



BL-2020-000880

Neutral Citation Number: [2023] EWHC 930 (Ch)

Case No: BL-2020-000880

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**BUSINESS LIST (ChD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 28/04/2023

**Before:**

**MR JUSTICE MICHAEL GREEN**

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**Between:**

**Eva Green**

**Claimant/  
Defendant to  
Counterclaim  
and Additional  
Claim**

**- and -**

**(1) White Lantern Film (Britannica) Ltd**

**Defendant/  
Counterclaimant**

**(2) SMC Speciality Finance LLC**  
**(a company incorporated under the laws of the State  
of California)**

**Additional Claimant**

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**Edmund Cullen KC & Amanda Hadkiss (instructed by Archerfield Partners LLP) for the  
Claimant**

**Max Mallin KC, James Goodwin & Lemuel Lucan-Wilson (instructed by Mishcon de Reya  
LLP) for the Defendant and Additional Claimant**

Hearing dates: 26, 27, 30, 31 January; 2, 3, 6, 7, 8 February 2023; 13 and 14 March 2023

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**Approved Judgment**

This judgment was handed down remotely at 10.00am on Friday 28 April 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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MR JUSTICE MICHAEL GREEN

Mr Justice Michael Green:

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## **A. INTRODUCTION**

1. This trial is concerned with the fallout from a proposed film called “*A Patriot*” (the “**Film**”) that was never made. It was to star the Claimant, Ms Eva Green, an internationally renowned actor, perhaps best known for her role alongside Daniel Craig in the James Bond movie, *Casino Royale*. Her fee for the Film was \$1 million (the “**Fee**”) and that sum is held by her agent, Tavistock Wood Management Limited (“**Tavistock Wood**”) in escrow. Her claim is for the Fee which she says is payable to her under the terms of her Artist Agreement dated 15 May 2019, as later amended (the “**Artist Agreement**”).
2. The Defendant and Counterclaimant, White Lantern Film (Britannica) Limited (“**White Lantern**”) is a special purpose vehicle formed for the purpose of producing the Film. It was the other party to the Artist Agreement. Its directors and sole shareholders at the material time were Mr Dan Pringle, who wrote the script for the Film and was to be its director, and Mr Adam Merrifield, who was the producer (together referred to as the “**Former Directors**”). They gave evidence for Ms Green and therefore against their former company, White Lantern.
3. SMC Specialty Finance LLC (“**SMC**”) is an American company specialising in film finance, particularly bridge lending. It is part of the Sherborne Media Capital Group. It provided a bridge loan to White Lantern to finance the Film’s initial pre-production costs including the Fee. This was pursuant to a Bridge Loan Agreement dated 15 May 2019 which included a Share Charge over the shares in White Lantern. After production of the Film was shut down, SMC exercised its Share Charge and replaced the Former Directors with their own appointees. Thus White Lantern is now, and during these proceedings was, controlled by SMC (together they will be referred to as the “**Defendants**”).
4. The Defendants deny that Ms Green is entitled to the Fee. They say that on 22 September 2019 Ms Green renounced the Artist Agreement and/or that she was in repudiatory breach of it. They further say that the evidence demonstrates that Ms Green was not truly ready, willing and able to perform her obligations under the Artist Agreement.
5. The events of the weekend of 21/22 September 2019, and the days immediately following, are at the core of the case. Shortly before the start of the trial, a number of audio recordings made on Mr Merrifield’s mobile phone were discovered, including certain critical conversations over that weekend. Mr Edmund Cullen KC, appearing with Ms Amanda Hadkiss for Ms Green, submitted that one particular recording on the afternoon of 22 September 2019 blew the Defendants’ renunciation case “*out of the water*”. This will be examined below but it is certainly true to say that the recording showed that what the Defendants’ witnesses had said in their witness statements about the conversations that took place on that day was not correct.
6. So White Lantern claims the Fee back on the above contractual grounds. In addition, SMC was joined to the proceedings so that the Defendants could make various alternative tortious claims against Ms Green based on an alleged unlawful means conspiracy, deceit and unlawful interference with SMC’s economic interest in White Lantern. The basis for these serious allegations, which were only raised almost two years after the proceedings were issued, is that Ms Green had misrepresented, in the

days after 22 September 2019, that she was “*ready, willing and able*” to perform her services under the Artist Agreement whereas she and the Former Directors knew that she had no such intention and was only saying that to conceal her alleged renunciation and/or to improve her position in the negotiations that were taking place at the time for her to purchase the rights to the Film.

7. Mr Max Mallin KC, who appeared together with Mr James Goodwin and Mr Lemuel Lucan-Wilson for the Defendants, maintained that Ms Green’s expectations for the Film were, right from the start, incompatible with its budget. Accordingly she made unreasonable demands in relation to the hiring of crew members. But matters came to a head when the production was moved from Ireland to Black Hangar Studios (“**Black Hangar**”) in Hampshire, owned by Mr Jake Seal, who became Ms Green’s main focus of discontent including personal animosity and serious concerns as to the sort of movie that could be produced by Mr Seal at Black Hangar. But in a Further Amendment Letter to the Artist Agreement dated 22 August 2019, Ms Green consented to the move from Ireland and to Mr Seal being added as an additional producer. Mr Mallin KC submitted that Ms Green never came to terms with the fact that there was not the money to make the film she wanted to make and that ultimately she pulled out when it was clear that the Film could only be made at Black Hangar under the control of Mr Seal.
8. By contrast, Ms Green’s case is that the Film could not be made because the Defendants’ finance plan fell apart. SMC was merely a bridge lender, funding the production through its initial stages until the long term financiers were meant to take over with SMC being repaid. However that long term finance was never secured and it meant that SMC would have had to finance much further into the production than it would have liked. Mr Cullen KC submitted that from mid-September 2019, SMC was only looking to recover the money it had loaned to White Lantern, which would necessarily involve ensuring that the Fee was paid back to it from the escrow agent. He said that the Defendants had constructed a false narrative designed to tarnish Ms Green’s reputation by reference to comments made by her in private text and WhatsApp messages so as to pressure her into not pursuing the case.
9. There was, indeed, much reference to Ms Green’s private messages and both sides were accusing each other of pretending to be in a position to make the Film at the end of September 2019. The reality is however that neither side was prepared to make the Film that the other wanted to make: Ms Green made it clear that she did not want to make the Film under Mr Seal’s full control; and the Defendants were only interested in recovering SMC’s loan. Once the impasse was realised, the parties engaged in without prejudice negotiations for Ms Green to buy the Film rights in return for the Fee and possibly more. But those negotiations eventually broke down, by which time the Film could not be produced and the Defendants claimed that Ms Green had breached the Artist Agreement which they purported to terminate in order to recover the Fee.
10. Towards the end of the evidence, and as a result of something said in the oral evidence of Mr Charles Collier, who is Ms Green’s agent, in relation to telephone calls that he said he had with Ms Green on 23 September 2019, the Defendants sought disclosure of his telephone logs and any other relevant messages passing between Mr Collier or any other members of his team at Tavistock Wood and Ms Green. It emerged that there had been a serious failure in the disclosure process on behalf of Ms Green and a substantial number of additional WhatsApp, text and voicemail messages have been disclosed. This necessitated a delay to the end of the trial to ensure that full disclosure was given

