

JERSEY / JUDGMENT

I -v- J [2016] JRC 118 (11 July 2016)

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judgment

the deputy bailiff: 1. This is a claim by I ("the Plaintiff") against J ("the Defendant") for £50,000 under an alleged agreement. In essence, the Plaintiff claims that the Defendant agreed to pay her £50,000 to transfer her share in X Limited (referred to either as "X" or "the business") to him following the end of a long-term relationship between the Plaintiff and the Defendant. The Defendant denies the existence of any such agreement and consequently the Plaintiff's entitlement to any payment. 2. The background to this matter is as follows:- (i) The parties began a relationship in 1990. (ii) The parties first daughter, Alice (this is not her real name), was born in 1997. (iii) X was incorporated on 19 th October, 2000. It had two issued shares, both held by nominee companies, and the Defendant was the sole director. In October 2002 the Defendant purchased premises and relocated the business. The new premises comprised a garage (including the facility for fuel sales) and a bungalow ("the bungalow") and was situated in St Brelade. The purchase of the new premises was paid for out of the proceeds of sale of a lodging house in the Defendant's name, his personal savings, and a mortgage. (iv) X traded from the new premises and the parties resided there together in the bungalow with their daughter Alice. Prior to moving into the bungalow the parties had not formally lived together. Their second daughter, Maisie (this is not her real name), was born in 2003. (v) In November 2003 the Plaintiff was made a director of X. (vi) In 2007 the Defendant transferred the X's accountancy administration from Mr David Holl ("Mr Holl") to Mr Aldwyn Sully ("Mr Sully") of Artax Accountants ("Artax"). (vii) On 24 th November, 2007, minutes of X reflect the transfer of the two shares in X one each to the Plaintiff and the Defendant from the previous nominee shareholders and on that same date a share certificate was issued in the name of the Plaintiff. There is a dispute as to the basis on which the Plaintiff held her share. It is alleged by the Defendant that the Plaintiff held it as his nominee and pursuant to a written nominee agreement. That is disputed by the Plaintiff who says that she held it in her own name and right. (viii) In or around November 2009, the relationship between the Plaintiff and the Defendant broke down. The Defendant had commenced a new relationship and he moved out of the bungalow in or around March 2010. Subsequently he moved back into the bungalow and the Plaintiff moved out with the children in November 2010. (ix) On 23 rd June, 2010, a letter was signed by the Plaintiff resigning as a director of X. (x) In or around June 2011 the Plaintiff transferred her share in X to the Defendant's new partner. 3. The Plaintiff commenced the present proceedings by Order of Justice on 1 st October, 2014, and the Defendant filed his answer on 6 th November, 2014. 4. Prior to the claim

being made in these proceedings, however, there had been family law proceedings between the Plaintiff and the Defendant relating to questions of parental responsibility and residence concerning their children including an application by the Plaintiff for financial provision under Schedule 1 to the Children Jersey Law 2002 . This dispute was both long running and acrimonious, starting in 2011 with final judgment being handed down in late 2013. It will be necessary to touch on some of the allegations contained within the family law proceedings and the findings of the Family Court in dealing with some aspects of the present claim. The law 5. Although the context of the present claim is the personal relationship between the Plaintiff and the Defendant and the family law proceedings it does not fall to be considered under the regime created by the Matrimonial Causes (Jersey) Law 1949 . The Plaintiff and the Defendant were not married and, accordingly, the powers and remedies available to the Court in proceedings following the breakup of a marriage are not available in this case. 6. In *Flynn v Reid*

[2012] JRC 100 Bailhache, DB (as he then was) said this at paragraph 5:- "The Matrimonial Causes (Jersey) Law 1949 enables the Court to make a wide variety of orders on separation or divorce. The jurisdiction to do so arises from the statute. The legislature recognised a problem arising from the fact that marriage between two people creates legal obligations as well as emotional and/or moral obligations and a breakup of the marriage required a legal solution to the breaking up of the legal obligations. The difficulty with which the Court is having to grapple in this case is one which has exercised the courts of the United Kingdom increasingly over the last 20 years - how to reach a fair result in circumstances where a couple chose to live their lives together outside the institution of marriage, which the law recognises, and nonetheless seek the resolution of the law in relation to their financial matters when they have separated. In her closing submissions, Advocate Hall invited us to make new law. It seems to us that we are entitled to look at all the existing grounds in law upon which a claim by one person against another might be founded, and possibly to extend those grounds if it seems to be appropriate to do so, but we certainly do not feel able to introduce a wholesale new quasi matrimonial causes regime to treat a couple, who remain unmarried, as though they were married and distribute assets amongst them on their separation simply because they considered themselves to be like a married couple. That would be for the legislature, which would give proper and full consideration to the boundaries of the potential for such claims." 7. Further, in that same case the Court, at paragraph 21, said this:- "in relation to the requirement for consent of the parties undertaking the obligations, there must be shown a true consent, a true desire or, adopting the French word, "volonté" that the arrangement become legally binding between them. We do not doubt that both the Plaintiff and the Defendant agreed with what was in the agreement as broadly setting out the position at that time. It reflected the fact that they were indeed a couple and were embarking on a family home together. If, however, the parties have intended its terms to operate in their day to day dealings, they would set up their arrangements quite differently In our judgment, if this is a contractual claim, we must apply ordinary contractual principles....." 8. Accordingly we are applying contract law to this matter although, in assessing the evidence before us, we are

not insensible to its wider context. 9. The classic statement of the elements of a contract under Jersey law is to be found in *Selby v Romeril*

