers, you have a tax benefit, you have a lot of camps in a lot of countries, not the team but you ..

150. This reply resulted in a letter dated 20 December 2011 to Mr McGann from Faradays solicitors, acting for Mr Bisping. In that letter, they asked Mr McGann for a copy of the contract relied on by him, a full breakdown of any fees claimed, and for a confirmation from Mr McGann that he accepts that the contract between him and Mr Bisping had now been terminated. It appears that Mr McGann did not send a formal response to this solicitors' letter. However, he has disclosed an undated draft letter, setting out his case, which appears to have been put together as a potential response.
151. An email dated 22 December 2011 from Lee Gwynn to Mr Bisping, headed "Money", and simply asking "When I getting paid?", was responded to by Faradays on 5 January 2012, indicating that all further communications should be directed to them. Nevertheless, on 10 January 2012 Mr Bisping sent Mr McGann an email saying "Obviously we need to talk .. I want to settle the situation amicably so we can go our separate ways. I don't dispute that I you money, but I do dispute the grossly over exaggerated amount". This resulted in a meeting between Mr Bisping and Mr McGann on 15 January 2012 in a diner in the Anaheim Hills in California.. According to Mr McGann, Mr Bisping concluded the meeting by asking him for a settlement figure.
152. Mr McGann's response was further a long email dated 21 January 2012, in which he set out "our contract clauses for you to review". These consisted of clauses 2.1.2 and 7.1.4 of the Management Agreement, which Mr McGann relied upon to support a claim for commission on all fights under the Fifth PAR agreement, and on sponsorship and merchandising income; clause 2.2 of the Management Agreement, which Mr McGann relied upon to support his claim to commission on the value of the Range Rovers as an "in-kind contribution"; and clause 8, which Mr McGann relied upon both in support of his assertion that Mr Bisping had "never terminated the original term in the proper manner", so that the original period of the Management Agreement was automatically extended for a further three years, and by way of justification for delivering copies of the 13 December 2011 invoices to Mr Bisping's mother. .. [Y]ou never terminated the original term in a proper manner. This gives us the original position of an automatic 3-year extension under the original terms and percentage (20%) .. A negotiation took place in Las Vegas and both parties agreed on the justification of the 3 year extension of contracts only, at the reduced percentage (15%). However this second position has yet to be adhered to as you have MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping not paid your percentage after I continued to adhere to my obligations as manager .. .. So that is basically our contractual position Mike. Your contract with us was more of a business partnership, hence our heavy investment in you.

From Cook to Evans over 9 fights we paid for all your camps. Including training, sparring, travel etc etc. From McCarthy to Kanga over 5 fights we paid 50% of all the bills. From Silva to Riviera over 4 fights we paid 20% of the bills. This situation does not exist in the fight world, or in the contract. You know all this, we invested in you because we knew our contract encompassed all the above situations. I hazard a guess that you are being advised that when a contracts up then it's up, and in a normal manager/fighter relationship then this is so. But remember our contract was designed specifically because we were investing heavily in our athlete that's why we went to Couchman Harrington in London at great expense. The contract was built by the best for this very position we are in now. It was Couchman Harrington's advice to us to make the contract 6 years as it was in their experience, reflecting on the world of football, that to regain our investment it would take 6 years. This issue was heavily discussed and was the basis for the original business plan. Like all expensive advice it has proved correct. In a position of a legal fight it will also be Couchman Harrington who we will instruct as they drafted the contract and understand its fundamental properties. So please don't listen to gym solicitors. To be honest Mike I have appraised the whole situation from top to bottom and the length of time and money invested on both sides of this relationship is a difficult problem to solve simply. I think that we are in the same position as we were when we met last time in Las Vegas. You are tied to me contractually and I am tied to you from investment. If we fight this out on any level it will be disastrous. I have been here before and the lawyers' bills are insane, and the amounts that the lawyers go after are insane. I propose that I continue to represent you till our contract runs out. You do not have to be part of the team and I will play no role in your camps. You are paying a manager you might as well have my services. Or we can continue on a path of mutual damage ..

153. Mr Bisping's response, by email dated 23 January 2012, was not positive. After referring to the 15 January 2012 meeting, he continued: Damian called with a follow-up to further discuss certain points, and you decide to show up at Damian's house with an ultimatum. You tell Damian that you are not interested in talking settlement numbers, and that I better pay the outrageously exaggerated sum of money you claim I owe, or bad things were going to start happening, MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping claiming Lee is going crazy back in the UK and is unpredictable. I will not tolerate any threats, I will [not] negotiate with someone who tries these methods to conduct his business. He requested that any further contact should be through solicitors.
154. That, however, did not stop the correspondence, which included several intemperate emails. One such email dated 23 January 2012 from Lee Gwynn included the following message: I don't no [sic] why you keep asking me for a copy of your contract you have your own copy! Because you think I have lost my copy this is just another game! One of many you play to avoid paying don't reply to this email this is the last email you will be getting off me Another email to Mr McGann came from Audie Attar of Paradigm Sports Management LLC. This email, dated 25 January 2012, informed Mr McGann that Paradigm was now retained by Mr

## Bisping. 2012-2014 – Further fights

155. Mr McGann's case includes a claim for commission on a number of further bouts: 155.1 On 28 January 2012 Mr Bisping fought Chael Sonnen in Chicago. 155.1.1 It is agreed between the parties that Mr Bisping earned a Purse Fee of USD 275,000 and an Event Bonus of USD 25,000, making a total of USD 300,000. Commission at 15% on that sum would be USD 45,000. 155.1.2 It also agreed that Mr Bisping earned a further USD 7,100 from sponsorship and similar arrangements in connection with this fight. Commission at 15% on that sum would be USD 1,065. However, Mr Bisping's case is that the agreements under which these monies were earned were not made during the Term of the Management Agreement. 155.1.3 Mr McGann sent a letter by email to Mr Bisping on 10 February 2012, in which he claimed commission on a total of USD 481,000 at 15%, amounting to USD 72,150. He now claims commission on Mr Bisping's earnings in connection with this bout at 20%. 155.2 On 22 September 2012 Mr Bisping fought Brian Stann in Toronto. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 155.2.1 It is agreed between the parties that Mr Bisping earned a Purse Fee of USD 275,000 and a Win Bonus of USD 150,000, making a total of USD 425,000. Commission at 15% on that sum would be USD 63,750 155.2.2 It is also agreed that Mr Bisping earned a further USD 13,500 from sponsorship and similar arrangements in connection with this fight. Commission at 15% on that sum would be USD 2,025. Again, Mr Bisping's case is that the agreements under which these monies were earned were not made during the Term of the Management Agreement. In addition, USD 10,000 of that income was derived from MMA Elite. Mr Bisping alleges that it was paid under an agreement dated 1 May 2012 between Ultimate Brand Management LLC, MMA Management LLC and Mr Bisping, which provided for payment to be made to MMA Management LLC and not to Mr Bisping. 155.2.3 Mr McGann rendered an invoice to Mr Bisping "trading as [MBL] trading as [RMI]" dated 25 September 2012 claiming commission on a total of USD 548,000 at 20%, amounting to USD 109,600. According to Mr McGann, the overstatement in this invoice was because "my figures were estimates". He now claims commission on Mr Bisping earnings in connection with this bout at 20% 155.3 On 19 January 2013 Mr Bisping had a bout in Brazil against a fighter called Belfort. 155.3.1 It is agreed between the parties that Mr Bisping received a Purse Fee of USD 275,000 and an Event Bonus of USD 25,000, making a total of USD 300,000. Commission at 15% on that sum would be USD 45,000 155.3.2 Mr McGann also alleges that Mr Bisping received at least USD 50,000 from sponsorship under the agreement with MMA Elite. Mr Bisping denies the accuracy of the figure, and asserts once more that the agreement was not made during the Term and in any event did not provide for payment to Mr Bisping personally 155.3.3 Mr McGann's evidence was that he did not send an invoice for this commission, as by then the parties were already in litigation. He now claims commission on all Mr Bisping's earnings in connection with this bout at 20% MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 155.4 On 28 April 2013 Mr Bisping had a bout in the USA against a fighter called Belcher. 155.4.1 It is agreed between the parties that Mr Bisping earned a

Purse Fee of USD 275,000 and a Win Bonus of USD 150,000, making a total of USD 425,000. Commission at 15% on that sum would be USD 63,750 155.4.2 Mr McGann again also alleges that Mr Bisping received at least USD 50,000 from sponsorship under an agreement with MMA Elite. Mr Bisping denies the accuracy of the figure, and asserts once more that the agreement was not made during the Term and in any event did not provide for payment to Mr Bisping personally 155.4.3 Mr McGann's evidence was that he did not send an invoice in relation to this fight because litigation had already begun. He now claims commission on all Mr Bisping's earnings in connection with this bout at 20% 155.5 On 16 April 2014, Mr Bisping fought Tim Kennedy in Canada. 155.5.1 It is agreed between the parties that Mr Bisping earned a Fighters Purse of USD 275,000 and an Event Bonus of USD 25,000, making a total of USD 300,000. Commission at 15% on that sum would be USD 45,000. 155.5.2 According to Mr McGann, Mr Bisping also earned an estimated USD 50,000 in sponsorship in connection with this fight. This is denied by Mr Bisping, on the pleaded basis that "it is not known to which sponsorship agreement [Mr McGann] intends to refer". 156. In addition to these commissions on these specific fights, Mr McGann's evidence was that Mr Bisping had a Merchandise Agreement with UFC, a Videogame Agreement with UFC and a sponsorship and endorsement deal with MMA Elite. According to Mr McGann, each of these agreements would have produced significant income for Mr Bisping, on which Mr McGann is entitled to commission. In paragraph 30 of his Re-Re-Amended Defence & Counterclaim, Mr Bisping denies Mr McGann's entitlement to the sums claimed in relation to these agreements, though he does not specifically dispute the existence of such agreements or receipt of these or other sums. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment The witnesses Anthony McGann v Michael Bisping

157. Against that background, I now turn to set out my impressions of the witnesses who gave evidence before me. Mr McGann and Mr Bisping
158. Neither Mr McGann nor Mr Bisping was a wholly satisfactory witness.
159. Mr McGann's manner, when giving evidence, varied between the aggressive and the obsequious. In a number of respects his evidence was, in my judgment, plainly untruthful. To give 3 examples unrelated to the central issues in the case: 159.1 Mr McGann's evidence denying that he knowingly participated in Mr Bisping's submission of dishonestly overstated Schedules of Tax Deductions & Tax Rates in 2010 and 2011 was inconsistent with the terms of Mr McGann's own letters dated 14 March 2010 and 21 April 2011, in which he proudly claimed credit for those expense submissions, and in my judgment was untruthful. 159.2 The evidence which Mr McGann gave in which he claimed only to have disregarded my instructions by discussing his evidence by "ranting" about those Australian tax matters (and nothing else) with his wife (and no one else) was inconsistent in many respects with the terms of the email sent by Mr Gwynn which led to the court being informed of what had happened It is plain from that email that a number of other aspects of Mr McGann's evidence were discussed directly between Mr McGann and Mr Gwynn. Again, in my judgment, Mr McGann's evidence on that topic was untruthful. Mr McGann's (and Mr

Gwynn's) reluctance to provide the court with a full and unredacted, copy of Mr Gwynn's email also reflects badly upon Mr McGann's (and Mr Gwynn's) general credibility. 159.3 Mr McGann was at some pains, in his evidence, to deny any partnership with Mr Gwynn in relation to the management of Mr Bisping. That evidence however was inconsistent with the conduct of Mr McGann and Mr Gwynn in relation to this litigation. It was clear from the bench that Mr Gwynn was playing an equal, if not leading, role in relation to this case. That evidence was also inconsistent with much of the contemporary correspondence, including the letter from WPL dated 28 May 2011 the subsequent letter from WPL signed by Mr Gwynn to which the "BISPING 1-3" invoices were attached, and Mr Gwynn's own emails dated 22 December 2011, 23 January 2012 and 24 January 2012 (all of which were worded as if the commission and outstanding expenses were due to Mr Gwynn rather than to Mr McGann). MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping In my judgment, Mr McGann's evidence on this aspect was untruthful, and was deliberately put forward by Mr McGann in order to bolster his case that Mr Bisping was mistaken in believing that the contract which he signed in 2005 was a contract with "Wolfslair" (ie both Mr McGann and Mr Gwynn), rather than the Management Agreement with Mr McGann alone.