and the Defendants had a good opportunity to review that disclosure and decide whether they wished to recall any witnesses for further cross-examination. In the event they decided not to apply for such a recall and the trial's closing submissions proceeded thereafter. The effect was a serious disruption to the trial timetable and the use of the court's resources. As it has turned out, the further disclosure may have little impact on the issues I have to decide, in particular whether there was a renunciation, but Mr Cullen KC properly apologised on behalf of his client and those involved in the disclosure process for their failures and the unfortunate impact it has had on the trial process. I will consider the new disclosure insofar as it is relevant in the course of setting out my factual findings below.

11. The case is relatively straightforward, it seems to me, both factually and legally – there was little dispute on the law – but it has been complicated by convoluted and overtechnical theories as to what happened and the purportedly malign strategies being adopted by the other side at the time. In my view there has also been an overinterpretation of the recordings' transcripts and private messages. Nevertheless, I will endeavour to cut through the froth and decide what did actually happen by reference to the available contemporaneous evidence as supplemented or explained by the oral evidence.

## **B. THE ISSUES**

12. The parties were virtually agreed on what the live issues were before me and they were set out in their separate lists of issues. The absolutely core issue, and this was put at the forefront of the Defendants' case, is whether Ms Green renounced her obligations under the Artist Agreement in a telephone conversation with Mr Pringle and Mr Merrifield on 22 September 2019. The Defendants' case is, in reality, completely dependent on establishing that there was such a renunciation. They do also refer in their pleadings to alleged repudiatory breaches of the Artist Agreement but these were not pressed at the trial and virtually no submissions were made about them by Mr Mallin KC.
13. If there was a renunciation by Ms Green, the Defendants allege that it was accepted by White Lantern so as to terminate the Artist Agreement. Until the first day of the trial this was solely based on a notice served on 18 October 2019. But at the start of the trial I gave permission to the Defendants to plead that there had been acceptance on or around 22 September 2019 by the conduct of the Former Directors. Finally on renunciation, there is an issue as to whether the alleged renunciation was withdrawn before acceptance and/or whether the Artist Agreement was affirmed by the Former Directors.
14. The somewhat contorted tort claims asserted by the Defendants are summarised in [6] above. As well as whether there was an actual combination and/or fraudulent misrepresentation, there are issues around SMC's reliance and loss suffered as a result. It seems to me (although this was not fully accepted by Mr Mallin KC) that the tort claims are based on there having been a renunciation by Ms Green which White Lantern was prevented from accepting because of the alleged conspiracy between Ms Green and the Former Directors to pretend that Ms Green was "*ready, willing and able*" to perform her services under the Artist Agreement.

### C. THE WITNESS EVIDENCE

15. Both sides accused each other of putting forward dishonest evidence and submitted that various witnesses were lying on oath. Mr Cullen KC put to all four of the Defendants' witnesses that they had combined together to present a wholly false version of what had taken place on 22 September 2019, in particular in relation to the telephone conversations and what Ms Green was said to have done. This was largely based on the new recordings coming to light shortly before the trial and which led to two of the Defendants' witnesses, Mr Seal and Mr Andrew Mann, putting in supplementary witness statements correcting their original witness statements.
16. By way of response, Mr Mallin KC focused on the late disclosure of the recordings, accusing Mr Merrifield of lying about his knowledge of the recordings and the reasons why they were not disclosed earlier. He also alleged that Mr Collier was lying about when he spoke to Ms Green and whether he had authority to send various letters. In relation to Ms Green, he said that she was evasive, failed to answer questions and simply repeated the narrative that she thought supported her case.
17. I will deal with the detail of the witness evidence in the factual chronology section of this judgment. But I make some preliminary and general observations on the witnesses that gave oral evidence.

#### The Claimant's witnesses

18. Including her own, there were seven witness statements filed on Ms Green's side, although one such witness, Mr Paul Sarony, was not in the end called (and I take no account of his witness statement). Another witness, Mr Damien Creagh, was offered for cross-examination, but the Defendants decided not to cross-examine him and his witness statement therefore stands unchallenged. Mr Creagh was the proposed Production Designer for the Film.
19. Ms Green was in some senses a frustrating and unsatisfactory witness. She knew what the case was about and what her case was, namely that she was passionate about the Film and wanted to make it with Mr Pringle as the director but that she became desperately concerned about the sort of movie that would be made if Mr Seal was in full control of the production. She admitted that she had made clear on 22 September 2019 that it was "*impossible*" for her to make the Film under Mr Seal's full control but insisted that, if she had been required under the terms of the Artist Agreement to attend for pre-production and indeed to make the Film under Mr Seal, she would have done so. As she continually repeated, and this was stressed by Mr Collier, she had never breached a contract and had never not turned up on time to make a film.
20. But for such a perfectionist in her art, she was surprisingly under-prepared for her evidence. I understand the torment it must have been for her to have all her private texts and WhatsApp messages revealed in open court and scrutinised for what they disclosed about her true state of mind and intentions in relation to the Film. She said it was "*humiliating*" but some of her explanations for the language she used and the feelings she expressed – such as they were down to her "*Frenchness*" – were not credible or adequate. However I do think allowances need to be made for the heightened emotions

that were clearly present when some of the messages were written and for the fact that these were assumed to be personal correspondence between friends that would never have been imagined to be seen by anyone else and certainly not analysed to the extent they were. Ms Green continually sought to avoid answering Mr Mallin KC's direct questions about what the words she used meant but I can read the messages for myself and decide what they show, in context, about Ms Green's intentions and actions. She said she was dyslexic and she apparently left school at the age of 16 but this is not really a good reason for not answering straightforward questions.