[1996] JLR 210 when Bailhache, Bailiff said (at page

217) the following:- "In our judgment, it may now be asserted that by the law of Jersey, there are four requirements for the creation of a valid contract, namely (a) consent; (b) capacity; (c) an "objet"; and (d) a "cause"." 10. We are to determine, therefore, whether or not there was an agreement between the Plaintiff and the Defendant under which the Defendant would pay to the Plaintiff the sum of £50,000 to transfer her share in X to him. The Plaintiff claims that there was such an agreement. She was, she claims, an equal owner and that her ownership is apparent from her shareholding in X and from her status as a director. It is further apparent, so the Plaintiff claims, from the fact that she worked in and for the business (although her larger contribution was to the family more generally) and she took little money out of the business. What she did take was in any event reinvested into the family and the business. She says there was a clear agreement between herself and the Defendant that they were in the business jointly and that when the relationship ended he had subsequently offered to pay and she had agreed to receive £50,000 for the transfer of her share in the company to the Defendant or his nominee. Whilst this reflected significantly less than the true value of 50% of the business, it was a figure she had agreed and she limited her claim to it. 11. The Defendant denies that any such agreement was made. He was, so he asserts, at all times the beneficial owner of 100% of X and he never agreed to give the Plaintiff, with whom he had, so he said, an on-off relationship, a share in his business. He had funded the business when it was purchased. Whilst the Plaintiff had held a share in the company (representing 50% of its issued share capital) she had done so purely as a nominee and had signed a nominee agreement to that effect. The reason that she had become a nominee was that the Defendant had moved accountancy services from one accountant to another and the new accountant did not provide nominee services. Hence a nominee was needed to hold a share. He never agreed to give her £50,000 for the share she held. 12. In addition to claiming that there was a valid contract for the payment of £50,000 the Plaintiff also pleads in the alternative that the Plaintiff agreed to transfer her share and resign as a director as a result of a misrepresentation by the Defendant. Further, it is suggested, the Court might determine that the Plaintiff was mistaken when she transferred the share and as a result the Defendant has been unjustly enriched. We do not consider that these alternate pleas assist the Plaintiff. Either there was an agreement that the Defendant would pay £50,000 for the share or there was not. 13. We will deal with our consideration of the evidence under the following headings:- (i) The evidence about what was agreed between the Plaintiff and the Defendant; (ii) The Family Court Proceedings; (iii) The evidence of the Plaintiff's status within the business and company; and (iv) The nominee agreement and whether or not the Defendant signed such an agreement. The evidence as to what, if anything, was agreed between the Plaintiff and the Defendant The Plaintiff's evidence 14. The Plaintiff gave evidence before us both in an affidavit and orally. Her evidence supports the background information set out in paragraph 2 above. She

characterises the earlier part of her relationship with the Defendant as on/off and states in her affidavit that she was the sole carer of both of their children and "it was a joint decision that I would care for the children so J would work long hours in the garage to try and build up the business". 15. She describes discovering the Plaintiff's infidelity in 2009 and then an acrimonious split. Although the Defendant had originally moved out of the bungalow in the later part of 2010 he informed her that he wished to move back there with his girlfriend and would live upstairs with his girlfriend whilst the Plaintiff and the children lived downstairs. This was unacceptable. The Plaintiff vacated the home. She says that she was afraid of the Defendant who was a man of quick temper, and she says "the property was in J's sole name and I therefore felt that I had no option but to move out. The girls moved with me in housing which I had been able to obtain through the Housing Trust". The Plaintiff describes an acrimonious separation from the Defendant with a number of proceedings before the Family Court. In those proceedings she provided a number of affidavits and in those affidavits had made reference to the alleged agreement which is the subject of the current proceedings. 16. The Plaintiff also gave evidence about the acquisition of X. At the time, the Defendant had been working at a small garage in St Clement's. The Plaintiff had been living at an address in St Martin and working as a full-time childminder. The Plaintiff and the Defendant did not live together at that point although the Plaintiff describes a close relationship in which the Defendant spent a lot of time at the Plaintiff's home. The Plaintiff would assist the Defendant with household duties and would occasionally assist with his business. She was not paid for this assistance and as she said "I saw my assistance as providing for mine and the children's future". She says that she had always considered the arrangement was building for the future. At the time that the business was acquired, the Plaintiff describes that she was reluctant to leave her home in St Martin but that she gave up that house and moved into the bungalow. She says that it was agreed that the purchase would be made in the Defendant's sole name and she did not ask for it to be put into her name "because it was all J's money". She states, however, that the arrangement under which they had always operated in which the Defendant recognised that her contribution had a monetary value, became more formal. She says that it was "agreed between us that the company would be run as a joint enterprise and that everything would be split equally between us". She also states that she was "always told that any money generated by the company would be for both of our benefit". She said that "in return for enabling him to run the business in this way, J always told me that he would provide for me and the children". She says that she would never have agreed to move into the bungalow and to contribute as she did over the years if it had not been a joint venture. 17. The Plaintiff confirmed to us that she had no knowledge of share transactions in the company which she left entirely to the Defendant. She does, however, claim that she had an active role within the company and would assist the Defendant in the running of the business. She refers to a wide variety of tasks such as the operation of the fuel pumps, collecting vehicle parts, carrying out banking, collecting breakfast for staff, collecting and dropping off vehicles and cleaning hire vehicles. She states that whenever the Defendant went away she assumed responsibility for the day to day running of the business. Her over-riding contribution, as she put it, to the business was,