160. My initial impression of Mr Bisping was that he gave his evidence in a more straightforward manner than Mr McGann had done. However, it was plain from the way in which he answered Mr Lawrence's questions in cross examination that his evidence was shaped by a lively appreciation of what he thought would be in his own best interests. His evidence on financial matters was in many respects inconsistent with the evidence of his own accountant, Mr Farnsworth, and with the various schedules which Mr Farnsworth produced. One plausible explanation for those discrepancies might have been that Mr Bisping was a simple fighter, who was not good with figures. However, at a couple of points in his evidence, Mr Bisping performed financial calculations in his head rapidly, and with some ease, in order to answer questions from Mr Lawrence. I formed the impression, therefore, that Mr Bisping was more at home with figures and financial matters than at first appeared, and that the discrepancies were by no means all explicable on the basis of mistake. Like Mr McGann, Mr Bisping was tailoring and trimming his evidence to suit his case. 161. In my judgment, Mr Bisping was also a knowing participant with Mr McGann in the scheme to defraud the Australian Tax Authorities by overstating Mr Bisping's expenses in 2010 and 2011. Mr Bisping's evidence to the contrary was incredible and untrue. As I shall explain later in this judgment, Mr Bisping's evidence in support of his breach of contract claim against Mr McGann, in particular in relation to the facilities at the Wolfslair gym, was inconsistent with the video evidence that was played to me and with the contemporary documents. This was a confected story, put together for the purposes of this litigation, and Mr Bisping's evidence in support of it was untruthful. 162. It follows that I must treat the evidence of both Mr McGann and Mr Bisping on the central issues of this case with considerable caution. Lee Gwynn

163. Mr Gwynn gave evidence in support of Mr McGann's case. His evidence covered (inter-alia) the signing of the Management Agreement in 2005, the meeting at the Wellington Arms, and the state of the Wolfslair gym. He was also asked in cross-examination about a number of the contemporary documents, particularly those of which he himself was the author or signatory. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 164. In particular, Mr Gwynn was asked about the emails sent by him in late 2011 and early 2012, and why those emails were worded as if the money being claimed was due to him, rather than to Mr McGann. His answer was that he "had been told by [Mr McGann] to get his money", that these emails were all written on behalf of Mr McGann, and that the words which he used did not mean that money was due to him (Mr Gwynn). He also said that he had no financial interest in the outcome of the litigation, and that there was no sense in which he was entitled to any money from Mr Bisping. For the reasons which I have explained in relation to Mr McGann's evidence on this same topic, I am unable to accept this evidence from Mr Gwynn as truthful. In my judgment, Mr McGann and Mr Gwynn had between them decided to present untruthful evidence to the court on this aspect of the case, for the purpose of bolstering Mr McGann's case in relation to the Management Agreement.
165. Mr Gwynn also provided a witness statement in which he supported Mr McGann's account explaining the limited nature of the extent to which Mr McGann had wrongfully discussed his evidence while he was giving it. For the reasons which I have explained in relation to Mr McGann's evidence on this point, I am unable to accept this evidence from Mr Gwynn as truthful. In my judgment, Mr McGann and Mr Gwynn had agreed between themselves to present untruthful evidence to the court on this aspect of the case, in order to minimise the extent of Mr McGann's culpability. Mr Gwynn declined to answer questions about his email and his witness statement concerning that email in cross examination, claiming the privilege against self-incrimination. 166. I must therefore also treat the evidence of Mr Gwynn on the central issues of this case with great caution. Mike Wood
167. Mr Wood gave evidence on behalf of Mr McGann that he had signed the Management Agreement as a witness. He accepted that he was a friend of Mr McGann, and that he had helped Mr McGann and Mr Gwynn out for a number of years with the management of the Wolfslair gym and academy. He said that, over those years, he had signed somewhere between 5 and 10 management agreements as a witness, and that he could not remember what particular clauses were in the agreement with Mr Bisping that he witnessed, and so could not say positively that the copy Management Agreement in the bundle was the agreement which he had witnessed. Nevertheless, he confirmed that it was his name and signature on the copy. He also said that the negotiations with Mr Bisping had dragged on for 2-3 months before the agreement was finally signed. On the day when he witnessed the signing of the agreement with Mr Bisping, "everyone was in high spirits due to the finalising of the Bisping deal – it was a happy occasion". MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 168. It seemed to me that Mr Wood was a careful witness, who gave his evidence clearly and calmly.

Dave Jackson, Gavin Sterrit, and Francisco Neto

169. Mr Jackson is a professional martial arts coaching, specialising in the discipline of Muay Thai. He gave evidence on behalf of Mr McGann that he had known Mr McGann since September 2006, and had coached a number of professional fighters for him since then. His evidence was that he had been involved in the training camps for Mr Bisping's Hamill, Evans, McCarthy, Day, Leben, Silva and Rivera bouts. Mr McGann had paid his fees in relation to these camps, and he had never been paid by Mr Bisping direct. On these occasions, Mr Jackson "assumed [Mr McGann] was paying on [Mr Bisping's]s behalf". In general, Mr McGann would bring together the various coaches on each occasion, and would have a Planning meeting at which Mr Bisping would be present. At that meeting, a plan would be formed along with the timetable. According to Mr Jackson, Mr Bisping always played "a major role in all camp decision making".
170. Mr Jackson seemed to me to be careful and straightforward witness.
171. Mr Sterrit also gave his evidence in what seemed to me to be a straightforward manner. He gave evidence on behalf of Mr McGann that he was originally a professional Muay Thai fighter, who had trained with Mr Jackson, and that he joined the Wolfslair team of fighters in early 2006 when Mr Jackson began coaching there. His evidence was that "it is accepted in the professional MMA world that a fighter will pay for coaching and sparring services provided to him at fight training camps". In cross-examination he said "that is what you do. If you have a camp and people get paid, then you pay the manager back". He also explained that "[I]n most cases I was paid for the services I provided that [Mr Bisping's]s training camps by [Mr McGann] but I assumed [Mr McGann] was paying on [Mr Bisping's]s behalf. According to Mr Sterritt he was involved in the training camps for the Sinosis, Hamill, Evans, McCarthy, Day, Leben, and Miller fights. Mr McGann contacted him in January 2013 asking him to confirm what camps he had worked on and how much he had been paid "to enable him to confirm his records". Mr Sterrit said that he a diary in which he kept his records. He used this to produce a document which he signed, scanned, and emailed to Mr McGann.
172. Like Mr Sterritt, Mr Neto was called to give evidence on behalf of Mr McGann to confirm the details of the various fight training camp that he had attended. His coaching speciality was Brazilian Jiu-Jitsu, and his evidence was in very similar terms to that given by Mr Jackson and Mr Sterrit, having been involved (as he said) in the training camps for the Haynes, Sinosis, Hamill, Evans, McCarthy, Leben, Henderson, MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping Kang, and Miller bouts. He also said that he had been contacted by Mr McGann in January 2013 and, at Mr McGann's request, had signed various undated receipts confirming what he had been paid. In cross-examination he said that he had signed the receipts and other documents at Mr McGann's house, and that he had taken the figures from the book in which he recorded his earnings. However he was unable to produce the book. He was shown some of these receipts and said that they bore his signature, but he did not know who had written

in the figures and dates on the receipt, or whose handwriting was on the receipts apart from the signature. He confirmed that he had never filled out any timesheets

173. Mr Neto gave his evidence in a very laconic way, was prone to answer questions just by saying “don’t remember”, and was often evasive in the way that he responded to Mr Buttimore’s questions. Jamie Peters 174. Jamie Peters gave evidence on behalf of Mr McGann about his observations about the working relationship between Mr Bisping and Mr McGann. His evidence was that he had met Mr McGann in January 2005 when he began training at the Wolfslair gym, and had effectively become Mr McGann’s “Assistant Manager” by about 2007. He gave evidence that he remembered the Management agreement being signed in July
2005. He also gave evidence about making a note of expenditure attributable to each fighter and noting them “in an expense ledger and other documents that [Mr McGann] would then use to draw up his invoices after the camp”. According to Mr Peters, Mr Bisping “was always aware of what is camps would involve”, “became more and more demanding in terms of the coaches and sparring partners and other facilities he wanted Mr McGann me to organise for him”, and “was renowned for keeping a very close eye on costs”. 175. In cross-examination, Mr Peters accepted that he would only make a note of the “outside” coaches used, not of those who were part of the Wolfslair team. He asserted that Wolfslair kept records other than just the ledgers, but accepted that he did not know what was in them, and that he had never seen any sort of timesheet. He also accepted that he had never seen a camp invoice, though he asserted that Mr McGann would ask him for information as he was about to draw an invoice up. He said that he had seen about 3 management contracts being witnessed at Wolfslair: but, when asked to name the fighters concerned, he simply shrugged his shoulders. 176. It seemed to me that Mr Peters was often evasive in his answers to Mr Buttimore’s questions. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Paul Lloyd Davies Anthony McGann v Michael Bisping
177. Mr Davies was Mr Bisping’s manager before he began to train at the Wolfslair. He was called by Mr McGann, and gave evidence about the changeover from his management to that of Mr McGann. According to Mr Davies, Mr Bisping on 2 occasions showed Mr Davies the draft contract that Mr McGann was asking Mr Bisping to sign, Mr Davies went through its provisions with Mr Bisping. Mr Davies’s evidence was that “it was very clearly drafted and Mr McGann commented that it cost him £6,000 to have it drawn up by his London solicitors”. Mr Davies’s evidence of the chronology of the negotiations indicated that Mr Bisping had finally signed with Mr McGann in July 2005. However, he accepted that he had not any point seen a signed contract.
178. Mr Davies gave his evidence in a combative way, and was plainly resentful of the way that he had been treated by Mr Bisping. Jan Bisping
179. Mr Bisping called his father, Jan Bisping, to give evidence about Mr Bisping’s early career, his early contacts with Mr McGann and Mr Gwynn, and the meeting in the Wellington Arms in 2007. According to Mr Jan Bisping, in the period 2005-7, the Wolfslair gym was “a dump”.

Mr Jan Bisping's account of the Wellington Arms meeting was that it was agreed that the "slate been wiped clean" and that, at that point, Mr Michael Bisping "owed Wolfslair no further monies and [Mr Bisping] would not renew his contract on its expiry". According to Mr Jan Bisping, Mr McGann "never once raised issues with [him] regarding outstanding monies from past camps or suchlike", even though Mr McGann knew that Jan Bisping acted as Mr Michael Bisping's adviser.

180. Mr Jan Bisping was plainly very anxious to support his son, and was sometimes aggressive and sometimes over-defensive when challenged. This did not inspire confidence in the accuracy or truthfulness of his evidence. Juanito Ibarra
181. Mr Bisping also called Juanito Ibarra. Mr Ibarra used to be the manager of Quinton 'Rampage' Jackson. He gave evidence about Mr Jackson's training camp in Big Bear in California in 2007, and his subsequent training at Wolfslair. Mr Ibarra's evidence was that he did not charge Mr Bisping or his management for his involvement in the training camp at Big Bear. Training at Wolfslair was then offered free by Mr McGann and Mr Gwynn. However, "at no point was it discussed or agreed that [Mr Bisping] would be responsible for the expense of our accommodation. At no point was it agreed or discussed that [Mr Bisping] would be responsible for any expenses of "Team Rampage" during our stay in England". MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping
182. Under cross-examination, Mr Ibarra accepted that there can be a lot of expenses involved in the training camp, and sometimes they come free of charge, sometimes they do not. His evidence was that "You do not argue with any fighter. Sometimes I would pay for it. I would never ask my fighter for it back. If my 10% does not cover it, I take a loss". However he accepted that in any given case, it all depends on the contract and who had agreed to pay for the expenses. It was not his business to enquire what the arrangements were between Mr McGann and Mr Bisping. 183. It seemed to me that Mr Ibarra was evasive in the way that he answered some of Mr Lawrence's questions. I formed the impression that he slightly resented the fact that Mr McGann had taken over from him as Mr Jackson's manager. He was keen to point out that he had been told by Mr Jackson that Mr McGann had encouraged him to hide money in offshore accounts. Dana White
184. At Mr Bisping's request, the president of Zuffa, Dana White, gave evidence by video link. This was primarily directed to the circumstances in which Range Rovers had been given to Mr Bisping as his reward for acting as a coach on series 9 and 14 of TUF. According to Mr White, some TUF coaches get nothing, some are given cash (because for that series Zuffa could not afford an expensive car), and one coach asked for and was given a tractor. However, in relation to most series of TUF, the coaches have been given cars. In answer to a question in cross-examination, Mr White gave a list of the cars that had been provided from series 2 through to series 10.