21. In short, I have to be cautious about accepting Ms Green's spin on the words she has used. But the broad thrust of her evidence, that she did not want to make the Film with Mr Seal in overall control of the Film, which was unexpectedly put to her on 22 September 2019, and that she was trying to find an alternative way to make the Film without him, is credible and fits with her general commitment to the Film. Whether her actions on 22 September 2019 and following constituted a renunciation or repudiation of her obligations under the Artist Agreement will be examined below. But I take account of her evident emotional and forthright personality in explaining her more extreme comments about Mr Seal, whom she clearly detested even though she only met him once, but also about others involved in the Film, including at times Mr Pringle and Mr Merrifield. She was speaking her mind in the private messages, using hyperbolic language not in her native tongue, but that does not mean that it was not an exaggeration of the truth.
22. Mr Pringle was quite a contrast to Ms Green. He wrote the script and was to be the Film's director, even though he had little experience of directing a feature film. Low-key and thoughtful, I found him forthcoming with his answers and quite prepared to make admissions that were potentially contrary to Ms Green's interests, such as that she would never have made the Film if the production was under the control of Mr Seal. He clearly felt totally conflicted with his obligations as a director of White Lantern and its liabilities to SMC as against the sincere desire to make a good quality film with Ms Green in the way he envisaged. He found the situation incredibly confusing at the time, with everyone seemingly play-acting for strategic reasons, but he was of the clear view that production was in a chaotic state with virtually no crew or cast engaged and realistically could not have gone ahead. There were a couple of times where he paused for a long time before answering a difficult question but I found him to be a clear and quietly confident witness, doing his best to assist the court with his honest recollections of the material period.
23. Mr Merrifield was the original producer of the Film and together with Mr Pringle, they were the sole directors and shareholders of White Lantern at the time. Mr Merrifield was a less impressive witness, somewhat dismissive of the questions being properly asked of him. His explanation for the late discovery of the recordings that were made by an app on his phone, together with his explanation for his many smashed or lost phones, seemed incredible but I do not believe he was deliberately trying to conceal the recordings or that his evidence was untruthful. I can understand that the pressure and stress that he was under, which affected both his physical and mental health, led to him forgetting that his phone might have automatically recorded and downloaded to a Dropbox account these important conversations. Mr Mallin KC submitted that Mr Merrifield, even after he had discovered the recordings, chose to disclose them selectively and that this was part of a plan only to disclose those that were favourable



to Ms Green. However, it seems to me that the important recordings do largely support his evidence and Ms Green's case and the fact that thousands of other documents were disclosed throughout the process helps me to conclude that there was no deliberate concealment of this evidence.

24. As to his evidence generally, he too found the situation to be confusing and as a result he was prepared to step aside and let Mr Seal take full control if that was what SMC wanted. Both he and Mr Pringle understood their responsibilities as directors of White Lantern to act in its best interests, but at the time they treated SMC as being in de facto control of White Lantern, making them obliged to go along with whatever SMC wanted. Mr Merrifield struggled with keeping both Ms Green and SMC happy, and I got the impression that it all became too much for him at the critical time and he ended up siding with Ms Green on the basis that the Film had to have her on board and that was only likely to happen if the deal could be done for her to buy the rights in return for her Fee. It meant that his behaviour in the week of 23 September 2019 was inconsistent and his evidence about this was ragged. I do agree with him however that everyone was then pretending that they were able to proceed with making the Film, when what everyone was actually doing was strategically positioning themselves during the negotiations for a deal on the rights and the Fee.
25. Mr Seal repeatedly accused both Mr Pringle and Mr Merrifield of being "*star-struck*" by which I took him to mean they were prepared to cow-tow to everything Ms Green wanted, whereas he was strong enough to resist her demands, because he was not "*star-struck*". Mr Seal may be right about their attitude towards Ms Green but it does not mean that they did not act in the best interests of White Lantern or with the genuine intention to make a good movie, that necessarily involved the lead actor being Ms Green. They were both juggling a number of balls in the air but I do not think that they were blinded to the reality of the production difficulties and the lack of long term financing by the need to keep Ms Green happy.
26. I found Mr Collier, Ms Green's agent for some 20 years, to be frank, credible and honest. I had to pause to consider whether that was an accurate assessment of his evidence when the further disclosures were made but I remain of that view. There was much disagreement between Ms Green and her agent; right from the beginning he had been against her doing the Film and during the summer when the production was in difficulty and it was being moved from Ireland, he was urging her to withdraw gracefully and hand back the Fee. But she strongly disagreed and wanted to make the Film with Mr Pringle, so she overrode his advice. In his evidence he disagreed with some of Ms Green's evidence, in particular whether the making of a poor quality "B" movie would be the end of her career – he said it would not, and it seems to me that that must be right – and also whether an email of 29 July 2019, in which he said that Ms Green was withdrawing from the Film, was sent with her authority or not.
27. Mr Collier accepted that Ms Green could be difficult and high-maintenance, but he insisted that he would never do anything formally on her behalf without her express authority. Mr Collier is a former solicitor and he knows the extent of Ms Green's contractual obligations. He was clear that he would never allow her to breach her contract (he said that would be very detrimental to her career) and everyone around her, including in particular Mr Pringle and Mr Merrifield, knew that Mr Collier would have to sign off on any contractual decision that Ms Green was proposing to make. Mr Collier was only concerned to protect his client's best interests and ensured that whatever Ms

Green may have been saying she was not prejudicing her contractual position. He was rightly outraged at the suggestion that he was giving dishonest evidence and I consider that he gave full, sometimes flamboyant, answers to the questions put to him and I can rely on his evidence.

28. Mr Harry Boyd had been recommended by Ms Green as First Assistant Director and he was engaged by a Deal Confirmation memo dated 23 August 2019. He has tremendous experience in such a role. His evidence mainly concerned the state of preparedness of the Film and the suitability of Black Hangar and Mr Seal for the Film's production. He was scathing of Mr Seal and Black Hangar which he said were like a "*morgue*", with nothing of the usual busyness that would be expected shortly before pre-production. He was also quite critical of Mr Merrifield and said things against Ms Green. He answered all questions put to him straightforwardly and fully and I have no hesitation in saying that his evidence was completely honest and reliable (and the Defendants do not suggest otherwise).
29. Mr Boyd's evidence as to the suitability of Black Hangar for the Film and the experience and character of Mr Seal are backed up by the witness statement of Mr Creagh, the original proposed Production Designer. However, Mr Creagh only visited Black Hangar once, on 29 July 2019, and it was for this reason that the Defendants did not seek to cross-examine him.