however, that she was the main care-giver of the children. The Defendant "always operated on the understanding that we were a team". She had not received any salary because, so the Plaintiff alleged, it was agreed between her and the Defendant that the "profits generated by the company would be re-invested back into the company to allow it to establish itself and grow". There was a large extension added to the garage including a larger workshop and two car lifts. The Plaintiff operated initially using a debit card to deal with household expenses from the Defendant's bank account until opening her own account. 18. The Plaintiff gave evidence in her affidavit relating to the shareholdings in the company and said that she had "always assumed that I was a member" and had "always relied upon the agreement reached between us as to how the business and indeed the relationship would be run". She says, however, that she "cannot recall the detail of the conversation, but I specifically recall J told me that my interest in the company would be formalised by way of a transfer of share in the company into my name and that must have been in and around 2007". The Plaintiff tells us that she should have entered into some "form of equity agreement with regard to the purchase of the property to protect myself" but she did not foresee a separation and believed the Defendant when he said that it was a joint venture. 19. At the time of the split, the Plaintiff described numerous discussions about how she could be compensated for her "interest in the business". The discussions focussed on how she had contributed over the years and how she might be compensated for that contribution. There was, so she says, some initial discussion about the purchase of a house for her by the Defendant and then, when the Defendant said that that was unaffordable, the payment of £200,000 for the transfer of her share in the company. The Plaintiff then says that the Defendant indicated that this too was not affordable, and that there was a further agreement that she would transfer her share for the payment of £50,000 as a one off lump sum payment. She characterised this as the final agreement entered into and that she had every intention of being bound by it and receiving the benefit of its terms. It is not clear from the Plaintiff's affidavit when this discussion took place nor precisely what its terms might be and, as set out above, she transferred her share in the company during the course of 2011. She indicated she was glad to do so because it represented a point of separation between herself and the Defendant but also because she expected to receive the £50,000 due under the agreement with him. She did not hold off from transferring the share prior to the payment nor take any steps to ensure that the payment would be made prior to the transfer. Whilst accepting that such a position might "seem odd" she says in her affidavit that she "honestly did not believe J would renege on the agreement". With regard to the nominee agreement, the Plaintiff says that she "categorically denies that I saw or signed this document". 20. In her oral evidence before us, the Plaintiff maintained that she had contributed towards the business and rejected any suggestion by the Defendant to the contrary. Prior to moving into the bungalow she had been in States accommodation and had worked full time. This she stopped doing because of the arrangements between her and the Defendant. In terms of her transfer of her share, she recalled a conversation with Mr Sully in which he told her that the Defendant was "getting a good deal" and that she should make sure that she got the money. She confirmed that she would not have discussed her interest in the business or anything

like that with any of the other employees of the business. 21. In cross-examination the Plaintiff accepted that there had been no arrangement with regard to an interest in the Defendant's business prior to the acquisition of X even though she had, on her evidence, contributed towards it. She confirmed that she viewed everything as being done for the benefit of the home and the children and she referred to discussions of "if the worse came to the worst, the Defendant would always ensure that they had a house." She confirmed that there was no discussion about putting the premises in joint names but that she thought that she was entitled to 50% of the business. It was apparent that the Plaintiff did not fully understand the role of a director. She confirmed that she did not deal with the paperwork related to the business and again she denied that she knew that she had been a shareholder in a nominee capacity. 22. The Plaintiff told us that after the breakup there were discussions between herself and the Defendant. They would have taken place in the garage and in the bungalow but she could not remember the exact words used. She wanted an end of it however and therefore agreed to receive £50,000. It was put to her that if she really thought she was entitled to the money she would never have signed the share transfer form without making sure she received it. The Plaintiff responded that she expected the Defendant to pay it. When challenged on why she had not put forward her claims within the context of the matrimonial proceedings and indeed had waited till 2014 to commence these proceedings the Plaintiff responded that she had been "told to keep the case separate". She did, however, in her affidavit detail how, in the Family Proceedings, she had raised the question of the £50,000 in the following terms:- "After months of discussion we eventually agreed that J would pay me £50,000 to use as a deposit for a house or to set aside for the girls' future..." (affidavit of 14th May, 2013, paragraph 82); "I then naively arranged for the share to be transferred back into J's sole name with J's accountant at the time, Mr Sully. After doing so, J refused to pay me any money or to provide my personal items." (affidavit of 14th May, 2013, paragraph 83). 23. In re-examination the Plaintiff said that she had wanted to deal with the family matter first and then deal with the £50,000 and that was why she had not made the claim at an earlier stage. She points out that in her response to the Defendant's questionnaire in the context of the family proceedings, she referred to the oral agreement that "the Applicant (the Plaintiff) would transfer her share in the business to the Respondent (Defendant) in return for a deposit on a house for herself and the girls, the return of her jewellery and a car. On finding a property the Respondent refused to provide the deposit and after further negotiations the parties agreed on a sum of £50,000. On transfer of the share the Respondent only provided a car for the Applicant and refused to provide the funds." The Defendant's evidence 24. The Defendant also provided evidence in an affidavit supplemented by oral evidence. In connection with the setting up of X he states "I understand that X was set up with two nominee shareholders, both controlled by Roscot.... A nominee agreement was entered into, stating that the Roscot controlled shareholders held shares in X on my behalf and to my order. My understanding was that I was the sole legal owner of X. The fact that there were nominee shareholders was related to the legal point about numbers of shareholders. I have relied on my professional advisers to assist me with that." He explained how it was very important to him that the ownership of the business was