185. Mr White was asked about the spitting incident and the negotiations that had led to the Fourth PAR Agreement. In his witness statement, Mr White had given evidence to the effect that there were no problems with Mr Bisping at any point, and that Mr McGann had played no part in the negotiations for the Fourth PAR Agreement. That evidence was inconsistent with the press report of the spitting incident, which recorded his reaction to it. Mr White was shown that press report in cross examination, but said that it did not jog his memory. “It may have happened. I just do not remember it now”. With regard to negotiating the contracts, his evidence in answer to questions in cross- examination was to the effect that all of these issues are dealt with at a lower level in his organisation, and he had no knowledge or memory of any of it. 186. I formed the view that Mr White was plainly trying to tell the truth, but that he had little or no useful evidence to give in relation to any matter other than the Range Rover

### issues.

MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Gary Farnsworth Anthony McGann v Michael Bisping

187. Mr Bisping’s final witness was Mr Farnsworth, his accountant. He produced Mr Bisping’s accounting records, and various schedules that he had prepared from those records. As I have already mentioned earlier in this judgment, many of Mr Farnsworth’s schedules did not support Mr Bisping’s account. They also demonstrated that Mr Bisping had claimed double taxation relief in the UK in relation to much of the withholding tax in relation to which he had declined pay commission to Mr McGann. The issues
188. Mr Buttimore prepared a draft List of Issues, setting out 21 issues (some having a number of sub- issues) which he submitted I had to decide. This was not formally agreed by Mr Lawrence, though he did not submit a competing list or argue that Mr Buttimore’s list was inaccurate.
189. Mr Buttimore’s list was, in my judgment, overcomplicated. It seems to me that the principal issues which I have to decide are 12 in number, and are broadly as follows: (1) (2) (3) (4) (5) (6) Did Mr McGann and Mr Bisping enter into the Management Agreement in the form relied upon by Mr McGann? Is Mr McGann entitled to be paid commission on the gross amount of Mr Bisping’s overseas earnings, even where withholding tax has been deducted from those earnings at source? Is Mr McGann entitled to commission on the value of the Range Rovers or on discretionary bonuses? Is Mr McGann entitled to be repaid for the sums he claims to have spent on training camp expenses? Did Mr McGann and Mr Bisping reach an agreement, either in late 2007 and/or in December 2010 to “wipe the slate clean”, in such a way as to amount to a settled account and/or a compromise of all existing claims? Did Mr Bisping effectively terminate the Management Agreement, either by agreeing in 2007 that it would come to an end at its expiry, or by giving notice orally and/or by his email dated 24 May 2011? MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping (7) Alternatively, did Mr Bisping bring the

Management Agreement to an end in May 2011 or in December 2011 by accepting repudiatory breaches committed by Mr McGann?

- (8) What rate of commission (if any) is payable by Mr Bisping to Mr McGann for the period from December 2011 onwards? (9) Is Mr McGann time barred from recovering any element of his claim?
- (10) Can Mr McGann recover commission on monies due and/or paid to MBL or RMI? (11) Is Mr McGann entitled to interest on any of the sums claimed by him, and if so from when at what rates? (12) To what relief (if any) are Mr McGann and Mr Bisping entitled? 190. In what follows, I shall deal with each of these issues in turn.
- (1) Did Mr McGann and Mr Bisping enter into the Management Agreement in the form relied upon by Mr McGann?
191. The first and crucial issue which I have to decide is whether the relationship between Mr McGann and Mr Bisping was governed, as claimed by Mr McGann, by the Management Agreement: or whether, as asserted by Mr Bisping, he signed a contract in May 2005 with “Wolfslair” (rather than with Mr McGann).
192. On behalf of Mr Bisping, Mr Buttimore submitted that the poor quality copy of the Management Agreement that has been produced did not provide any satisfactory evidence to contradict Mr Bisping’s own clear recollection that the copy document now relied upon by Mr McGann is not the one which he signed. It is not disputed that Mr Bisping had been asking Mr McGann to supply him with a copy of the original agreement since the Wellington Arms meeting at the end of 2007. Mr McGann’s failure to bring a copy of the Management Agreement signed by Mr Bisping to that meeting, producing instead a copy of a contract with Lee Dixon, suggested that no such contract then existed. Mr McGann’s explanation that Mr Bisping’s contract was “locked in a safe at Lee Gwynn’s property in Liverpool” was not merely suspicious in itself, but also leads to further unanswered questions. Why was the Management Agreement with Mr Bisping at Lee Gwynn’s property in the first place, particularly given Mr McGann’s insistence that his fighter management business was entirely separate from any business that he had with Mr Gwynn? Mr McGann has offered no satisfactory explanation of when, how, and why the original Management Agreement with Mr Bisping was subsequently moved from Mr Gwynn’s property to Wolfslair. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping If Mr Bisping’s original contract had still been in a safe at Lee Gwynn’s property when the fire occurred at the Wolfslair in 2011, it would not have been destroyed in the fire. Overall, Mr McGann has offered no satisfactory explanation for the loss of the original. Mr McGann has also not called his accountant to support his explanation that the copy document which has now produced has come from Mr McGann’s accountant’s office.

193. As for the witness evidence, Mr Buttimore submitted that it does not assist matters. Mr McGann's own evidence is unreliable because he has demonstrably lied about other matters, and his evidence cannot therefore be trusted. Moreover, it is notable that Mr McGann does not quote from or refer by number to any specific provisions of the Management Agreement until his long email dated 21 January 2012. None of the other witnesses called to support Mr McGann's evidence concerning the execution of the Management Agreement could honestly say that the document presented to them in court was, in its entirety, the document whose execution they witnessed. As for the evidence as to the month in which the Management Agreement was signed, Mr Bisping's emails sent in May 2011 and saying that the term of the agreement had come to an end were consistent with his clear belief that he had signed with Wolfslair 6 years before, in May 2005. That, Mr Buttimore submitted, is much more cogent evidence than the vague recollection of the witnesses. Mr Davies's evidence, in particular, was coloured by his resentment at the way that he had been discarded by Mr Bisping in favour of Mr McGann.
194. Mr Lawrence, for Mr McGann, vigorously rejected these criticisms of the evidence in favour of the Management Agreement. He pointed out that that it was common ground between Mr McGann and Mr Bisping that Mr Bisping had signed an agreement. Mr McGann had gone to considerable trouble and expense in getting his solicitors, Couchman Harrington, to draft a standard form of agreement for him. Having done so, it is inconceivable that he would have used any other form when contracting with Mr Bisping. Moreover, "Wolfslair" did not exist as a legal entity in
2005. WPL was not incorporated until September 2009. The direct evidence of Mr McGann himself, and of the witnesses whose names appear on the Management Agreement, Lee Gwynn and Mike Wood, is supported by the evidence of Jamie Peters and Paul Lloyd Davies. Mr Lawrence did not accept that there were any justified criticisms to be made of the evidence of Mr McGann and Mr Gwynn. The evidence of Mr Peters (who recollected the Management Agreement being signed "around the time of Lee [Gwynn]'s birthday" (on 26 July), and of Mr Davies (whose account of the progress of his negotiations with Mr Bisping shows that the Management Agreement must have been signed in about July, rather than in May) was, according to Mr Lawrence, particularly compelling. 195. It seems to me that the fact that "Wolfslair" did not exist as a legal entity in 2005 does not assist Mr Lawrence's argument on behalf of Mr McGann. Neither Mr McGann nor MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping Mr Bisping struck me as people who were over concerned with legal niceties. Mr McGann frequently used the expression "the Wolfslair team" to describe the entity to which Mr Bisping belonged. Mr McGann's letter dated 28 May 2011 and Mr Gwynn's letter enclosing the 13 December 2011 invoices were both written as if the contracting party under the Management Agreement was WPL, not Mr McGann personally. It does not seem to me to be in any way improbable that Mr McGann could have invited Mr Bisping to sign an agreement with "Wolfslair" in 2005. There is also force in Mr Buttimore's points about Mr McGann's failure to produce the Management Agreement at

the Wellington Arms meeting in 2007, the unanswered questions to which Mr McGann's explanation for that failure gives rise, and the general unreliability of the evidence of Mr McGann and Mr Gwynn.

196. Nevertheless, on balance, I am persuaded that Mr Bisping did sign the Management Agreement in July 2005 in the form now relied on by Mr McGann. I accept Mr Lawrence's argument that it is common ground that Mr Bisping signed some form of agreement, and it is highly improbable that Mr McGann would have used any form of agreement other than that which had been prepared for him by his solicitors. Although Mr McGann did not produce evidence from his solicitors as to the date upon which they produced the standard form for him, he is represented in this litigation by their successor firm, Couchmans LLP: and it would have been a breach of professional duty for them to permit Mr McGann to put forward a case which they knew was untrue. While I can place little reliance upon the evidence of Mr McGann and Mr Gwynn themselves, the evidence of Mr Wood, Mr Peters and Mr Davies as to the circumstances in which the Management Agreement was signed did not strike me as in any way improbable, and provides firm support for Mr McGann's case on this issue. In my judgment, those factors, taken together, outweigh the contrary points put forward by Mr Buttimore on behalf of Mr Bisping, and tip the scales in favour of Mr McGann on this issue. That means that it is unnecessary for me to consider Mr McGann's alternative claim in restitution.
- (2) Is Mr McGann entitled to be paid commission on the gross amount of Mr Bisping's overseas earnings, even where withholding tax has been deducted from those earnings at source?
197. In the light of my finding on Issue (1), this second issue primarily turns on the proper interpretation of the relevant terms of the Management Agreement.
198. Under clause 1.1 of the Management Agreement, Mr Bisping appointed Mr McGann: .. On a sole and exclusive basis to promote and manage his activities within MMA and all income producing activities that result from it throughout the World .. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping Mr Bisping's obligation to pay commission was dealt with in clause 2. Clause 2.1 provided: 2.1 In consideration of performing his obligations under this Agreement, you agree to pay to AM the following commissions: 2.1.1 a sum equal to 20% (twenty per cent) of all income received by you in the form of monies and/or "in-kind contributions" from any contracts entered into or substantially negotiated during the Term in relation to all income producing opportunities arising directly or indirectly from your role as a MMA fighter and/or your image and profile as a professional sportsman and entertainer including, without limitation, personal endorsement or team sponsorship, appearance fees, merchandising revenues and all other potential income ("Commercial Contracts")
199. On behalf of Mr McGann, Mr Lawrence's primary submission was that "income received by you" in this clause should be interpreted as meaning "income earned by you". He pointed out that, in relation to Mr Bisping's UK income, Mr McGann was plainly entitled to, and was paid, 20% of Mr Bisping's gross earnings, even though Mr Bisping was subsequently obliged

to pay tax on those earnings to HMRC. The position, he submitted, should be the same in relation to overseas earnings, even though tax on those earnings is deducted at source, rather than subsequently. That, he submitted, was the commercially sensible interpretation of the wording of this clause. Any other interpretation would be an uncommercial one, for at least 2 reasons. First, in many cases foreign withholding tax payments are allowable as an expense against income in computing the taxpayers' UK tax liability. It was clear from Mr Bisping's UK tax returns and from the evidence of his accountant, Mr Farnsworth, that Bisping had in fact received double taxation relief in relation to a number of the items on which Mr McGann was now claiming commission. Secondly, in the jurisdictions relevant to this case, it is open to the taxpayer to reclaim all or part of the tax withheld from the overseas tax authorities, by providing material to them to demonstrate that the amount of tax properly payable by him in that jurisdiction is less than the flat amount withheld. The evidence shows that Mr Bisping (or one or other of his companies) has in fact claimed refunds from overseas tax authorities. In particular, since 2012, tax refunds of not less than USD 47,600 have been received from the US IRS. Mr Lawrence also relied upon the fact that Mr Bisping actually paid commission on gross sums in relation to the Haynes and McCarthy fights, even though tax was deducted at source (in the USA and Canada) from Mr Bisping's earnings.