#### The Defendants' witnesses

30. Mr Cullen KC mounted a full-scale attack on all four of the Defendants' witnesses in relation to their evidence as to the central issue in the case, namely whether Ms Green renounced her obligations under the Artist Agreement on 22 September 2019. Using very similar wording, and in a seemingly coordinated way (they denied this), all four said that they were told on 22 or 23 September 2019 that: Ms Green no longer wished to make the Film at Black Hangar with Mr Seal; she did not wish to work on the Film "*unbonded*"; she was withdrawing her services from the Film; and she would be returning the Fee.
31. Mr Mann and Mr Seal had said in their witness statements that they were told this in a telephone conversation with Mr Pringle and Mr Merrifield in the afternoon of 22 September 2019. Mr Burlingham said that this was reported to him separately by Mr Mann and Mr Seal. Mr Raskin said that Mr Burlingham passed this on to him. The new recordings, particularly of a short conversation between Mr Mann and Mr Merrifield at 5pm, show that their accounts must be false. Neither Mr Seal nor Mr Pringle were on the call where Mr Merrifield reported Ms Green's reaction to the proposed new production structure. And on any fair reading of the transcript, and having listened to the audio, it is clear that Mr Mann was not being told that Ms Green was withdrawing her services from the Film because it was unbonded and would be returning the Fee. Mr Mann was simply told that Ms Green was "*not keen*" on the proposed new production structure and would prefer to negotiate over the rights to the Film script. He was specifically told that they needed to speak to Mr Collier as he "*owns the keys to the Eva Green castle*".
32. Furthermore, their reaction to what they said they were told was not what would have been expected if they had been told of such a momentous decision having been taken by Ms Green. There was no reliance placed on the alleged renunciation in the

negotiations that followed; it was never even referred to without prejudice or in terms suggesting that they were reserving their position on whether there had been a renunciation. In short, I believe that Mr Cullen KC is correct to submit that the Defendants' witnesses did combine in some way to present a false picture of what they purportedly remembered they were told and this was necessary to provide some evidence of the alleged renunciation. Their credibility as witnesses is seriously damaged by this false evidence going to the heart of their case.

33. Mr Alastair Burlingham was the first of the Defendants' witnesses to be cross-examined. He is the 50% owner and a director of SMC and an experienced film financier and executive producer. He lives in Los Angeles and made a point of emphasising that on the evening of 22 September 2019 he was travelling back from New York, arriving in Los Angeles late in the evening, Pacific time. In his witness statement he stated that he received a call from Mr Mann and later a call from Mr Seal. He said he recalled "*clearly*" the conversation that Mr Seal had relayed of his, Mr Seal's, conversation with Mr Pringle and Mr Mann during which he had been informed of Ms Green's withdrawal from the Film and her instruction to her agent to return the Fee. Even when presented with the transcript of the recording of the conversation between Mr Mann and Mr Merrifield reporting Ms Green's reaction to the new production structure, Mr Burlingham unconvincingly insisted that he must have been told this at some point by one or other of Mr Mann or Mr Seal. I do not accept his evidence and he has decided to adopt the party line in relation to what the Defendants are trying to prove Ms Green said on 22 September 2019.
34. I am afraid that I found Mr Burlingham to be extremely defensive, claiming that he was not an expert on aspects of the making of the Film, despite his many successful years involved in the financing of films. There was much that he exaggerated in his witness statement, such as the difficulties allegedly encountered with the demands of Ms Green. This was all to paint a particular picture of Ms Green as some sort of justification for the actions that the Defendants took or their failure to secure long term financing for the Film. On behalf of SMC, his only objective was to get its money back and I am afraid that this leaves me very sceptical about any statements that SMC was willing to fund the Film to the end of production, particularly if that would mean producing a very low quality Film.
35. It was difficult to see how there could be so much vitriol directed at Mr Seal by Ms Green and her witnesses, particularly as she only met him once, and the others on only a few occasions. I assumed that it was because of what he wanted to do with the Film and his unwillingness to spend money on paying and engaging crew at standard industry rates and generally not being willing to listen to any of the suggestions emanating from Ms Green or Mr Pringle in order to make a good quality movie. But I have to say that, having heard him give evidence, I can see how it might be possible to take an instant dislike to him. In giving evidence he was at times patronising, sarcastic and denigrating; he laughed when he considered that the question betrayed a misunderstanding of how the film industry works; and he had a habit of reinterpreting his own documents in an absurd way. I found him to have an innate aggression and can understand why Ms Green and others might have been displeased to be told that they had to make the Film under his full control. He was unrepentant about his false first witness statement's account of the conversations he had had on 22 September 2019 and I will have to be cautious about

accepting anything from him unless there is independent corroboration by contemporaneous documents or admitted facts.

36. I found Mr Mann to be a far more engaging and credible witness. He was seen at the time, by Ms Green and the Former Directors, as the Film's saviour when he flew in from Australia on or around 17 September 2019, and I could see why. It seemed as though he was taking control of the budget and he was not enamoured with Mr Seal's somewhat wild suggestions of trying to use Spanish tax credits and the like to finance the Film. His evidence in relation to this was straightforward and seemed reliable.
37. But his evidence began to unravel when talking about the weekend of 21 and 22 September 2019 which began with Mr Mann combining with Mr Seal to put forward the new production structure but during which he had a private discussion with Mr Merrifield about the possibility of Ms Green buying the Film rights in return for the Fee. While recognising that his first witness statement had got certain details wrong as revealed by the newly discovered audio recordings (which he repeatedly, rather sarcastically, expressed his gratitude for), he still stuck to the broad thrust of his witness statement. He maintained, incredibly, that it was a simple "*binary*" choice for Ms Green and the answer that was communicated to him by Mr Merrifield was that Ms Green was "*not keen*" and which he took as a complete rejection by her and therefore a withdrawal of her services and an agreement to return her Fee. That interpretation is not consistent with the tone and content of the conversation with Mr Merrifield; nor does it bear any relation to the reality of how he and all others behaved in the following days. No one considered that Ms Green had, or gave, an answer to her so-called "*binary*" choice. That is because it was not put to her as such a choice; nor was it capable of being that as the situation was far more nuanced and everyone understood that both sides had effectively moved into a phase of negotiating over the rights to the script.
38. After hearing Mr Mann's evidence about the conversations on 22 September 2019, I am afraid that my view as to his credibility diminished and I found it difficult to accept his evidence in relation to Ms Green's renunciation. It also undermined the genuineness of his actions taken during that week, when he was purely trying to position SMC in the best position to get the Fee back plus other money that had been lent to White Lantern.
39. The Defendants' final witness was Mr Gary Raskin who is the other 50% owner of SMC. He is a lawyer and managing partner in a law firm in Los Angeles, as well as being Co-Chief Executive, with Mr Burlingham, and General Counsel for SMC. SMC has claimed privilege over a number of communications that passed through Mr Raskin.
40. He was at one further stage removed from the conversations with Ms Green on 22 September 2019 but he still put forward the same story, claiming that this was what he had been told, probably by Mr Burlingham as to what had happened, although in his oral evidence for the first time he said that he thought he might have heard it direct from a call with Mr Mann and Mr Seal. Apart from repeating what Mr Burlingham had said about the difficulties allegedly faced in dealing with Ms Green, the main point of his evidence was in relation to the negotiations with those acting on behalf of Ms Green following 22 September 2019 in relation to a deal to buy the script rights in return for the Fee. Mr Raskin maintained that there was no negotiation about returning the Fee, which was not conditional on the script rights being transferred to Ms Green. I will explore this point below, even though it does not seem to me to be important. The Fee

was always going to be returned if Ms Green acquired the script rights; the only question was whether SMC wanted more than the Fee from Ms Green. The Defendants' case was not really enhanced by Mr Raskin's persistence on this point and I got the impression that his evidence was really at some remove from the material events such that his support for the other witnesses' evidence was really just part of the agreed narrative that they decided to put before the court.