entirely his as he had worked extremely hard by saving and otherwise to enable him to purchase the business. 25. At around the time that X moved to the premises, the administration was transferred to Mr Holl and another nominee arrangement was put in place. The Defendant confirmed that he did not pay very much attention to the legal side of things and he relied on Mr Holl for their purpose. 26. The Defendant describes his relationship with the Plaintiff as "off/on" relationship. At the time that X was set up the first child had been born but even though that was the case, the Plaintiff and the Defendant were not living together at that time as a couple. The second child was born just after the premises had been purchased and the Plaintiff and the Defendant moved in together. 27. Whilst the Defendant tried to look after the financial needs of the Plaintiff, he expressly denied that there was any agreement that the company would be run as a joint enterprise or that everything would be split equally between the parties. He denied that there was any suggestion that they were co-owners of the business. The Defendant was adamant that having his own business was a result of a great deal of hard work and sacrifice and he was protective of X and would never have agreed to anyone else becoming an owner unless they were contributing something significant to the business. He stated that the Plaintiff contributed little to the business and that he denied that that was ever the understanding between them. He describes a relationship that was from his perspective "never fully secure". He describes circumstances in which there had been gaps in his relationship with the Defendant during which times he had been in relationships with other women and he says that it would have been "high risk to have agreed that the business would be split equally between us in these circumstances. I would not have agreed to it, and did not agree to it." 28. The Defendant characterised the Plaintiff's involvement in X as doing "odd jobs around the business". She had no set role. She did not work full time. Because they were a couple he wanted to help her financially but she was always a part-time employee and not a co-owner of the business. 29. The Defendant explained that in 2007 there was a difficulty with a tax return as a result of which he moved from Mr Holl to Mr Sully. As Mr Sully did not have nominee companies it was thought that the simplest way of structuring the transfer was to place the two shares into the name of the Defendant and the Plaintiff. It is in that context, so the Defendant says, that the Plaintiff entered into the nominee agreement. The agreement is incorrectly dated and should have been dated around November or December of 2007. The Defendant explains this error by reference to an erroneous copying of an earlier nominee agreement. He denies that an agreement was ever reached that the Plaintiff transferred the share that she held to him for £50,000 as a one off lump sum payment. As he says "If we had, the paperwork documenting this would naturally have been drawn up alongside the share-transfer form as it would have been a key part of the same transaction". He points out that after the separation the Plaintiff never came to him arguing that he owed her anything in respect of a share in X and the first he heard of her claim was in her affidavit of means of the 18 th February, 2013, sworn in connection with the family proceedings. In the family proceedings, the Defendant had suggested, so the Plaintiff said, that the assets of X were fully his own and that is the basis on which he was to be assessed in connection with any liability for periodic payments. 30. In his oral evidence before us the Defendant pointed

out that the Plaintiff had not made a claim to his share of the profits in the business whilst they were together. It was not, in his view, a question that the Plaintiff had reluctantly left her home in St Martin, which was States accommodation, and given up a job to join him at the garage. It was rather the case that the Plaintiff's job had naturally come to an end once her employer's children had grown up and she was no longer needed. In cross-examination the Defendant was asked about the Plaintiff's status as a director. He answered that she had been made a director so that she could be a signatory. 31. It was put to him in cross-examination that he had alleged in the family proceedings that he had met the Plaintiff at Belcroute slipway and handed over a bag of money containing £50,000 in cash which he did in that way because the Plaintiff was trying to receive rent-rebate and other benefits and she would not have been entitled to it if the Social Security Department had found out that she had received £50,000. He alleged that the Plaintiff had threatened him that if she did not receive the money he would not see the children again. 32. In dealing with the evidence of both the Plaintiff and the Defendant above we have not, of course, gone into every detail but have referred to those matters which we believe to be of significance and to give an overview of the flavour of the evidence of each of them. Some further details are provided elsewhere in this judgment, in particular in connection with the nominee agreement. Family Court Proceedings 33. It is not in our view necessary to refer to the detail of the family law proceedings between the parties to any great extent. There is no doubt that the proceedings were acrimonious and it appears that the family court was content to proceed on the basis that the entirety of the ownership and the income of X could be attributed to the Defendant in making its assessment concerning the payments for the children. 34. In the judgment of the Royal Court in the family law proceedings (I v J (Family)