200. Mr Buttimore's answer on behalf of Mr Bisping was short and to the point. In his submission, "received" means "received", not "earned". There is no justification for departing from the ordinary and natural meaning of the word in order to increase the MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping extent of Mr Bisping's liability, particularly in an agreement whose terms were drafted for, and which was proffered by, Mr McGann.
201. The court's task when interpreting a commercial contract such as the Management Agreement has been explained by the Supreme Court in a number of cases, of which the most recent are *Rainy Sky SA v Kookmin Bank*<sup>18</sup>, *Arnold v Britton*<sup>19</sup>, and *Wood v Capita Insurance Services Ltd*<sup>20</sup>. In short, the court's aim is to try to determine the objective meaning of the language in which the parties have chosen to express their agreement. This involves ascertaining what a reasonable person (who had all the background knowledge that would reasonably have been available to the parties in the situation in which they were at the time of the contract) would have understood the parties to have meant. In reaching its view, the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context, including the consistency of any particular suggested interpretation with business common sense.
202. Applying the principles set out in those cases, Mr Buttimore is in my judgment right to this extent: that "income received by you" in clause 2.1 of the Management Agreement means income actually paid to, and therefore received by, Mr Bisping. It does not just mean income "earned" by him. 203. I am reinforced in that view by the other provisions of clause 2,

including clauses 2.4 to 2.6. These provide that: 2.4 All monies received under Commercial Contracts shall be paid directly to AM. AM shall deduct his commission due and then shall pay the balance as soon as reasonably practicable following receipt. 2.6 2.5 You shall notify AM upon receipt of any monies or any instalment thereof, and/or any “in-kind contributions” from any Commercial Contracts. In the event of you receiving any monies are set out in paragraph 2.1.221, you shall pay the commission due to AM within 14 days of receipt of an invoice from AM. All sums due from you not paid by the due date shall bear interest on a daily basis at the annual rate of 4% over the base rate of the HSBC in London.

19 21

[2011] UKSC 50; [2011] 1 WLR 2900

[2015] UKSC 36; [2015] AC 1619

[2017] UKSC 24, [2017] 2 WLR 1095. Which provides for Mr Bisping to pay Mr McCann a sum equal to 15% of all income received from any renewals, extensions, modifications or variations to Commercial Contracts entered into for a period of 3 years following the expiry of the Term MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping In these later clauses, it would not accord with business common sense to interpret “receipt”, “received” and “receiving” as being equivalent to “earned” or “earning”. For example, in clause 2.4, interpreting “receipt” as meaning “earned” would mean that Mr McGann was obliged to pay Mr Bisping’s earnings to him (minus commission) as soon as they were contractually due, irrespective of whether or not Mr McGann had actually received them. Clause 2.5 also makes much more sense if the notification obligation springs up upon payment, rather than upon contractual entitlement.

204. However, that is not an answer to Mr McGann’s claim, because Mr McGann’s pleaded claim under this head is not a claim for commission on money simply “earned” by Mr Bisping, but a claim for commission on money actually paid by Zuffa in discharge of its monetary obligations in connection with Mr Bisping’s fights.

205. The Bout Agreements under which Mr Bisping fought were “Commercial Contracts” within the meaning of the Management Agreement, and imposed on Zuffa a variety of monetary obligations. Mr McGann was entitled under the Management Agreement to commission on “all income received by [Mr Bisping]” from the discharge of those monetary obligations.

206. In the US and other jurisdictions where the law made provision for a withholding tax, Zuffa discharged its monetary obligations under the Bout Agreements by doing 2 things: first, by transferring a sum to Mr Bisping’s account<sup>22</sup> which was less than the gross amount payable under the Bout Agreement by the amount which the law required it to retain; and, secondly, by retaining the amount required by law, for which it was thereafter obliged to account for the benefit of Mr Bisping to the relevant tax authorities.

207. Even though the amount which actually went into Mr Bisping's account was less than the gross amount payable, what Zuffa did amounted to payment in full to Mr Bisping as between Zuffa and Mr Bisping. In legal and practical terms, Mr Bisping therefore "received" the gross amount, partly in the form of the sum transferred to his account, and partly in the form of the sum for which Zuffa was obliged to account for his benefit to the tax authorities. 208. In my judgment, therefore, the "income received by" Mr Bisping in relation to these overseas bouts was the gross amount, not simply the net sum transferred into his bank account.
209. That seems to me to be the natural meaning of these words in their context, both within the Management Agreement and in their wider commercial context. To give For the purpose of this analysis, I disregard the issues arising from the interposition of MBL and RMI, which are dealt with later in this judgment under Issue (10). MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping those words the narrow meaning contended for by Mr Bisping would not accord with business common sense. As Mr Lawrence rightly submitted, it would produce very anomalous and difficult situations if (as was always likely to happen) Mr Bisping either re-claimed all or part of the withheld tax from the overseas tax authority, or claimed the tax paid overseas as a deduction in his UK tax return. It would also make a distinction between the treatment for commission purposes of Mr Bisping's UK earnings and overseas earnings which does not appear to be warranted by the terms of the Management Agreement, which expressly applies "throughout the World".
210. Mr Bisping has an alternative argument, pleaded in paragraph 22(d) of the Re-Re- Amended Defence and Counterclaim, to the effect that the Management Agreement was varied by conduct and/or Mr McGann is estopped from asserting this claim. 211. In my judgment, Mr McGann's conduct in not pressing more strongly for payment of commission on withheld tax falls far short of the sort of conduct from which a variation of the contract or an estoppel could properly be inferred. Nor, on the evidence, did Mr Bisping rely on any of the ways alleged on any relevant words or conduct of Mr McGann's.
212. The specific sums claimed by Mr McGann under this head amount to a total of USD 64,500, made up as follows: 212.1 Schafer 30/12/06 USD 6,000 212.2 Evans 17/11/07 USD 7,600 212.3 Henderson 11/07/09 USD 15,000 212.4 Silva 20/02/10 USD 6,400 212.5 Miller 29/05/10 USD 19,000 212.6 Rivera 27/11/11 USD 10,500
213. Subject to the issues discussed later in this judgment, Mr McGann would therefore be entitled in principle to an order for payment of that amount.
- (3) Is Mr McGann entitled to commission on the value of the Range Rovers or on discretionary bonuses?

214. Mr McGann claims that the two customised Range Rovers that were given to Mr Bisping following his participation as a coach in TUF 9 and TUF 14 were “in-kind contributions” on which the Management Agreement entitled him to commission. It is MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping common ground that the value of each car should be taken for these purposes as being USD 100,000.
215. Clause 2.2 of the Management Agreement defines “in-kind contributions” as: .. monies not in cash by [sic] the value of any goods, services, products or property provided to you. The value represented by any “in-kind contributions” shall be determined by way of agreement between you and AM. Failure to agree shall result in an independent mutually agreed party being asked to determine value, and such a decision on value shall be final and binding on both parties The word “monies” in clause 2.2 seems to me to be a reference back to clause 2.1.1, which entitles Mr McGann to commission on “all income received by you in the form of monies and/or ‘in-kind contributions’ from any contracts entered into or substantially negotiated during the Term”.
216. Both sides relied, at least to some extent, on the other party’s contemporary comments and/or conduct as showing that these cars were, or were not, treated when received as “in-kind contributions” on which commission was payable. However, this issue is primarily one of interpretation of the Management Agreement: and it is trite law that (subject to immaterial exceptions) subsequent conduct is not admissible as an aid to interpreting a written agreement<sup>23</sup>.
217. Mr Buttimore submitted that, whilst items such as Range Rovers are in principle capable of being “in-kind contributions”, the evidence of Mr Bisping himself and of Dana White was that they were gifts, not made pursuant to any contractual obligation. They were therefore not “from any contracts”, and so fell outside the definition in clause 2.2.
218. Mr Lawrence’s answer was that it was clear from the evidence of Mr White that Mr Bisping did enter into a contract and was engaged and contractually bound to participate as a coach in relation to both TUF 9 and TUF 14. While it may be true that Zuffa was not obliged under those contracts to provide Mr Bisping with these cars (or indeed with any remuneration other than transportation, housing and a small per diem payment for expenses), Mr Bisping would not have received the cars had he not entered into these contracts and had he not performed under them. They are therefore “in-kind contributions” received by Mr Bisping from those contracts. According to Mr Lawrence, Mr Buttimore’s argument involves reading the word “from” as if it said “pursuant to” or “under”. Chitty on Contracts (32nd ed) para 13-129. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 219. In my judgment, Mr Lawrence’s contentions are to be preferred to those of Mr Buttimore on this issue. Mr Bisping’s receipt of these cars resulted from his contracts with Zuffa in relation to these series of contests. The fact that they were a discretionary, though expected, benefit from those contracts did not take them outside the definition in clause 2.2.

220. Again, Mr Bisping has an alternative argument, pleaded in paragraphs 23(c) to (f) of the Re-Amended Defence and Counterclaim, to the effect that Mr McGann is estopped from asserting this claim<sup>24</sup>. Again, on the evidence, Mr McGann's words and conduct were not such as to give rise to the suggested estoppel, nor in my judgment did Mr Bisping in fact rely on any relevant words or conduct of Mr McGann.
221. Subject to the issues discussed later in this judgment, Mr McGann would therefore be entitled in principle to an order for payment of commission at 20% on the USD 200,000 value of these cars.
- (4) Is Mr McGann entitled to be repaid for the sums he claims to have spent on training camp expenses?
222. Clause 3 of the Management Agreement set out Mr McGann's obligations. These were to "assist" Mr Bisping in relation (inter alia) to the following: 3.1 advising generally on the progression of your career; 3.2 provide you with access to first-class MMA coaching and training; 3.3 enable you to use the MMA facilities including the cage, the 3.4 3.5 gymnasium and the weights at Wolfslair MMA; advise you on suitability of events to enter and the progression of your career generally; use reasonable endeavours to introduce you to companies interested in entering into sponsorship and endorsement merchandising appearance packages or other income producing arrangements with you; 3.6 provide access to third- party services (which costs you shall be responsible for provided you have a proven in advance) if reasonably required including media exposure and publicity; legal and accountancy Mr Bisping's Response to Request for Further Information dated 30 December 2013 answered requests for information about how he had treated the Range Rovers for tax in the US and the UK by stating that "Paragraph 23(f) of the Defence and Counterclaim is no longer being relied upon". Mr Bisping nevertheless expanded paragraph 23(f) in the Re-Amended Defence & Counterclaim served by him in September 2014: and Mr Buttimore has relied upon this estoppel argument in his Written Closing Submissions. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping services to include tax and other specialist advice; such other services which are considered beneficial to you.
223. Clause 2.8 of the Management Agreement provided: 2.8 AM's day-to-day expenses in carrying out his obligations shall not be recoverable. Any extraordinary expenses incurred by AM such as travel, accommodation and subsistence shall be recoverable provided you approve such expenses in advance.
224. Mr McGann's case is that the sums for which he claims to have invoiced Mr Bisping in relation to training camp expenses were "extraordinary expenses" within the meaning of clause 2.8, which were approved by Mr Bisping in advance. Alternatively, Mr McGann says that, if Mr Bisping did not approve those expenses in advance, Mr Bisping acquiesced in the incurring of those expenses and/or subsequently ratified them. Mr McGann's evidence was that, although he invoiced Mr Bisping, bout by bout, for these "extraordinary expenses", he

agreed with Mr Bisping that he would allow them to remain outstanding until Mr Bisping's financial position improved. In the middle of 2009, that agreement was varied, so that Mr Bisping would pay 50% of camp expenses directly himself. That became 80% in 2010.

225. Mr McGann's witnesses confirmed that it was customary for the managers of MMA fighters to pay their training expenses, and then to be reimbursed later by the fighter. For example, Mr Sterritt's evidence was that this was the system: "if your manager pays for your sparring partner, you pay your manager .. That is just what happens in the fight game". Even Mr Bisping himself confirmed that costs such as the fees of outside coaches, "sparring partners from overseas or full camp trips overseas etc .. costs that were not encompassed in the day-to-day running of the gym" would be thought of as "out of the ordinary costs".
226. However, Mr Bisping's primary case is that, in practice, the terms of the Management Agreement were ignored. Mr McGann was content to pay everything (including any "extraordinary expenses") until the time in 2009 when, because things were going better for him, Mr Bisping and Mr McGann agreed that Mr Bisping would himself pay 50% of these "extraordinary expenses". Eventually, in 2010, he agreed to pay 80% of these "extraordinary expenses". However, his arrangement with Mr McGann was that Mr McGann would himself bear the remaining 50% or 20%, recouping whatever he spent from his (by then substantial) 20% commission on Mr Bisping's earnings. According to Mr Bisping, the invoices and supporting documents which Mr McGann now relies on have all been manufactured for the purposes of this litigation, and were not sent or given to him at the time. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping
227. Mr Bisping's fall-back position is that, in any event the sums claimed by Mr McGann were not all in fact incurred and, in any event, were not pre-approved or later ratified by Mr Bisping. Many of the items which Mr McGann now claims either do not fall into the category of "extraordinary expenses", because they are just part of the ordinary running costs of Wolfslair and were as much for the benefit of other fighters as for the benefit of Mr Bisping, or were paid either by Mr Bisping direct or by Zuffa, and not by Mr McGann. 228. In my judgment, Mr McGann is broadly correct in the interpretation which he seeks to put upon clause 2.8 of the Management Agreement. That clause entitled him to charge Mr Bisping for things like: (a) the fees of coaches and sparring partners who were not (putting the matter broadly) part of the Wolfslair operation, and who were specially brought in to train Mr Bisping for a particular fight; and (b) the extra costs of providing training for Mr Bisping at locations other than Wolfslair. Of course, he would only have been entitled to re-charge those costs to Mr Bisping if the relevant item had been agreed in advance with Mr Bisping, and provided that the expense would otherwise have stayed with Mr McGann, and would not have been reimbursed e.g. by Zuffa.