#### **D. FACTUAL NARRATIVE**

##### *(a) The Film*

41. In late 2017, Ms Green was first introduced to the script of the Film. Mr Pringle had been working on the script from 2015. It originally had the working title "*Blood Port*" because it was a horror/thriller film set within a dystopian British port city and was dealing with themes associated with immigration. The title of the Film changed in 2016 to "*Britannica*" and that resulted in the inclusion of that word in the name of White Lantern when it was incorporated on 6 July 2017. Mr Merrifield had, in the early 2000s, set up White Lantern Films and he worked on-and-off with Mr Pringle on producing short films and film-based educational resources. From around 2009, they worked together on developing their own scripted projects, producing two feature-length films. In 2014 they produced a film, *K-Shop*, which was Mr Pringle's first time as writer and director. Thereafter the projects they worked on were broadly with Mr Pringle on the creative side and Mr Merrifield on the business and financial side.
42. During the course of 2016 and 2017, Mr Pringle and Mr Merrifield put together a team to help develop the script, attach cast and seek to raise finance to make the Film. They hired a line producer who drew up a production budget of around \$10 million. Even though they had little experience of making a film on that sort of budget, they realised that something in that region would be required to attract a significant theatrical release either in the UK or the US.
43. Towards the end of 2017, and with the assistance of their casting director, Mr Pringle and Mr Merrifield identified Ms Green as their first choice to play the lead role of *Kate Jones*, who was to be a soldier. Mr Hubbard knew Ms Green's agent, Mr Collier, and sent him the script to pass on to Ms Green. Within a week, Ms Green had responded to say that she loved the script and she wanted to meet up with Mr Pringle to discuss it. Ms Green was so taken with the script because of the unusual opportunity to play a soldier but also she was particularly attracted to the messages of the Film around climate change and migration, about which she was passionate. She met with Mr Pringle and found him inspiring, with a clear vision for her character and the Film. She agreed to make the Film.
44. While Ms Green was very keen, it appears that Mr Collier was not, largely because Mr Pringle and Mr Merrifield seemed to him to be very inexperienced. He advised that, if she wanted to make the Film with them, she should ensure that they were assisted and surrounded by experienced and talented heads of department, preferably people with whom Ms Green had worked before. Mr Pringle and Mr Merrifield were very amenable to this. Even though Mr Collier's advice on legal and contractual matters was always followed by Ms Green, she held sway on the creative side and she decided that she

wanted to make the Film with Mr Pringle and Mr Merrifield. They agreed a fee of \$1 million and Mr Collier insisted that this would be on a “*pay or play*” basis, meaning that she would be paid even if the Film did not get made, and that the Fee be paid into escrow to protect her.

45. With Ms Green on board things moved quite quickly in early 2018. White Lantern attached Kathy Bates and Ed Skrein to the Film and just before the Cannes Film Festival in May, Tim Robbins also joined the project. They engaged a film sales agent called The Exchange and through them were able to achieve significant international pre-sales at Cannes of approximately \$3.7 million, including funding of about \$1.2 million from Sky. These critical pre-sales, which affect the producer’s ability to raise finance for the Film, were largely dependent on the quality of the script and the attachment of Ms Green.
46. White Lantern instructed Mr Christos Michaels, a partner of Lee & Thompson LLP, as the production’s lawyer and they began the process of seeking finance and managing the Film’s financial closing. Mr Michaels introduced White Lantern to Mr Burlingham, as SMC, which was part of the Sherborne Media Capital Group, were providers of interim bridge finance for the Film’s pre-production costs, which were principally Ms Green’s agreed Fee. However, as matters could not be concluded quickly, Ms Green decided to take an alternative offer of a TV series called *The Luminaries* that was to be shot in New Zealand. Mr Pringle and Mr Merrifield kept the role open for Ms Green until her return but it meant that negotiations were put back to early 2019.
47. After Ms Green returned from New Zealand in or around February 2019, negotiations resumed both with her and SMC, together with potential financiers. White Lantern had been speaking to two well-known film financiers in particular, Piccadilly Pictures (“**Piccadilly**”) and Ingenious Media (“**Ingenious**”), both of whom were interested. These were financiers who would be the senior lenders taking the Film all the way through to its completion. They often require the security of a completion bond which is a bespoke film finance insurance product covering the completion and delivery of a film on time and on budget. There were discussions with European Film Bonds (“**EFB**”) in relation to this.
48. By mid-May 2019, agreement was reached with SMC to finance Ms Green’s Fee and other production related expenses by way of a bridge loan, the expectation being that by the time of the maturity of the loan, long term finance would be in place by which the loan would be repaid. The plan was for the Film to be shot in Ireland over the summer of 2019 with principal photography to commence in late July/early August.

*(b) The 15 May 2019 Agreements*

49. On 15 May 2019, the key contractual documentation, including the Artist Agreement, was signed. The important terms are set out below.

(i) The Artist Agreement

50. Mr Collier negotiated with White Lantern that Ms Green should in addition receive an executive producer credit which effectively gave her approval and consultation rights over certain cast and crew roles and the script. While she could be overridden, Ms Green considered that these rights were important to ensure that Mr Pringle had experienced

crew with him and so that she could have her personal team on board, such as her hairdresser, make-up artist and dialect coach.