[2013] JRC 156) the Court's assessment of the mother's financial position does not include any claim for £50,000 or indeed any claim for a half interest in X. With regard to X and in considering the Defendant's financial position, the Court said:- "Indeed he described himself as the sole owner and beneficiary of the business and it is quite clear that that is the reality, whatever the accounts may say". 35. Although the Court made that observation in the context of the position that was then before it, it does not appear to have been asked to proceed on the basis that either the Plaintiff had an interest in X or an entitlement from the Defendant of £50,000. 36. There is reference at paragraph 20 of the judgment to the allegation that the Defendant had paid some £50,000 approximately to the mother "for her shares in the company" which payment the Plaintiff denied. It is clear the Court, which had the benefit of affidavit and oral evidence from the parties, found the evidence of the Defendant implausible. It did not accept that he had paid £50,000 at Belcroute slipway as he alleged and preferred the evidence of the Plaintiff in that regard to the effect that she had received no such sum. Evidence of the Plaintiff's status in the company and the business including the evidence of the various witnesses 37. We heard evidence both in affidavits and orally of the role that the Plaintiff played in the business (some of which has been referred to above) and the understanding of others employed by the business or connected with it as to the Plaintiff's role. 38. We heard from Mr T who in his affidavit

confirmed that he had worked for the Defendant for a long time and felt that he knew him well and knew how X worked as a business. He indicated that he was surprised to hear that the Plaintiff was claiming a 50% ownership in X as he did not think that her behaviour was consistent with someone who owned a valuable stake in a business. He expressed the view that she did not seem to engage and that she had nothing to do with X "beyond doing occasional odd jobs because of her relationship with J". 39. In his evidence before us Mr T was clear that the Defendant ran and owned the business and that, other than referred to above, the Plaintiff had no involvement. Mr T was himself a full-time mechanic. In cross examination Mr T confirmed that he was unaware that the Plaintiff was either a director or at any time a shareholder of X. 40. The Court also received an affidavit from Mr V. Mr V was the manager of X and had held that position since 2002. Throughout the time that he worked for X his position and role had remained largely the same and he describes his role as primarily administrative, making sure that the office side of the business is run properly to enable the Defendant and other mechanics to concentrate on the practical side. He works full time on site at X's premises. He characterises a large portion of his responsibilities as involving paperwork and he acted as the liaison with the company's accountants. He deals with wages, ITIS returns, Social Security returns and other administrative matters arising out of the fact that the business is an employer. 41. Mr V confirms that the Plaintiff had some responsibilities in connection with the business. She would, on occasion, collect parts for the workshop. On other occasions she would drive X employees to wherever they needed to be. She was not, however, a full-time employee and there was not, in Mr V's view, a huge amount for her to do. In his affidavit he characterises her involvement as that of a "part-time handywoman". She received a wage for her responsibilities which was modest and, so he states, "in keeping with the modest nature of her responsibilities". 42. Mr V was surprised to hear of the Plaintiff's claim to be a 50% partner in the business. He had only become aware of that when told by the Defendant as a result of the present proceedings. He had always considered the Defendant to be the sole owner nor had he heard or read anything that caused him to think that that might not in fact be the case. The Plaintiff had not at any point involved herself in the management of X as far as Mr V was concerned. The Defendant, on the other hand, was so involved. Mr V had never discussed any of the business matters with the Plaintiff although he had done so with the Defendant frequently. The Plaintiff had not received any dividend nor ever requested such. 43. Mr V quite properly says that he does not know what the reality is with regard to the ownership of X but he says that the Defendant had always acted like the owner of the business and that the Plaintiff had never given Mr V any indication that she might be a co-owner, either by her words or her behaviour. He was, however, aware that over the years a number of people had held shares in X as a nominee. Knowing the finances of the business as he did, he thought it unlikely that the Defendant would have £50,000 available and had he needed such a sum it would likely have had to come from X and Mr V would have been aware of it. He had no discussions with the Defendant about that. He informs the Court in his affidavit that he remains surprised by the Plaintiff's claim because that did not reflect his experience or understanding. We might remark that Mr V's