229. However, the totality of the evidence seems to me to indicate very strongly that Mr Bisping's account of the practical arrangements between himself and Mr McGann with regards to expenses is to be preferred to the case now put forward by Mr McGann. I am also persuaded, on the totality of the evidence, that Mr McGann has indeed (as alleged by Mr Bisping) created for the purposes of this litigation the letters and invoices upon which he now relies, and that none of those documents was provided to Mr Bisping at the time.
230. Among my reasons for this view are the following: 230.1 First, the misleading impression created by the documents which Mr McGann produced on disclosure as if they were contemporary but which he now accepts were created by him several years after the event: see paragraphs 44 to 52 above. The overall impression given by the way that these copy documents were produced on inspection, and by the way that they had been filled in, was deceptive: and Mr McGann offered no plausible explanation for the fact that he twice wrote a 2006 or 2007 date next to a signature which he now admits he did not put on the relevant document until 2011. In my judgment, his intention in creating these documents was to deceive: and I reject his explanation about how these misleading documents came to be disclosed in the way that in fact occurred. 230.2 Secondly, the fact that it is implausible that Mr McGann would have sent his email dated 4 December 2009 to which the "Mike Camp" ledger sheet was MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping attached, showing total expenses of £14,084, if (as he now claims) he had only 2 days before sent or handed to Mr Bisping a letter dated 2 December 2009 attaching a "Camp Bill Report" totalling £7,299 in relation to those very same expenses: see paragraph 101 above. 230.3 Thirdly, the absence of any reference to the invoices on which Mr McGann now relies in his correspondence with Mr Bisping beginning with Mr McGann's 28 May 2011 letter (see paragraph 122 above) until after Faraday's letter dated 20 December 2011 (see paragraph 150 above). When Mr McGann, in his 13 December 2011 email, said to Mr Bisping "you have my invoices and you have my number", he was plainly referring to the 3 newly- created invoices attached to that email, not to the documents on which he now seeks to rely. If Mr McGann had truly sent formal invoices to Mr Bisping after each and every bout, it is almost inevitable that he would have referred to them at some point in this correspondence. The fact that he did not do so strongly suggests that those invoices did not then exist. 230.4 Fourthly, the words used by Mr McGann in that correspondence to describe the arrangements between himself and Mr Bisping in relation to these expenses: in particular (though by no means exclusively) Mr McGann's repeated references to these expenses as part of his "investment" in Mr Bisping. Mr McGann would no doubt argue (as Mr Gwynn did in his 1 May 2017 email referred to in paragraphs 62 to 67 above) that "investment can equally mean recoverable". That is no doubt true: but what is striking in this correspondence is the absence of any reference to the case now advanced by Mr McGann, that there was a specific agreement between him and Mr Bisping that the amounts paid by Mr McGann should "lie on the file", to be paid only when Mr Bisping's financial position improved. If such an agreement had truly been made, it is almost inevitable that Mr McGann would have referred to it in this correspondence, and

would not simply have described this expenditure as an “investment”. 230.5 Fifthly, the discrepancies between the sums claimed in invoice “BISPING 1” dated 13 December 2011 in relation to these expenses, and the sums claimed in the invoices on which Mr McGann now relies. Mr McGann’s explanation that “this was done without the benefit of papers because they were with my accountant” is implausible, given the level of detail in “BISPING 1”. It is not credible that the invoices sent on 13 December 2011 were put together simply from memory. It is more likely that they were put together from the records then available to Mr McGann and Mr Gwynn, and that those records did not include the invoices on which Mr McGann now relies, because those invoices did not then exist. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 230.6 Sixthly, the fact that Mr McGann’s email dated 16 December 2011, in describing the 3 invoices dated 13 December 2011, specifically distinguishes between “outstanding monies not collected by us” (which appears to be a reference to the commission monies claimed in BISPING 2 and BISPING 3) and “monies invested in you by us over the period of your career building stage” (which seems to be a reference to the monies now claimed in BISPING 1). In relation to these, the 16 December 2011 email says: “also invoiced are the monies expended by us solely on you (not the team) for UFC fight camps, in reality we invested a hell of a lot more but this becomes a grey area as the team were also present”. That, like the 28 May 2011 email which was said to be “consolidated” into the 13 December 2011 invoice, appears to indicate that the sums claimed had very recently been collated or estimated by reference to the available records, a process which would have been unnecessary had the specific sums already been invoiced bout by bout. 230.7 Seventhly, the fact that, even though email correspondence going back to 2005 has been disclosed, there is no reference to any of the letters and emails on which Mr McGann now relies in any of that correspondence. 230.8 Eighthly, the fact that, as at the date when several of the letters and invoices on which Mr McGann now relies purport to have been written, Mr McGann was not physically at the Wolfslair. While that does not make it impossible that he (or someone on his behalf) could have produced these computer-generated documents in this form, they are unlike the small number of invoices and receipts which he verifiably produced at the time, which all seem to be handwritten. 231. In other circumstances, I should have been minded to hold that the effect of Mr McGann’s and Mr Bisping’s words and conduct in the way that they operated their relationship of manager and fighter was to vary the provisions of the Management Agreement in relation to expenses, so as to make Mr Bisping responsible only for those expenses which he was specifically asked to pay, and did in fact pay, bout by bout. However, I can only decide this case on the basis of the pleaded issues 25, and Mr Bisping has not pleaded any such agreement of variation in his Re-Amended Defence & Counterclaim. The nearest he gets (in paragraph 31(c)) is the averment that Mr McGann’s requests for payment of specific expenses (which Mr Bisping then paid) each amounted to an implied representation, sufficient to found an estoppel, that no other expenses were then due. Since the evidence does not establish either any sufficient representation by Mr McGann or any sufficient reliance on any such representation by Mr Bisping, that plea cannot itself provide a good answer to Mr McGann’s claims. See eg Al-

Medenni v. Mars UK Limited [2005] EWCA Civ 1041 per at [21]-[25], per Dyson LJ. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping

232. Nevertheless, in paragraphs 31, 31A and 31B Re-Re-Amended Defence & Counterclaim, Mr Bisping does put Mr McGann to proof of the fact and amount of each item of expense now claimed by him, of the fact that that specific item of expense was properly chargeable to Mr Bisping under clause 2.8 of the Management Agreement, and of the fact that the incurring of that specific item of expense had been approved by Mr Bisping. In my judgment, Mr McGann has failed to discharge that burden of proof. 232.1 First of all, my finding that the letters, invoices and supporting documentation on which Mr McGann now relies for his claim are all recent fabrications means that, in relation to most of the expenses now claimed, there is no reliable proof of the fact and amount of that expense. I except from that finding those airfares for which there are copy printouts from a travel company website, and those expenses which relate to sums paid to Mr Jackson, Mr Neto, Mr Peters and Mr Sterritt, and which those witnesses have confirmed in their own evidence. 232.2 Secondly, even in relation to those sums for which there is reliable proof of the fact and amount, there is no reliable proof (except in relation to the airfares) that they are properly chargeable to Mr Bisping. Mr Jackson, Mr Neto Mr Peters and Mr Sterritt were all (to put the matter broadly) closely associated with Mr McGann and the Wolfslair gym. Mr McGann has not, in my judgment, established that those specific payments to these particular coaches and sparring partners fall within the concept of “extraordinary expenses” for the purposes of clause 2.8, rather than being part of the general overhead for which Mr McGann himself was responsible under the Management Agreement. 232.3 Thirdly, and perhaps most importantly, in relation to each and all of the expenses now claimed by Mr McGann (including the airfares), Mr McGann has failed to establish that that specific item of expense was approved by Mr Bisping as an item chargeable to Mr Bisping. I accept the evidence of Mr McGann and his witnesses that Mr Bisping was closely involved in planning his training for his various bouts. Indeed, Mr Bisping did not deny it. Against the background (as I have found it to be) of the way in which Mr McGann and Mr Bisping operated their relationship in relation to expenses, it seems to me that Mr Bisping’s general approval of the training arrangements for a particular fight, including his approval of particular coaches and sparring partners, did not amount to an approval of the cost of those arrangements as an “extraordinary expense” chargeable to him under clause 2.8. The contrast between the way in which Mr McGann and Mr Bisping dealt with expenses in relation to the Miller fight in December 2011 (see paragraphs 131 to 136 and MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 140 above) and their earlier conduct is telling. It is common ground that Mr Bisping himself paid all expenses in relation to that bout. 233. It follows that, in my judgment, Mr McGann has failed to make out any aspect of this element of his claim.

234. That conclusion makes it unnecessary for me to deal in detail with the alternative argument deployed by Mr Buttimore on behalf of Mr Bisping, which was that, were I to find (as I have) that Mr McGann had fabricated documents in support of his claim, I should strike out those parts of the claim as an abuse of the process, without entering upon the merits. Mr Buttimore relied upon the cases of *Arrow Nominees Inc v Blackledge*<sup>26</sup>, *Masood v Zahoor*<sup>27</sup>, and *Alpha Rocks Solicitors v Alade*<sup>28</sup>.
235. Those authorities make it clear that, where a claimant is guilty of misconduct in relation to proceedings which is so serious that it would be an affront to the court to permit him to continue to prosecute his claim, then the claim may be struck out for that reason. However, as the Court emphasised in *Masood*: .. it must be a very rare case where, at the end of a trial, it would be appropriate for a judge to strike out a case rather than dismiss it in a judgment on the merits in the usual way .. In my judgment, the appropriate way to deal with this aspect of Mr McGann's claim is to deal with it on the merits, as I have done.
236. Mr Bisping also challenged the authenticity of 5 other letters which Mr McGann claimed to have written between January 2008 and April 2011. These letters related to Mr McGann's claims for commission on sums withheld by overseas tax authorities and on the first Range Rover. Mr Bisping's evidence was that he did not receive any of these 5 letters at the time, and that they too were fabrications put together by Mr McGann to bolster his case in this litigation. 237. In relation to these 5 letters there is, however, much less in the contemporary correspondence to support Mr Bisping's allegation of forgery: and, taking all the available evidence into account, I am not satisfied that Mr McGann has also fabricated these 5 further letters. These letters are, in any event, not an integral part of the elements of Mr McGann's claim for commission to which they relate. Even had I found that these letters were fabrications, I should not in all the circumstances have considered it appropriate to strike out these elements of Mr McGann's claim. 27
- [2000] CP Rep 59, CA.
- [2009] EWCA Civ 650, [2010] 1 WLR 746
- [2015] EWCA Civ 685, [2015] 1 WLR 4534 MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping
- (5) Did Mr McGann and Mr Bisping reach an agreement, either in late 2007 and/or in December 2010 to "wipe the slate clean", in such a way as to amount to a settled account and/or a compromise of all existing claims?
238. Mr Bisping's case is that he and Mr McGann reached oral agreements, first at the meeting which took place at the Wellington Arms in late 2007, and subsequently at a meeting in December 2010, which amounted to a "settled accounts" as at the date of each meeting. According to Mr Bisping, these "settled accounts" preclude Mr McGann from seeking any further payment in relation to matters predating them: see paragraphs 35A and 35B of the Re-Re-Amended Defence & Counterclaim.