51. The parties to the Artist Agreement are White Lantern, described as the “*Producer*”, and Ms Green, the “*Artist*”. Ms Green agreed to provide her services as an actor playing the role of *Kate Jones* in the Film. By clause 4, the “*Start Date*” for the Film was “*on or around 1 August 2019*”, meaning that it could be one week either side of that date at White Lantern’s election. By clause 9, it is clear that the Start Date is the start of the Production Period which was to last for 7 weeks and was subject to a “*Stop Date*” of 20 September 2019. By clause 8, a pre-production Period of 4 weeks prior to the Start Date was provided for.
52. Clause 5 of the Artist Agreement specified Ireland as the location for the Film. Ms Green’s prior written approval was required if White Lantern wanted principal photography to take place in another location.
53. The Fee was provided for in clause 12 and it was to be paid to Ms Green’s agent, Tavistock Wood, acting as the Escrow Agent pursuant to the Escrow Agreement that was entered into on the same date between White Lantern, Ms Green and Tavistock Wood. The Fee could only be paid out pursuant to the terms of both Agreements. By clause 12, Ms Green was “*“pay or play” (subject always to applicable events of default, disability, death and force majeure)*”. The Fee became payable “*in equal weekly instalments during principal photography in arrears commencing at the end of the first week following the Start Date.*”
54. As part of the “*pay or play*” provision, clause 13 permitted White Lantern to terminate the Artist Agreement on a no-fault basis:

“the Producer shall have the right to terminate the Artist’s services by written notice at any time prior to or during the Pre-production Period and the Production period without legal justification or excuse whereupon the Producer shall have no further obligation to the Artist hereunder provided that, solely in the event that the Artist is deemed “*pay or play*” for the Fixed Compensation pursuant to clause 12(a) above at the time of such termination, the Producer shall pay the Artist any unpaid portion of the Fixed Compensation”.
55. Clause 17 set out the rights of approval and consultation that Ms Green had. The material rights are set out below:
  - (a) Clause 17(a) set out the approvals which Ms Green had as an executive producer over:

“the final shooting script of the [Film], the director of photography, the production designer (Damien Creagh pre-approved), the head of costume department (Sandy Powell pre-approved), the head of the hair and makeup department (Orla Carroll pre-approved), the head of the stunt department (Gary Powell pre-approved), the lead cast roles of the picture (Helen Hunt pre-approved in the role of Scarlett; Charles Dance preapproved in the role of Doctor Hastings), the roles of Bamford, Khaliffa, Private Mills, Hutchins, Mason and Baker, the casting director (Dan Hubbard pre-approved), the director (Dan Pringle pre-approved) provided that (i) in the event of

disagreement with the financiers and/or guarantor for the [Film], the view of the financiers and/or guarantor shall prevail and (ii) if the artist does not provide her approval or disapproval within 24 hours of a request to do so, the view of the financiers and/or guarantor shall prevail”.

- (b) Clause 17(b) gave Ms Green “*a right of approval with respect to the Artist’s hair, makeup and overall look of the Role and the selection of personnel to provide hair and make-up and wardrobe services with Morna Ferguson (makeup) and Orla Carroll (hair) as pre-approved.*” White Lantern would use reasonable endeavours to contract Ms Ferguson and Ms Carroll in connection with the Film.
- (c) Clause 17(c) gave Ms Green a right of prior approval “*with respect to material changes to the screenplay insofar as they materially alter the Role (the screenplay dated 29 March 2019 is approved); subject always to the rights of financiers of the [Film]*”.
- (d) Clause 17(e) provided that White Lantern would make “*reasonable commercial efforts to engage the services of*” the following:
  - (i) Nancy-Marie Claire for physical training for 2 hours per day across May and June 2019 and thereafter Josh Randall;
  - (ii) Gary Powell or Eunice Huthart for stunt coordination or such other stunt co-ordinator approved by Ms Green;
  - (iii) Debra Bruce-Nazarian as Ms Green’s dialect coach or such other person approved by Ms Green.
- (e) Clause 17(e) also contained a general provision regarding Ms Green’s rights of approval and consultation:

“the Artist’s rights of approval and consultation under this Agreement (including, without limitation, under this clause 17) shall be exercised by the Artist in good faith so as not to frustrate the production and delivery of the Picture in accordance with the approved screenplay, budget, principal photography schedule, post production schedule and other requirements of the Producer and any such approvals shall not be unreasonably withheld or delayed by the Artist”.

56. Clause 26 headed “*Force Majeure/Suspension/Termination*” provided express rights of termination:

(a) Clause 26(a):

“Artist’s engagement shall be deemed suspended or terminated and the Producer shall notify the Artist in writing upon the occurrence of any of the following events:

- (i) if the Artist fails refuses or neglects to perform Artist’s material obligations for reasons other than set forth in clause 26(a)(ii) and clause 26(a)(iii) below which if capable of cure has not been cured within



three (3) days reducible to twenty four (24) hours during principal photography of written notice having been given to Artist or Artist's agent in accordance with this Agreement;

- (ii) if the Artist is prevented from rendering Artist's services by reason of ill health, mental or physical capacity provided that the Producer may only terminate Artist's services if such ill health or incapacity etc. lasts for five (5) consecutive or ten (10) days in the aggregate; or
- (iii) if the production of the Picture is prevented, interrupted or delayed as a result of any event of force majeure [...]"

(b) Clause 26(b):

"Suspension and if applicable termination of the engagement shall have the following effect:

- (i) In the case of a suspension only, it will last as long as the event giving rise to it plus such further period as may be reasonably required by Producer to prepare the resumption of Artist's services or it will last until this agreement is terminated;
- (ii) While it lasts (in the case of suspension only), payments of [Fee] (other than such sums as shall have accrued to the date of suspension or termination) will cease to fall due and upon termination pursuant to clause 26(a), the Artist shall not be entitled to [Fee] in excess of that which has already become due and payable up to the date of termination in accordance with the payment schedule set out in clause 12(b) [...]"

57. Under clause 31, Ms Green also gave several warranties and indemnities:

"[Ms Green] represents and warrants to and with the Producer that [...] (c) the Artist will fully and willingly comply with all directions given on behalf of the Producer as to the manner or portrayal or presentation on the screen of the Role; (d) [Ms Green] will comply with [...] all reasonable requests given by the Producer or its representatives from time to time; (e) throughout the term of this Agreement [Ms Green] will keep the Producer informed of the Artist's whereabouts [...] (l) [Ms Green] will indemnify and at all times keep the Producer fully indemnified against all actions, claims, costs, proceedings and damages whatsoever incurred by and/or awarded against and/or compensation agreed by the Producer in consequence of any breach or non-performance by [Ms Green] of any of the representations, warranties, undertakings and agreements by [Ms Green] in this Agreement."

(ii) The Escrow Agreement

58. The Escrow Agreement was between Ms Green, White Lantern and Tavistock Wood as the Escrow Holder. By clause 2 of the Escrow Agreement, and subject to the execution of the Artist Agreement, White Lantern was obliged to send the Fee to the specified Escrow Account to be under the control of Tavistock Wood. The instalments

of the Fee payable to Ms Green under the Artist Agreement were to be paid from the monies standing in the Escrow Account subject to clause 4 of the Escrow Agreement.