evidence tends to support the view of the Family Court, that the Defendant did not hand £50,000 or a similar sum to the Plaintiff on Belcroute slip. 44. In cross-examination Mr V confirmed that he did not know that the Plaintiff was a shareholder, he had not seen any of the legal paperwork nor had he seen any income tax forms which would, as he told us, have been with the company's accountant. 45. The affidavit of Mr W was read by agreement. Mr W worked for X between September 2009 and January 2014 and worked directly with the Defendant as he was learning his trade from him. He said that he had gained a good understanding of the Defendant's role within the business and his impression at all times was that he was "the boss and owner of X". He left X as a result of illness and in his discussions relating to a potential return to work he spoke only to the Defendant because he was the appropriate person to have the discussions with being the boss and owner of X. He was aware that the Plaintiff and the Defendant were a couple but he had nothing to do with the Plaintiff. She did not spend any significant amount of time at the garage and his impression was that the Plaintiff had nothing to do with X during the time that he worked there. 46. What, then, should we make of the evidence of these three witnesses? As the Plaintiff maintains, none of these witnesses were present at, or would be expected to be present at, any discussions between herself and the Defendant relating to her entitlement to a share in X or the basis on which she was a shareholder. We accept that this is the case. It is submitted to us on the Plaintiff's behalf that their understanding would derive entirely from what was told to them by the Defendant and therefore did not advance matters before this Court. 47. In our view it is clear that the evidence of these witnesses do not support the Plaintiff's claim to being a joint owner of X. There is no suggestion that the Plaintiff told any of the employees that she was an owner, that the business was in effect a joint enterprise, nor did she act in a way consistent with that understanding. All of the witnesses proceeded on the basis that it was the Defendant who was the sole owner of the business and the Plaintiff had given them no reason, either by her involvement within the business and activities within it, or by any assertion, to think that the reality was other than that. 48. This of course is not conclusive evidence one way or the other but it does not suggest that the Plaintiff acted as if she was in fact a co-owner (and indeed a director, one of the governing minds of the company) and not simply an employee. The nominee agreement 49. As has already been stated, one of the key areas of dispute between the Plaintiff and the Defendant is the basis on which the Plaintiff held her share in X. There is no doubt that a share in that company was transferred to the Plaintiff on the 24 th July, 2007. Until that time she had not been a shareholder, a fact which she said in evidence she viewed with some surprise. 50. It is the Defendant's case that the Plaintiff held that share as his nominee and he relies to a significant extent on the existence of a "nominee agreement" dated 27 th April, 2005, ("the nominee agreement"). 51. The nominee agreement before the Court is a photocopy only. The original is not available. It is in a fairly standard form and it has the following features:- (i) It is dated 27 th day April, 2005; (ii) It is apparently signed by the Plaintiff; and (iii) It is apparently witnessed by Mr Sully. 52. The date of the nominee agreement does not appear to bear any relation to the date upon which a share was transferred to the Plaintiff. The Defendant

says that the dating was simply an error and it should have been dated 2007 and not 2005. He speculates that the error may have come about because the author of the nominee agreement, which was not him, probably copied the form of the previous nominee agreement, dated 27 th April, 2005, in which the company HS Corporate Services Limited declared that it held a share as nominee for the defendant. We have seen a copy of a nominee agreement bearing that date executed by HS Corporate Services Limited declaring that it holds its share as nominee for the Defendant. 53. The Defendant's explanation for the existence of the nominee agreement is that he had changed X's accountant from Mr Holl to Mr Sully. Mr Holl's business was able to provide nominee services, which it had done, but that was not a service that Mr Sully could provide. Accordingly, it had been necessary to identify a new nominee. The Defendant did not prepare the nominee agreement and assumed that it was done by Mr Sully's office. Mr Sully appeared to have witnessed the agreement. It is in that context, so it appears from the Defendant's case, that the share was transferred to the Plaintiff and the nominee agreement came to be signed. 54. The Plaintiff, for her part, as stated above, disputes that she held the share as a nominee. She had assumed that she was already a 50% shareholder of the company pursuant to the understanding that she had had with the Defendant and was surprised when she discovered that the single share had been transferred into her name as late as July 2007. She categorically denied that she had ever signed the nominee agreement and therefore asserted that her signature had been falsified. 55. Evidence was given by Mr Holl both in affidavit form and before the Court. Mr Holl is a chartered accountant with considerable experience both as an independent practitioner and as the financial director of a substantial professional services firm. He confirms that he was engaged by X in or around 2002 to provide company secretarial and other services. At that time, there were two issued shares in the company held in the name of two companies which were apparently connected to the previous corporate service provider. Those shares were transferred to Mr Holl and an associate of his and held as nominee for the Defendant. In 2005 the shares were transferred to Mr Holl's in-house companies, HS Corporate Services Limited and HS Secretaries Limited which executed nominee agreements to confirm that those shares were held on behalf of the Defendant. 56. In July of 2007, the accountancy services for the company were taken over by Artax which was the business of Mr Sully. Mr Holl confirms that after that time he was no longer involved in providing accountancy services to X. Mr Holl told us that during the time that he was involved with X he prepared the Defendant's tax return on the basis that he was the 100% shareholder in the business and he further confirmed that the Defendant never spoke about the Plaintiff as being a co-owner in the business. He further confirmed that the Defendant would rely on his professional advisers and that during the time that he worked with X he had never met the Plaintiff. He had never received the impression that the Plaintiff was anything to do with the business. 57. We also heard, both in affidavit and in oral evidence, from Mr Sully. He confirmed that he was engaged by X in July 2007 under the trading name of Artax. He remained the advisor to X until around 2012. He confirms that when he first was engaged by X both of the shares were held by companies controlled