239. Strictly speaking, to be a “settled account” in equity, the agreed account must be in writing<sup>29</sup>. However, an accord and satisfaction – where the parties agree that a certain figure should be accepted, and the person to whom that sum is owing agrees not to claim any more and the person by whom it is owing agrees not to pay any less – may have much the same effect in law, and can perfectly well be made orally<sup>30</sup>.
240. The parties’ competing accounts of what occurred at the meeting which took place at the Wellington Arms in late 2007 are set out in paragraphs 83 to 86 above. 241. I did not find the evidence of Mr Bisping or of his father, Jan Bisping, about what took place at that meeting to be reliable or convincing. There is no support in any of the contemporary documents for Mr Bisping’s case that he and Mr McGann were in dispute about Mr McGann’s entitlement to commission on “locker-room bonuses”, and compromised that dispute by reaching the kind of mutual settlement agreement which I have just described. On the contrary, the sum of “around” USD 70,000 to which Mr Bisping refers in his witness statement cannot readily be reconciled to the agreed rate of commission due on these bonuses. Nor can this payment, which Mr Bisping says that he agreed and made by cheque, be found in or reconciled with the schedule of payments prepared by Mr Farnsworth. During his oral evidence, Mr Bisping was given the opportunity to produce the cheques to which he was referring. He did in fact produce 2 cheques, but they did not appear to relate to any payment agreed at this meeting. Mr Bisping’s own witness statement does not even refer to “wiping the slate clean”. That detail appears only in the witness statement of his father.
242. Given that the events concerned took place nearly 10 years ago, and that no notes were taken at the time, it is inherently improbable that anyone could remember accurately what was said. It is also, in my judgment, improbable that Mr McGann would voluntarily have given up his claim to outstanding commission on the US withholding 30 *Burk v Brown* (1742) 2 Atk 397 at 399, per Lord Hardwicke LC. See *Phillips-Higgins v Harper* [1954] 1 All ER 116 at 117 per Pearson J; *affd* on another point [1954] 1 QB 411 at 420, CA. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment *Anthony McGann v Michael Bisping* tax elements of Mr Bisping’s earnings in relation to the Shafer fight on 30 December 20,006 and the Evans fight on 17 November 2007, given his awareness that that withholding tax element might later be reclaimed in whole or in part by Mr Bisping. Taking all of the evidence into account, I am not persuaded that what was said and done at that meeting amounted to an agreement of accord and satisfaction between the parties, such as would preclude Mr McGann from continuing his claim for unpaid commission.
243. The rival accounts of the meeting in December 2010 are set out in paragraph 110 above. Mr Bisping’s case that there was a settlement of accounts at that meeting is supported to some extent by his 14 December 2011 email, in which he responded to Mr McGann’s 13 December 2011 claims by saying: .. I have always paid what is due when we square up .. If you recall, we sat down after the Akiyama fight [which took place on 16 October 2010] and squared everything up .. However, that email then went on to say “I need a copy of the agreement between us to see if I owe you any money for the Range Rovers”. That suggests that Mr

Bisping did not see at least that particular claim as having been compromised by any prior agreement. 244. It is not in dispute that Mr Bisping and Mr McGann had frequent meetings to deal with the amounts due between them. Taking all the available evidence into account, it seems to me, on the balance of probabilities, that this December 2010 meeting was just another meeting in that series, and did not involve any agreement amounting to an accord and satisfaction between Mr McGann and Mr Bisping, precluding any further claims from Mr McGann. I do not accept Mr Bisping's evidence to the contrary.

- (6) Did Mr Bisping effectively terminate the Management Agreement, either by agreeing in 2007 that it would come to an end at its expiry, or by giving notice orally and/or by his email dated 24 May 2011?
245. Clause 1.3 of the Management Agreement provides: This agreement shall commence on the date hereof and shall continue for a period of 6 (six) years ("Term") unless previously terminated in accordance with the provisions of this Agreement are set out below. Following the conclusion of the Term this Agreement shall automatically renew for a period of 3 (three) years, unless you notify AM in accordance with clause 7.1 Clause 7.1 provides: Upon expiry of the Term, this Agreement shall automatically renew for a further 3 (three) years, unless you notify AM no sooner than 3 MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping (three) months prior to the end of the Term and no later than one month prior to the end of the Term that you no longer wish to continue using AM's services Also relevant is clause 8.1, which states: All notices or other communications required or permitted to be served on, or given to either party under this Agreement, shall be deemed properly served if in writing and sent by registered post or delivered by hand to the intended party
246. Mr Bisping's case is that he operated the machinery for preventing automatic renewal provided in the second sentence of clause 1.3 by giving notice orally in 2007 and/or in May 2011, and by his email dated 24 May 2011.
247. Mr McGann disputes that anything was said in 2007 about the Management Agreement coming to an end. He accepts that Mr Bisping told him both orally and by email in May 2011 that he did not want the agreement to renew. His case, however, is that that notification was ineffective for the purposes of clause 1.3 for 2 reasons: first, because Mr Bisping's email dated 24 May 2011 was not "properly served", because it was not "sent by registered post or delivered by hand" as required by clause 8.1; and, secondly, because that notice (even if effective) was waived by the agreement which he and Mr Bisping reached at their meeting in Las Vegas in June 2011. 248. I need not spend long on Mr Bisping's allegation of an agreement in 2007. I am not persuaded by his evidence or that of his father that any such agreement was made.
249. However, there is no dispute that Mr Bisping did give notice in May 2011, which was intended to bring the Management Agreement to an end: see paragraphs 119 to 124 above. I must therefore consider Mr McGann's two arguments as to why that notice was not effective.

250. The foundation of Mr McGann's first argument is the submission that, in order to be an effective notification for the purposes of clauses 1.3 and 7.1 of the Management Agreement, the notice must be given in the manner described in clause 8.1, and cannot be given in any other way. 251. In my judgment, that is not the correct interpretation of these clauses. There is nothing in clause 8.1 which expressly or impliedly limits the way in which notices under the Management Agreement may be given. It does not say "notices under this agreement may be given" in one of the following ways<sup>31</sup>. It simply says that notices Contrast the wording of clause 12 of the 1992 ISDA Master Agreement, considered by Carr J in *Greenclose Ltd v National Westminster Bank plc* [2014] EWHC 1156 (Ch), [2014] 2 BCLC 486 at [88] MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment *Anthony McGann v Michael Bisping* "shall be deemed properly served" if given in either of the specified manners. With regard to the ways in which notices can properly be given, it is therefore permissive rather than mandatory. It prescribes the consequences of following the stated method, but does not make that the only way in which service can properly be effected.
252. Mr Bisping's email dated 24 May 2011 was given within the period prescribed by clause 7.1 and, although it was not given in the manner described in clause 8.1, it was in my judgment a perfectly effective notification to Mr McGann, preventing automatic renewal of the Management Agreement.
253. That leaves Mr McGann's second argument which is pleaded in paragraph 12(c) of his Amended Reply as follows: After the defendant's email of 24 May 2011, the Claimant and the Defendant had further communications further to which the parties agreed that their relationship would continue to be governed by the Management Agreement subject to the Claimant agreeing to a reduced commission of 15%
254. The conflicting accounts given by the parties of what (if anything) was agreed between them in Las Vegas in June 2011 are set out in paragraphs 126 to 129 above. Interestingly, both Mr McGann and Mr Bisping say that that agreement was in some way conditional and temporary. Mr McGann says that the agreement to renew the Management Agreement for a further 3 years was unconditional, but the reduction in percentage to 15% was conditional upon Mr Bisping paying his outstanding debts to Mr McGann, as later invoiced on 13 December 2011. Since Mr Bisping did not perform that obligation, Mr McGann is entitled to continue to claim commission at 20% throughout that 3-year period. That is consistent with Mr McGann's argument, which I have held to be misconceived, that the Management Agreement had automatically renewed because Mr Bisping's 24 May 2011 notice to bring it to an end had not been properly served. By contrast, Mr Bisping's case is that his agreement to carry on with Mr McGann as his manager was simply a temporary agreement for a trial period, which it was agreed would be documented by Mr McGann in a new written contract that he would draw up for Mr Bisping to consider and, if he agreed, sign.

255. Mr McGann's case that the parties simply agreed to treat the existing Management Agreement as automatically renewed for 3 years, but at a lower percentage commission, is supported to some extent by his email dated 11 July 2011. However, the opening words of that email were "Just to clarify .. ". Those words, and the fact that Mr McGann felt the need to send that email, suggest to me that no clear agreement was in fact reached, and that both parties came away from the meeting with to [134] MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping different expectations as to what would happen in the future. That is consistent with the fact that the relationship between the parties seems to have broken down by May 2011, and both parties were feeling their way towards a possible reconciliation.
256. No note was made by either party at the Las Vegas meeting. It is impossible to be certain precisely what was said. However, it seems to me to be inherently improbable, given the past circumstances, that Mr Bisping would have agreed an unconditional deal for a further 3 years with Mr McGann, in return only for a 5% reduction in the commission level. After all, the circumstance which had originally brought Mr Bisping and Mr McGann together in the first place was the convenience of the Wolfslair gym and its proximity to Mr Bisping's home. By the end of 2011, however, Mr Bisping was based in California, and was planning to make his life there, not in the North of England. The subsequent correspondence between the parties in relation to the preparations for the Miller fight in 2011 seem to me to show the parties exploring the possibilities of a new and much more arms-length and formal relationship, with Mr McGann working hard to commend his services to Mr Bisping, and Mr Bisping reacting in a rather detached manner.
257. Taking all the evidence into account, I am not satisfied that there was, as Mr McGann suggests, an unconditional agreement for a further 3 years on the terms of the Management Agreement. There was, however, an agreement under which Mr McGann agreed temporarily and on a trial basis to continue to provide his services to Mr Bisping in return for Mr Bisping's agreement to pay commission of 15%. In my judgment, the parties did not agree on the duration of that agreement. Mr McGann's suggestion of a three-year term in his 11 July 2011 email was not expressly accepted by Mr Bisping, and it does not seem to me than an implied acceptance can be spelt out from Mr Bisping's silence or later conduct. That being so, the agreement was terminable on reasonable notice, which Mr Bisping gave shortly after the Miller fight in December 2011.
258. Those findings mean that: 258.1 For the purposes of clause 2.1.1, the "Term" of the Management Agreement ended on 21 July 2011; 258.2 For the purposes of clause 2.1.2 the "period of 3 years following the expiry of the Term" ran from 22 July 2011 to 21 July 2014; 258.3 Notwithstanding the provisions of clauses 2.1.1 and clause 2.2.2, Mr McGann is in principle entitled (subject to the matters considered later in this judgment) to commission at the rate of 15% on any income "arising directly and indirectly from [Mr Bisping's] role as an MMA fighter and/or [Mr Bisping's] image and profile as a professional sportsman and entertainer" MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved

Judgment Anthony McGann v Michael Bisping during the period between the end of the Management Agreement on 21 July 2011 and the end of December 2011, whenever the relevant Commercial Contract was entered into or negotiated. This will include all earnings connected with the Miller fight in December 2011.