59. Clause 4 of the Escrow Agreement provided as follows:

“If the Producer gives Escrow Holder written notice of an alleged material breach by Artist under the Agreement or of the occurrence of an event which would otherwise entitle Producer to suspend or terminate its payment obligations under the Agreement, Escrow Holder shall not disburse to Artist any further sums from the Escrowed Amount. Escrow Holder shall instead retain in the Escrow Account the balance of the Escrowed Amount remaining undisbursed on the date of Escrow Holder’s receipt of such notice, until the occurrence of the first of any one of the following events:

- a. Escrow Holder receives written instructions from Producer to resume payment of the balance of the Escrowed Amount, in which case Escrow Holder will resume such payments effective upon, and in accordance with, such instructions; or
- b. Escrow Holder receives mutual and consistent written instructions from Producer and Artist (or both of their respective counsel) to pay such amounts either to the Producer or to the Artist, or proportionately to each of them or as otherwise indicated in such instructions, in which event Escrow Holder will make such payment(s) or
- c. Escrow Holder receives a final written award issued by a court of competent jurisdiction instructing Escrow Holder as to the manner in which to make payment, in which event Escrow Holder will comply with said final award or judgment.
- d. Escrow Holder receives notification from Producer of the death of the Artist or of the termination of the Agreement in which event it will immediately notify the Artist (or his representatives) in writing of its receipt of such notification and if the Artist does not dispute such notification within ten (10) business days following receipt of the foregoing written notice, the Escrow Holder will promptly pay the remaining balance of the Deposit standing to the credit of the Escrow Account to the Producer. If the Artist does dispute such notification within the foregoing ten (10) business day period, the Escrow Holder will retain the remaining balance of the Escrowed Amount in the Escrow Account until receipt of the instructions or award specified in sub-paragraphs (b), or (c) above.”

(iii) The Bridge Loan Agreement

60. The Bridge Loan Agreement was between White Lantern and SMC and it provided for a facility to draw down between \$1.4 million and \$2 million over a period of several weeks in order to cover Ms Green’s Fee and other production related expenses. The maturity date of the loan was 70 days after drawdown of the facility by White Lantern, which was 23 July 2019. If the loan was not repaid on the maturity date, this would be an Event of Default and White Lantern became obliged under clause 3.10 to pay Default Interest at the rate of 2% per week for the first 28 days, then 2.5% per week. It was

hoped that by the maturity date, financing from Piccadilly would be in place, from which the loan could be repaid and the punitive rates of Default Interest avoided.

61. The Bridge Loan Agreement referred to two budgets for the Film: a Plan A with a budget of \$6,893,178 – this took into account China pre-sales; and a Plan B with a budget of \$5,312,036 – this excluded China pre-sales. Both budgets and their associated finance plan contemplated the receipt of certain grants and tax credits from various jurisdictions. But these were not certain and depended on spending money in the particular jurisdiction offering the tax credit. At this stage, the Film was going to be made in Ireland and there were substantial Irish tax credits and grants anticipated. But these budgets had to be flexible and depended on what financing was ultimately available. The elements of the Film approved by SMC included Mr Pringle as the director and Mr Merrifield as the producer.

(iv) The Share Charge

62. As security for the repayment of the bridge loan, the Former Directors executed a personal Share Charge of their shares in White Lantern in favour of SMC. This could be enforced if White Lantern defaulted under the Bridge Loan Agreement and would allow SMC to take complete control of White Lantern. Even though White Lantern was in default from 23 July 2019, SMC only exercised the Share Charge on 8 January 2020, when it removed the Former Directors from White Lantern. By clause 6.2 of the Share Charge, the Former Directors agreed not to “do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender, or diminish the value of any of the Secured Assets”.

(v) Producer and Director Loan Out Agreements

63. These Agreements between White Lantern and Mr Pringle’s and Mr Merrifield’s individual service companies provided standard terms of engagement of their respective director and producer services to the Film. Mr Merrifield was entitled to “a credit on screen for the Producer as an individual producer of the Film in first position of all individual producing credits in the main titles of the Film...”

*(c) Early stages of production*

64. Following the signing of the above Agreements, White Lantern set out to assemble the cast and crew for the Film. There was considerable engagement with Ms Green in relation to the crew choices, in particular a Director of Photography (“DOP”) and a First Assistant Director, both of which roles were important to fill with experienced personnel, given the Former Directors’ limited experience of feature film production.
65. However it appears that, from an early stage, Ms Green was concerned about whether the Former Directors would actually commit to someone of sufficiently high calibre. On 31 May 2019, she emailed Mr Collier, saying that she was worried that they were “not willing to invest in a good DOP or 1<sup>st</sup> AD...without a strong, experienced DOP, we are fucked...I am very worried [the Former Directors] are super weak and stupid.” Mr Collier replied later that day to say: “This is turning into a nightmare!! I don’t think it’s too late to return their money and see if we can jump back into Blithe Spirit which now starts 18 June. What do you think?” (Blithe Spirit was a film with Dame Judi Dench that Ms Green had been offered.) Later in the email he said: “I still think it’s

*possible that they get to the end of August and they are not ready to make the film. At which point, under your deal, you keep the money and the film never happens.”* Ms Green was however insistent that she wanted to make the Film and she kept pressing for these key appointments to be made. But Mr Collier was demonstrating his consistent doubts about the Film and whether it was ever going to happen.

66. Mr Pringle, in his witness statement, referred to Ms Green being a “*little unrealistic*” in relation to her suggestions for heads of department and other crew, they being either too high profile or expensive for a Film with their budget. He said that Ms Green had very high standards and only wanted the best individuals involved to ensure a high quality film. It was frustrating for all concerned that their budget might not allow for that sort of quality of crew. The Defendants sought to portray Ms Green as acting unreasonably, but it seems to me that she had committed to the Film because she was passionate about it and wanted to make it as good as possible. She continued to pressure the Former Directors to engage her preferred choice of crew.
67. On 13 June 2019, Mr Collier on Ms Green’s behalf agreed to push back the start date by two weeks “*if that is what’s needed to secure the services of a top flight DOP and the services of Harry Boyd as 1<sup>st</sup> AD.*” On 9 July 2019, White Lantern made a formal request to amend the Artist Agreement to delay the start by four weeks. The amendment to the Artist Agreement was signed by Ms Green on 22 July 2019 providing for a new Start Date “*on or around 1 September 2019 (i.e. up to one (1) week either side at Producer’s election).*”
68. However, on 26 June 2019, unbeknown to Ms Green and Mr Collier, including at the time she was asked to push back the Start Date, White Lantern was informed that Screen Ireland would not be making a grant to the production. This would have a knock-on effect for the hoped-for Irish tax credit of around €1.5 million and it effectively made filming in Ireland unviable. At around the same time, the Belgian “*tax shelter*” finance that was in the Plan A budget at €787,771 collapsed. And it appeared that a significant amount of the China pre-sales that were a critical part of the Plan A budget were falling through.
69. On 23 July 2019, the maturity date of the bridge loan, SMC served a notice of default on White Lantern, making the Default Interest payable. The production was in a state of disarray with no long term finance in place and the need to move production away from Ireland. The Defendants say that from this point on SMC was in de facto control of the production, even though it did not actually take over White Lantern as it was entitled to do under the Share Charge.