by Mr Holl but that Mr Sully, unlike Mr Holl, did not own companies that could act in a nominee capacity. In his affidavit he confirms that:- "As a result, the shares in X were transferred to J and I and an agreement was entered into by I in connection with her share, stating that she held it as a nominee for J I cannot recall whether I was involved in preparing this agreement, as it is a long time ago now." 58. Mr Sully's understanding, as it appears from his affidavit, was that the position had not changed from the time when Mr Holl provided services in that the Defendant was the beneficial owner of the business and other parties on occasions held shares for him as nominee. 59. Whilst Mr Sully did not provide any advice to the Plaintiff he had, what he characterised, as "minor dealings" with her. They sometimes shared car journeys but at no time during his conversations with the Plaintiff did he gain the impression that she was engaged with what was going on at X or that she had an interest in that business even though she was in name a director of it. He confirmed that in June of 2010 the Plaintiff signed an agreement resigning as a director of X. He recalls that he asked her if she was happy to sign the document and that she said that she was. He says that he was unsurprised by this and he also informed us in his affidavit that the share previously held by the Plaintiff had been transferred, under a nominee arrangement, to the Defendant's new girlfriend. 60. Mr Sully was pressed in cross-examination concerning the circumstances of the signing of the nominee agreement. He confirmed that in his view the date must have been an error and probably resulted from a simple copying by whoever prepared the nominee agreement of the date on the earlier nominee agreement created under Mr Holl's time as adviser. Although in his affidavit he makes no mention of it, in his evidence before us he was very clear that the Plaintiff signed the nominee agreement. Mr Sully identified his signature as a witness and stated that he would not have witnessed a blank piece of paper. He indicated that he remembered the Plaintiff signing the nominee agreement. 61. The nominee agreement is, of course, a copy. The original is missing. Mr Sully was clear that he would have given the original agreement to the Defendant as it was an important document. The Defendant's evidence is to the effect that the original had been lost within the offices somewhere of his previous legal adviser. 62. Mr Sully was challenged on the apparent inconsistency between his affidavit in which he said that he could not recall whether he was involved in preparing the nominee agreement and his evidence before us in which he was adamant that he remembered the agreement. It is certainly the case that in his evidence before us he recalled significantly more detail than was set out in his affidavit to the extent that he indicated that he remembered drafting the nominee agreement. He was also challenged on the terms of a letter dated 17 th January, 2011, which he sent to the Comptroller of Income Tax relating to the company's tax returns and the Plaintiff and the Defendant. It is clear that in the Company's 2009 tax returns he had provided information which treated the Plaintiff as beneficially interested in the share that she had and not as a nominee. In his letter of 17 th January, 2011, he corrects that saying that:- "We were then unaware that Ms I held the share as a nominee for Mr J". 63. In cross-examination Mr Sully says that the letter to the Comptroller of Income Tax was inaccurate in that in fact he had been aware that the Plaintiff held her share as a nominee at the time that the 2009 company tax return

had been provided and that the wording in the letter was an error. 64. Aspects of Mr Sully's evidence are, accordingly, inconsistent and the documentation that he accepts he had a hand in contained inaccuracies. 65. We also received evidence from two handwriting experts who were asked to express the view on whether or not it could be said that the signature on the nominee agreement was in fact that of the Plaintiff. 66. We heard first from Dr Hilary Pritchard who prepared a report having examined a range of comparative documents containing known examples of the Plaintiff's signature. She had considered some twelve copy documents ranging in date from 2006 to 2015 and 30 sample signatures made by the Plaintiff at her request. The Plaintiff's signature, as was confirmed by Dr Pritchard and indeed as is apparent to the Court from a simple viewing of examples, varies considerably over time and between documents. Dr Pritchard concluded, however, that on the balance of probabilities the Plaintiff did not write her name in the nominee agreement. Dr Pritchard was pressed by the Court to give some indication of the level of certainty or confidence on which she based her view in terms of a percentage ranging between 51% and 99%. She was, reluctant to be drawn but said "she was not saying that she did not write it, just on the balance of probabilities she did not". 67. We also heard from Mr Paul Craddock of Paul Craddock Consultancy Limited who was a forensic handwriting expert. It is fair to say that his instructions were not identical to those given to Dr Pritchard and he had simply been asked to give an opinion on the degree of variation found between the known signatures belonging to the Plaintiff and how this would affect any report on the authenticity of a questioned signature allegedly belonging to the Plaintiff. He too confirmed that there was "an exceptionally high degree of natural variation amongst them". In his report he referred to the difficulty in examining copy documents as opposed to examples of handwriting on original documents. In his short report he makes the following observation:- "Conclusive statements cannot be made regarding the authenticity of disputed signatures when examining copy documents. The finer detail will be lost in the copying process restricting forensic document examiners ability to check for important details such as pressure patterns, method of construction and line quality. These are features which help determine authenticity. When examining copy documents, unless otherwise indicated, the forensic document examiners opinion is on the signature or handwriting only, not the underlying document. Without examination of the original document it is not possible to determine whether the signature was placed on the document by handwriting or mechanical means." 68. He repeated the view contained in his report that it is impossible to draw a conclusion as to whether or not the signature, particularly where there is a wide degree of natural variation, is the actual signature of the purported signer or not. 69. What then is the Court to make of these various strands of evidence relating to the existence of a nominee agreement and the Plaintiff's signature on it? The Court's own observation of the sample signatures of the Plaintiff is that they contain a very high degree of variation and it was not possible for the Court to conclude with any confidence at all that the signature as it appears on the nominee agreement was not within the range of signatures that could be those of the Plaintiff. In other words the signature was not obviously and apparently not that of the