259. That means that the Fifth PAR Agreement was entered into after the end of the Term of the Management Agreement, but during the 3-year period following the expiry of the Term. This raises the issue of whether the bouts (other than the Miller bout) falling within the terms of the Fifth PAR fall within the commission provisions in clause 2.1.2 of the Management Agreement. 260. In my judgment, those bouts do fall within the commission provisions in clause 2.1.2. The Fifth PAR Agreement was signed on 2 December 2011, but was in materially identical terms to the Fourth PAR Agreement, except that RMI was now a party in place of MBL. It was simply a modification, for tax purposes, of the existing arrangements, rather than a new agreement. In my judgment, it therefore comes squarely within the category of agreements described as “any renewals, extensions, modifications or variations to Commercial Agreements” in clause 2.1.2.
261. Each fight would have been covered by a specific Bout Agreement, entered into shortly before the fight took place. However, in my judgment, those Bout Agreements were entered into pursuant to the Fifth PAR Agreement, and the earnings from those fights therefore came “from” the Fifth PAR Agreement, within the meaning of clause 2 of the Management Agreement.
- (7) Alternatively, did Mr Bisping bring the Management Agreement to an end in May 2011 or in December 2011 by accepting repudiatory breaches committed by Mr McGann?
262. Since I have already held that the Management Agreement came to an end in July 2011, subject to a temporary trial extension which itself came to an end in December 2011, I can deal with this issue shortly. 263. In paragraph 15 of his Re-Re-Amended Defence & Counterclaim, Mr Bisping pleads that his email dated 24 May 2011, even if (contrary to his primary case) it was ineffective to bring the Management Agreement to an end as a notice under clauses 1.3 and 7.1, was effective to terminate that agreement as his acceptance of Mr McGann’s prior repudiatory breaches of contract. In very broad summary, Mr Bisping’s allegations of breach fall into 4 categories: 263.1 failing to produce proper accounts 263.2 failing to provide access to first-class coaching and training MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 263.3 failing to get Mr Bisping’s approval in advance before engaging third parties on his behalf 263.4 failing to work diligently and with best endeavours to maximise Mr Bisping’s income and/or to promote and protect Mr Bisping’s interests
264. None of these allegations was made in writing until long after the relationship between Mr McGann and Mr Bisping had broken down at the end of 2011. On the contrary, the written and video evidence before the court suggests that Mr Bisping neither had, nor made, any significant complaint during the relevant period about Mr McGann’s performance as his

manager, or about the Wolfslair gym. To take what is, perhaps, the most straightforward example, Mr Bisping's 24 May 2011 email itself stated in terms that "my decision to move on from the Wolfslair is nothing personal, and I have no problem with you guys or the gym. It simply a case of me moving on with my life. I want to thank you both for everything you have done to me over the years .. its been a great 6 years". That email reflects the reality that, by that point in 2011, Mr Bisping's career had moved into a new phase, and he was making a new life in California. Even making allowance for the fact that Mr Bisping would have been reluctant to cause unnecessary offence, the tone and content of that email is wholly inconsistent with his present criticisms. So too is the tone and content of the emails and other correspondence sent in and after December 2011, when the relationship between the parties had finally broken down. From Mr Bisping's side, the only complaint being made even then is that Mr McGann was asking for more money than he was properly entitled to.

265. That having been said, the first category of Mr Bisping's allegations of breach is factually accurate. Under clause 2.9 of the Management Agreement Mr McGann should have produced formal accounts on an annual basis, identifying the monies received and the monies paid out on Mr Bisping's behalf, and should have made those accounts available to Mr Bisping. However, that was not how the parties dealt with each other during their 6-year relationship. Mr McGann at no stage produced formal annual accounts. Instead, financial matters were dealt with on a much more informal basis. Nevertheless, there is no evidence of any written complaint made by or on behalf of Mr Bisping during the term of the Management Agreement about the lack of written annual accounts.
266. Apart from that first category, the written and video evidence clearly shows that all of Mr Bisping's present complaints are either recent inventions or are exaggerations of comparatively minor problems or circumstances which did not trouble him (and about which he did not complain) at the time. One of the less attractive features of Mr Bisping's evidence, and one which significantly damages his credibility, has been his readiness in his Statements of Case and his evidence to seek to bolster his case by making unjustified criticisms of the facilities at the Wolfslair gym and of the quality of Mr McGann's management during the original period of the Management Agreement. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping
267. Even taken at their face value, on no sensible basis could it be said that the various matters relied upon by Mr Bisping were (individually or when taken together) such as to deprive Mr Bisping "of substantially the whole benefit which it was the intention of the parties as expressed in the contract that he should obtain as the consideration for performing" his side of the contract<sup>32</sup>.
268. On both of these bases, factual and legal, there was therefore in my judgment no repudiatory breach of any kind by Mr McGann, and so nothing for Mr Bisping to accept by his email of 24 May 2011.

269. Mr Bisping's criticisms of Mr McGann's management in relation to the Miller fight in December 2011 (pleaded in paragraph 25(c) of the Re-Re-Amended Defence & Counterclaim) have more substance. Mr McGann promised to, but did not, attend the bout, and was not able to give it his full attention. Not merely was he distracted by the fire at the Wolfslair in November 2011, but he was also prevented from entering the USA by the US authorities. His performance of his obligations in relation to this fight therefore fell below the standard which Mr Bisping was reasonably entitled to expect.
270. Even so, had it been necessary for me to do so, I would have held that Mr McGann's failure to attend this fight (and the associated failures of administration and promotion in relation to it) were not so serious as to amount to a repudiatory breach of any express obligation on Mr McGann. These circumstances did, however, serve to bring home to Mr Bisping the fact that being managed by Mr McGann was unlikely to prove to be a satisfactory arrangement, now that Mr Bisping was based in California.
- (8) What rate of commission (if any) is payable by Mr Bisping to Mr McGann for the period from December 2011 onwards?
271. The provisions of clause 2.1.1 of the Management Agreement in relation to commission are set out in paragraph 198 above. Under that clause, Mr McGann is entitled to commission at the rate of 20% of Mr Bisping's income "from any contracts entered into or substantially negotiated during the Term" in relation to the specified matters. That commission will continue to be payable on any income from any such contracts, despite the expiration of the Term on 21 July 2011.
272. As I have already held in relation to Issue 5 above, the arrangement reached by Mr McGann and Mr Bisping in June 2011 was a temporary and provisional one. For the period for which it was in operation - June to December 2011- Mr McGann had agreed to reduce his commission to 15%. In my judgment, there was nothing in that agreement to entitle him to return to claiming 20% in relation to that period. *Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26 at 66, per Diplock LJ. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment *Anthony McGann v Michael Bisping* However, just as the June 2011 agreement was insufficiently definite to bind Mr Bisping to Mr McGann for the whole of a further 3 years, it was similarly insufficiently definite to bind Mr McGann to a 15% commission rate in relation to anything other than income earned during that particular period.
273. Clause 2.1.2 entitles Mr McGann to commission at 15% on Mr Bisping's income "received from any renewals, extensions, modifications or variations to Commercial Contracts entered into for a period of 3 years following the expiry of the Term". That three-year period started on 22 July 2011. Commission at that 15% rate will continue to be payable on any income from any such renewals, extensions etc, even after the expiry of the three-year period on 21 July 2014.

(9) Is Mr McGann time barred from recovering any element of his claim?

274. The Claim Form in this action was issued on 24 October 2012. The limitation period in relation to claims for breach of contract is 6 years from the date the cause of action arose<sup>33</sup>. Prima facie, therefore, any of the claims put forward by Mr McGann in relation to which the cause of action arose prior to 24 October 2006 will therefore be statute-barred

275. The only claim put forward by Mr McGann to which this issue is relevant is Mr McGann's claim for training camp expenses in relation to the Hayes fight on 24 June

2006. Since I have already held under Issue (4) that that claim (in common with all of Mr McGann's claims for expenses) fails, this issue does not arise.

276. Had I been required to decide the issue, I would have decided it against Mr McGann. Mr Lawrence, on behalf of Mr McGann, argued that the cause of action in relation to these expenses only arose when Mr McGann made a demand for them, as his arrangement with Mr Bisping was that they should "lie on the file" and only be payable when Mr Bisping's financial situation improved. In Mr Lawrence's submission, these expenses were therefore only payable at the point at which Mr McGann asked for them to be paid, and that was the point at which the cause of action would arise.

277. However, Mr McGann has pleaded his claim for these training camp expenses as a claim under the Management Agreement, and not as a claim under any separate contract of loan. The law does not generally regard the giving of a period of credit by a seller of goods or supplier of services as a loan for the purposes of the Limitation Act 1980 s 6. So, the relevant period of limitation is that applicable under s 5 to a claim under the Management Agreement, and time would have begun to run at the Limitation Act 1980 s 5. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping moment when payment fell due under the Management Agreement, and not at any later point.

(10) Can Mr McGann recover commission on monies due and/or paid to MBL or RMI?

278. MBL was incorporated in September 2008, and was a party to the Second, Third and Fourth PAR Agreements. RMI was incorporated in October 2011 and was a party to the Fifth PAR Agreement. Mr Bisping's case (as eventually pleaded in paragraph 24 of the Re-Re-Amended Defence & Counterclaim) is that those companies employed him, provided his services to Zuffa under the relevant PAR Agreements and Bout Agreements, and were the entities entitled to payment from Zuffa under those agreements. Those payments were accordingly not income received by Mr Bisping for the purposes of clause 2 of the Management Agreement, and no commission was or is due to Mr McGann on those payments.

279. At my prompting, Mr McGann Re-Amended his Particulars of Claim so as formally to set out his case as to why commission was properly due under the Management Agreement on these payments. In summary, Mr McGann now relies upon 4 arguments: 279.1 Under clause 2.4 of the Management Agreement, all monies received as a result of Mr Bisping's activities

as an MMA fighter should have been paid to Mr McGann rather than to these companies. Mr Bisping is therefore seeking to rely upon his own breach of the Management Agreement in procuring that the payments went to these companies. 279.2 To the extent that these companies received monies as a result of Mr Bisping's activities as an MMA fighter, they did so on Mr Bisping's behalf; 279.3 On the true interpretation of the Management Agreement Mr McGann was entitled to commission on all monies paid as a result of Mr Bisping's activities as an MMA fighter. 279.4 It was an implied term of the Management Agreement that Mr McGann should be entitled to commission on all monies paid as a result of Mr Bisping's activities as an MMA fighter; 280. In my judgment, the first 2 of these arguments are misconceived. 280.1 With regard to the argument based upon clause 2.4, it is circular. Clause 2.4 applies to "all monies received under Commercial Contracts". While it is MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping correct that the definition of "Commercial Contracts" does not specify the parties, and clause 2.4 does not itself specify the person by whom the monies are to be received, it seems clear that this is a reference back to clause 2.1.1, which identifies the relevant monies as "income received by you", ie Mr Bisping. It follows that, unless the monies represent income received by Mr Bisping (in the extended sense in which the word "received" is used in these provisions - see Issue (2) above), they do not fall within clause 2.4. 280.2 The argument that the companies received the money on Mr Bisping's behalf is inconsistent with the structure of the relevant PAR Agreements and Bout Agreements. The PAR Agreements do not expressly identify the party to be paid by Zuffa. However, it would make little commercial sense if the money to be paid under these agreements was, on their true interpretation, to be Mr Bisping's income and not that of the companies. That would defeat the tax- driven purpose of having the companies in the first place. That that is the correct interpretation is made clear by the terms of the various Bout Agreements, all of which refer to payments being made to the company or to "Fighter [ie Mr Bisping] as its authorised agent".

281. Mr McGann's remaining arguments, however, seem to me to have much more force. The commercial context of the Management Agreement included the fact that it was intended to last for 6 years, and was to cover Mr Bisping's "career and related commercial activities on a national and international basis": see Recital (C). Clause 3.6 of the Management Agreement specifically required Mr McGann to provide access to specialist tax advice for Mr Bisping: and it was always likely that tax management advice of that kind might include advice to set up service and similar companies. 282. 283. In those circumstances, it does not seem to me to be stretching the meaning of the words of clause 2.1 of the Management Agreement so as to include income such as this, earned by Mr Bisping's activities as an MMA fighter, and received by companies controlled by him under a contractual structure which he himself had set up for tax and other purposes. It has been said that the processes of consideration of express terms and of the possibility that an implication exists are all part of an overall, and potentially iterative, process of objective construction of the contract as a whole<sup>34</sup>: and, were I to be wrong about the correct interpretation to be put on clause 2.1, I would instead

hold that it was an implied term of the Management Agreement that Mr McGann's entitlement to commission on income under clause 2.1 should not be altered by the use of Mr Bisping of a structure such as this, under which income that would otherwise have been payable and paid to Mr Bisping himself becomes payable and paid at Mr Trump International Golf Club Scotland Ltd v Scottish Ministers [2015] UKSC 74, [2016] 1 WLR 85 at [44], per Lord Mance. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping Bisping's request to a third party. The test for implication is a strict one, particularly in a professionally drafted agreement such as this. However, it seems to me that such a term would here meet all of the relevant criteria: it would be reasonable and equitable; so obvious that 'it goes without saying'; capable of clear expression; and would not contradict any of the express terms of the contract<sup>35</sup>.