Plaintiff. The two experts in the case differ in that Dr Pritchard concludes that whereas the Plaintiff might have signed the document on a balance of probabilities she did not do so and Mr Craddock who effectively says that it is impossible to draw any conclusion from the documents. The Plaintiff denies signing the nominee agreement. The evidence of Mr Sully, though perhaps with a number of inconsistencies, is equally clear that she did sign it and that he witnessed it. The Defendant does not claim to play any part in the nominee agreement which he left, so he said, to his professional advisers. It is clear, however, that from the time that the shares in X were issued they were held on a nominee arrangement and they are, so we are informed, held on a nominee arrangement to this day. Did the arrangement change between 2007 and 2010? The Plaintiff appeared to be entirely unclear as to the formalities of her position within the company, at which point she became a shareholder in name or indeed what her position was as a director. In our judgment the Defendant intended at all times for the nominee arrangement to subsist although he relied on his professional advisers to put this in hand. On the balance of probabilities we conclude that the signature of the Plaintiff on the nominee agreement is authentic and we accept the evidence of Mr Sully that he recalls witnessing the Plaintiff's signature of the nominee agreement. We think it likely that the Plaintiff had forgotten signing the nominee agreement. Discussion and Conclusion 70. It is for the Plaintiff to satisfy us that, on the balance of probabilities, an agreement existed between herself and the Plaintiff under which he would pay to her the sum of £50,000. 71. There are a number of ways in which the evidence is unsatisfactory. It is undoubtedly the case that the Defendant's evidence has been found to be unreliable by the Family Court. We, too, do not accept that the Defendant paid £50,000 or any similar sum to the Plaintiff at Belcroute. 72. There is an obvious conflict between the evidence of the Plaintiff and the evidence of the Defendant. 73. We do not doubt that the Plaintiff and the Defendant, being in a relationship, operated and conducted themselves as couples do. We do not doubt that there was some participation by the Plaintiff in the activities of the business and there were, in our view, discussions about the future. We accept that the Plaintiff believed that she and the Defendant were in it together, and that the work that they both did would be for the ultimate benefit of their family. We have no reason to doubt her that there were conversations between the Plaintiff and the Defendant, perhaps frequently, and that things were said and their lives were lived in a way that suggested to the Plaintiff that there was a partnership in the general sense between her and the Defendant in their lives. However, we are not satisfied that there was an agreement in place or that the Defendant promised or intended to give the Plaintiff 50% of X. There were discussions and conversations but, on the part of the Defendant, there was no intention to put things on a legal footing nor any agreement on his part to do so. In our view there was no agreement that the Plaintiff be entitled beneficially to 50% of the shares. We do not think that the Plaintiff understood the distinction between holding shares on one's own account or as a nominee. We are not satisfied that on the balance of probabilities the Defendant agreed to give the Plaintiff 50% of the business and in our judgment she held the share in effect as the Defendant's nominee. 74. However, that is not the end of the matter. Even if the Plaintiff held the share as nominee for the Defendant she

did so at a time when there was a very significant acrimony between them and when claims were being made within the family proceedings. Is there evidence to suggest that the Plaintiff transferred the share back to the Defendant or his nominee because there was an agreement between herself and the Plaintiff that she receive £50,000? 75. It is clear that the sum of £50,000 figured in their conversations. It is clear, as appears from the judgment of the court in the family proceedings mentioned above, that the Defendant suggested that he had transferred £50,000 or thereabouts to the Plaintiff at Belcroute slipway which the Court rejected as implausible. Nonetheless, it is of note that the Defendant himself referred to £50,000 in the context of a payment and claimed, although that claim was not accepted by the Family Court, that he had paid such a sum to the Plaintiff. 76. Although the Plaintiff was not, as we have found, a 50% beneficial owner in the company it seems to us on the balance of probabilities, that discussions did take place between the Plaintiff and the Defendant on the basis that the Plaintiff did have an interest which reflected the contribution that the Plaintiff had made to family life. We accept that following the split between the Plaintiff and the Defendant there were discussions between the Plaintiff and the Defendant as to how she should be compensated for her contribution, and that the Defendant accepted and expressed an obligation to make some form of payment or provision for her. We also think that the Defendant linked that payment to the transfer to him of the share that the Plaintiff held in the company. 77. It may be thought to be somewhat strange that he might do so given that, as we have found, she had no legal right in law to retain the share but we do not doubt that the Defendant was anxious to procure the return of the share to him, avoid a dispute about it, and we think on the balance of probabilities that he agreed to make a payment of £50,000 to the Plaintiff to ensure that she did so and to keep things relatively cordial. 78. In this we accept the evidence of the Plaintiff and in our view it is more likely than not that the Defendant, recognising a moral obligation, if nothing more, to the Plaintiff for her contribution to the relationship over the years and seeking to avoid any difficulties with regard to the transfer of the share made positive representation to her that he would provide for her and ultimately, agreed to pay her £50,000 and, in reliance on that, she transferred the share that she held as nominee to him on the basis that he would pay her £50,000 in return for giving up any claim she might have in the business. It was intended at the time, by both of them, to be an agreement and legally binding. 79. The share was transferred but the agreed payment has not been made. In our judgment, therefore, the Defendant owes the Plaintiff the sum of £50,000 with interest from the date of the transfer in June of 2011 until the date of payment at the Court rate. 80. In the light of this finding we do not need to deal with the alternate basis on which the Plaintiff pleads her case. *Authorities Children Jersey Law 2002. Matrimonial Causes (Jersey) Law 1949. Flynn v Reid*

[2012] JRC 100 . *Selby v Romeril*

[1996] JLR 210 . *I v J (Family)*

[2013] JRC 156 . Page Last Updated: 18 Aug 2016 BAILII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

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