284. As I have pointed out in paragraph 216 above, it is not legitimate to use as an aid in the interpretation of a written contract such as this anything which the parties said or did after it was made. However, my view that this result would have been "so obvious that it goes without saying" to a reasonable and objective bystander as the intention of the parties in July 2005 when the Management Agreement was signed is entirely consistent with the way that the parties in fact behaved following the incorporation of MBL in September 2009. It is common ground that the parties in practice treated Mr McGann's commission entitlement as unaffected. Mr Bisping continued to pay Mr McGann his commission (and not to object when Mr McGann deducted his commission at source when the payment came through Mr McGann in accordance with clause 2.4), even though it was MBL, and not Mr Bisping personally, that was entitled to payment from Zuffa under the Second, Third and Fourth PAR Agreements.
285. That means that Mr McGann is in principle entitled (subject to the matters considered later in this judgment) to commission on any relevant monies due and/or paid to MBL or RMI. (11) Is Mr McGann entitled to interest on any of the sums claimed by him, and if so from when at what rates?
286. The Management Agreement contains two provisions dealing with interest: 286.1 Clause 2.6 states: In the event of you receiving any monies as set out in Paragraph 2.1.2, you shall pay the commission due to AM within 14 days of receipt of an invoice from AM. All sums due from you not paid by the due date shall bear interest on a daily basis at the annual rate of 4% over the base rate of the HSBC in London 286.2 Clause 2.10 provides: Upon termination, you shall pay any invoiced amounts to AM in respect of 2.1.1, within 14 days of the date of invoice. All sums due See Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd [2015] UKSC 72,

- [2016] AC 742 at [14] to [32], per Lord Neuberger; and *Hallman Holding Ltd v Webster* [2016] UKPC 3 at [14], per Lord Hodge. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping from you not paid by the due date shall bear interest on a daily basis at the annual rate of 4% over the base rate of the HSBC in London
287. Mr McGann's Re-Amended Particulars of Claim make a claim, in paragraph 32(c), for "interest on any sum awarded in debt or damages calculated 4% over base rate".
288. Mr Bisping has not sought to argue that either of these terms are unenforceable, for example as penalties. In principle, therefore, Mr McGann is entitled to contractual interest in accordance with them on any relevant sums. 289. It is to be noted, however, that under both clause 2.6 and clause 2.10, interest does not begin to run until Mr McGann has invoiced Mr Bisping for the particular amount concerned. In my judgment, these clauses of the Management Agreement (on their true construction) are referring to accurate invoices, not invoices which mis-state the amount or basis of the claim.
290. The only accurate invoice rendered by Mr McGann and Mr Bisping in relation to any of these outstanding sums is his 13 December 2011 invoice "BISPING 3", in relation to the commission due on Mr Bisping's earnings from Zuffa in relation to his fight against Jason Miller earlier that month. That, therefore, is the only sum presently in dispute on which contractual interest can properly be claimed under these provisions.
- (12) To what relief (if any) are Mr McGann and Mr Bisping entitled? 291. In his Re-Amended Particulars of Claim, Mr McGann claims as debt or damages the arrears of commission discussed in Issue (2) and Issue (3) above, and the training camp and other expenses discussed in Issue (4) above. He also claims an account of all further sums payable by Mr Bisping under the Management Agreement, including commission on the sums payable in connection with the Miller fight in December 2011 and other later fights, and in connection with other Commercial Contracts entered into or substantially negotiated during the Term, or renewals, extensions etc of such contracts in the following 3-year period. 292. In his Re-Re-Amended Defence & Counterclaim, Mr Bisping pleads Mr McGann's failure to provide yearly accounts as required by clause 2.9 (or any accounts), and counterclaims for an account.
293. On behalf of Mr Bisping, Mr Buttimore argues that Mr Bisping's entitlement to an account arises both as a matter of contract and because Mr McGann, as his manager and agent, is in equity an accounting party. By contrast, he submits that Mr McGann has no such entitlement, since Mr Bisping has no such contractual obligation and is not an accounting party. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping
294. Mr McGann's pleaded answer to Mr Bisping's assertion that he failed to provide proper accounts as required by clause 2.9 was that he "produced fight by fight breakdowns of income and expenses", and so "did more than was necessary to comply with clause 2.9",

given that Mr Bisping never called upon him to produce annual accounts for inspection. However, I have already held in the discussion of Issue (4) above that Mr McGann's assertion that he produced these fight by fight breakdowns, in the form of letters and invoices after each fight, was untruthful. I have also held in dealing with Issue (5) above that none of the discussions between Mr McGann and Mr Bisping amounted to an accord and satisfaction or settled account. 295. It is not in dispute that much of the income earned by Mr Bisping and his companies from sponsorship deals was paid to Mr McGann, as Mr Bisping's agent. It was therefore his duty, under clause 2.9 and at common law "to preserve and be constantly ready with correct accounts of all his dealings and transactions in the course of his agency" and "to produce to [Mr Bisping] upon request, or to a proper person appointed by [Mr Bisping], all books, correspondence and documents (including emails and other electronic material) under his control relating to [Mr Bisping's] affairs"<sup>36</sup>.

296. There are disputes between Mr McGann and Mr Bisping in the evidence as to whether Mr McGann has in fact passed all of the sponsorship and other income received by him on to Mr Bisping, particularly in relation to sponsorship by MMA Authentics in relation to the Henderson fight on 11 July 2009, and in relation to sponsorship by Hard Nutrition in relation to the Evans fight on 17 November 2007. Those disputes were not explored in detail in the course of the trial, and I cannot resolve them now. They are, in any event, put forward by Mr Bisping simply as examples. In the circumstances, while it is true that Mr Bisping cannot point to any written demand for accounts made by him during the subsistence of the Management Agreement, it seems to me that Mr McGann has no good answer to Mr Bisping's claim that he should now provide proper accounts, year by year, as he was contractually required to do under clause 2.9, and should vouch those accounts by producing all books, correspondence and documents (including emails and other electronic material) under his control relating to Mr Bisping's affairs from the inception of the Management Agreement in July 2005 down to the present.
297. As for McGann's own claim for an account as against Mr Bisping, Mr Buttimore is right in saying that Mr McGann cannot rely upon any contractual right equivalent to clause 2.9 in support of his claim, and that the Management Agreement does not make Mr Bisping a trustee or quasi-trustee of any property, so as to make him an accounting Bowstead & Reynolds on Agency (20th ed) para 6-090. MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping party in equity. An action of account, properly so called, is available to a principal against his agent, but not to an agent against his principal<sup>37</sup>.
298. Nevertheless, clause 2.5 of the Management Agreement requires Mr Bisping to notify Mr McGann upon receipt of any monies or in-kind contributions from any Commercial Contracts. In the light of my decision on Issue (10), that will include receipt by Mr Bisping's companies. Mr Bisping and his companies have plainly received income on which commission is due, but have not complied with that obligation. Mr Bisping's approach to his obligations of disclosure has been reluctant, and his performance of those obligations

inadequate. Moreover, Mr McGann cannot properly comply with his accounting obligations unless Mr Bisping has properly complied with his obligations under clause 2.5. 299. In such circumstances, the court is not powerless to require Mr Bisping to provide details of the income received by himself and his companies, and to vouch those details by production of the relevant books correspondence and documents (including bank statements) simply because he is not an accounting party in equity.

300. The costs of this litigation to date are almost certainly out of all proportion to the sums at stake. I am therefore very reluctant to make any order which is likely to prolong this dispute. However, there remain outstanding issues which, unless the parties can come to a sensible commercial agreement, can only be resolved by ordering a suitable mutual account and enquiry.
301. Taking all the circumstances of the case into account, it seems to me that the best and most economical course that I can take to do justice between the parties is to give judgment in favour of Mr McGann in relation to the specific sums to which he is entitled as a result of my determination of the Issues set out above, and to order the taking of a suitable account and the making of a suitable enquiry and determination between the parties in relation to all outstanding matters, properly vouched on both sides.

## Conclusion

302. For the reasons set out above, the Orders which I propose to make are as follows: 303. I propose to give judgment in favour of Mr McGann in relation to the following sums: 303.1 USD 64,500 in respect of commission at 20% on sums withheld by overseas tax authorities (Issues (2) and (10)) Bowstead & Reynolds on Agency (20th ed) para 6-095, citing Beaumont v Boulton (1802) 7 Ves 599; Mackenzie v Johnston (1819) 4 Madd 373 MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 303.2 USD 40,000 in respect of commission at 20% on the value of the Range Rovers (Issue 3) 303.3 USD 63,750 and USD 975 in respect of commission at 15% on Mr Bisping's admitted earnings in connection with the bout against Jason Miller in December 2011 (Issues 6 and 10) 303.4 USD 45,000 in respect of commission at 15% on Mr Bisping's admitted earnings from Zuffa in connection with the bout against Chael Sonnen in January 2012 (Issues 6 and 10) 303.5 USD 63,750 in respect of commission at 15% on Mr Bisping's admitted earnings from Zuffa in connection with the bout against Brian Stann in September 2012 (Issues 6 and 10) 303.6 USD 45,000 in respect of commission at 15% on Mr Bisping's admitted earnings from Zuffa in connection with the bout against Belfort in January 2013 2012 (Issues 6 and 10) 303.7 USD 63,750 in respect of commission at 15% on Mr Bisping's admitted earnings from Zuffa in connection with the bout against Belcher in April 2013 2012 (Issues 6 and 10) 303.8 USD 45,000 in respect of commission at 15% on Mr Bisping's admitted earnings from Zuffa in connection with the bout against Tim Kennedy in April 2014 (Issues 6 and 10) 303.9 Contractual interest on the sum of USD 67,350 awarded in paragraph 303.3 above at the rate of 4 % over the base rate of HSBC Bank Plc from 13 December 2011 to the

date of judgment (Issue 11).

304. Having regard to the way in which Mr McGann has conducted this litigation, greatly exaggerating his claim and putting forward false documents and false evidence, it seems to me to be inappropriate for me to exercise my discretion under the Senior Courts Act 1981 s 35A to make any further award of interest in his favour, and I do not propose to do so. 305. I propose to dismiss Mr McGann's claim in relation to training camp and other expenses (Issue (4)) 306. I propose to direct that: MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping 306.1 An account should be taken (having regard to the determinations made in this Judgment) of the sums received and payments and deductions made by Mr McGann under the Management Agreement (and under the temporary trial extension thereof agreed by Mr McGann and Mr Bisping in June 2011) year by year for the period from 22 July 2005 up to and including 31 December 2011; 306.2 An enquiry should be made to determine (having regard to the determinations made in this Judgment) what earnings were received by Mr Bisping or by companies associated with him in the period from 22 July 2005 to date on which commission has or should have been paid, and what commission was accordingly due to Mr McGann on those earnings: 306.2.1 Under clause 2.1.1 of the Management Agreement, and 306.2.2 Under clause 2.1.2 of the Management Agreement; 307. 308. 306.3 A determination should be made, as a result of that account and that enquiry and taking into account the sums for which judgment has already been given in this action, as to the net sum (if any) that remains due from Mr McGann to Mr Bisping or from Mr Bisping to Mr McGann; And I intend to order the payment of any sum so found due. I also propose to direct that that account, enquiry, and determination should be dealt with together by a Master of the Queen's Bench Division, and that the parties should by no later than 4 pm on Friday 12 January apply to the Senior Master of the Queen's Bench Division for the matter to be allocated to a Master and for an appointment for directions. I invite the parties to agree a Minute of Order giving effect to this judgment, and dealing with any consequential matters. If the parties cannot reach agreement, a hearing will need to be fixed through the usual channels for me to determine any outstanding matters, and I adjourn all consequential matters (including any applications for permission to appeal) to that hearing. In the circumstances, there is no need for the parties or their representatives to attend the formal handing down of this

## judgement.

309. In case it assists the parties to reach agreement on consequential matters, my provisional view (subject to any further submissions which either side may choose to make to me) is that the appropriate way of dealing with the costs of this action to date is to make no order. To an extent, Mr McGann has been the successful party, in that Mr Bisping is the paying party. However, having regard to the way in which Mr MR RICHARD SALTER QC Sitting as a Deputy Judge of the High Court Approved Judgment Anthony McGann v Michael Bisping McGann has conducted this litigation, it presently seems to me (as I say, subject to any

further submissions that either party may make) that it would be an affront to justice to order Mr Bisping to reimburse any part of Mr McGann's costs of the action. However, Mr Bisping's own conduct in relation to this litigation has fallen well short of the standard that the court is entitled to expect from those who come before it, to such an extent that I presently do not (again, subject to the parties' further submissions) consider that the justice of the case merits an award in Mr Bisping's favour, even in relation to those issues about which Mr McGann has sought to deceive the court. However, I have not reached a final view on these matters, should the parties wish to make further submissions in relation to them.

310. Finally, I yet again encourage the parties to try to settle their differences. Postscript
311. After this judgment was made available to them in draft, the parties requested that the formal handing down should be delayed for a period of some weeks in order to allow time for them, once more, to make efforts to reach a settlement. Unfortunately, no compromise has been achieved, and this judgment must therefore now take effect according to its terms.
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