*(d) The move from Ireland to Black Hangar*

70. From early July 2019, it appears that SMC and White Lantern had been discussing alternative plans, including filming in England at Black Hangar owned by Mr Seal. He was introduced to the Former Directors by SMC. There had also been brief consideration of shooting in Eastern Europe, but the location was unsuited to the British-style roads and architecture that were needed for the Film.
71. Under the Artist Agreement, a move from Ireland required Ms Green’s consent. The Former Directors were concerned that such consent would not be forthcoming if Ms Green knew of their funding difficulties. SMC told them not to discuss the move from

Ireland or the funding position with Ms Green while they worked out what to do. Ms Green actually asked Mr Merrifield on 20 July 2019 if the “*finance was in place*”, to which he responded that it was. On 21 July 2019, in an email to Mr Burlingham and others, Mr Pringle said that Ms Green “*is still planning for **Plan A in Ireland**. I am under the impression that we have been instructed legally not to mention that anything else is being explored until we have authorisation from everyone to do so...but it remains that our daily conversations with her are still revolving around the original script and Ireland for which she remains very passionate*” (emphasis in original).

72. It is clear that so far as the Former Directors were concerned, Ms Green was fully engaged with the production and assumed that it was going ahead in accordance with the Artist Agreement in Ireland. In his attempt to cast Ms Green in a poor light, Mr Burlingham said in his witness statement that at this time in late July 2019 she had been out of contact with the Former Directors “*for several weeks*” and there had been a “*lack of constructive involvement*” from her. This is flatly inconsistent with what Mr Pringle said in his email, where he referred to their “*daily conversations*” with her, and is part of the false picture painted by the Defendants’ witnesses of Ms Green’s behaviour in relation to the Film.
73. Ms Green was first told of the proposed move from Ireland to Black Hangar on 25 July 2019. As was predicted, Ms Green was shocked and upset by the news, particularly as it had clearly been kept from her for so long by the Former Directors, with whom she had been working so closely. She was also concerned at the way the Irish crew, with whom she had close connections, had been treated. On 27 July 2019, she expressed her frustration in a private email to a friend, Ms Karen Richards, in which she said that she wanted to “*threaten to pull out if we go to the UK but Charles is saying it is too late and I will be in trouble if I do this.*” On the same day, she emailed Mr Merrifield complaining about being deceived by them and saying that only a week earlier he had told her that the financing was in place. She said: “*I find myself in a fragile position as I feel I cannot work with people I don’t trust.*”
74. Mr Merrifield and Mr Pringle profusely apologised to Ms Green for not keeping her informed. They both said that with the move to Black Hangar and with the crew that had already been signed up, they believed that the Film could be made to a good quality. Mr Pringle even went so far as to say that “*legal powers*” meant that he was not meant to discuss finance with her but that “*rules were meant to be broken, and I’m ready to go against the lawyers now to **keep you informed at each and every stage***” (emphasis in original).
75. However on 29 July 2019, Mr Collier confirmed to Ms Green that he had told the Former Directors that “*it was all over and you wanted to exit the project unless things were restored to Ireland.*” Later that night, Mr Collier sent an email to Mr Merrifield which the Defendants maintained was a purported termination of the Artist Agreement and a withdrawal of Ms Green’s services to the Film. The email stated:

“Further to our conversation of this afternoon, this email is to provide [sic] of Eva’s concerns that need to be addressed within the course of this current week. Very sadly, Eva believes that you are in breach of the contract because she feels that you have been misleading her about so many of the facts and circumstances of this production. Further, more generally, she feels that there has been a breach of trust between you both since she feels some of the things you have said about the status

of contracts with the team are not correct and she doesn't know if she can depend on the information she receives from you. Therefore with great regret, she feels there is no alternative but for her to withdraw from the project and terminate the agreement made between her and the producers...

Eva is saddened by the breakdown of communication between the two of you. She feels that she has been open and reasonable throughout the entire process but has not received the same treatment in return. She is frustrated. With all the plans for shooting in Ireland apparently now in ruins and the contracts with the production team now entirely unstable, she does not feel that this relationship can be rebuilt and so therefore needs to exit from this project before any more time is wasted.

I look forward to your response in the hope that we can reach an amicable settlement in order to resolve matters between Eva and the production."

76. Mr Collier insisted in his written and oral evidence that this email was intended to pressure the Former Directors into sorting out the situation and was not an actual withdrawal by Ms Green. This is borne out by the terms of the email in which he asked for Ms Green's concerns to be addressed and in the last sentence looking to reach an amicable settlement to resolve matters and continue with the production. He also made it clear to the Former Directors in a telephone conversation, which Mr Merrifield informed Mr Burlingham about, that Ms Green really wanted a meeting with them to agree a way forward.
77. Ms Green's evidence was that she never saw Mr Collier's email and that there was a misunderstanding of the situation and she never intended to withdraw. On 31 July 2019, she sent an email to Mr Pringle, in which she said that "*there has been a horrible miscommunication between us. I am absolutely devastated by the news that the film has been shut down. Yes, I was angry and felt betrayed that I was being played for a fool. But never, ever did I want this beautiful project to fall apart. Is there any way that we can get it back on track? I have worked too hard and deeply love the project to see it cancelled...*" She sent a further email that day to the Former Directors again expressing her devastation but also relief that they were getting things sorted. From WhatsApp messages between Mr Collier and Ms Green, disclosed as part of the late disclosure after they had given evidence, it is clear that Mr Collier had been told by Ms Green that she did not want to make the Film in the UK, but that she immediately relented after she realised that that would mean the end of the Film and told him that she wanted to make the Film in the UK.
78. Ms Green forwarded her email to the Former Directors to Mr Collier. He was concerned that the potential financiers of the Film were now worried that the relationship had irretrievably broken down and they would need much reassurance that things were back on track. He sent a long email to Ms Green on 1 August 2019 in which he said that the financiers felt there was now too much risk in the project because it was "*all becoming toxic*". He said that she would have to show them that she was "*really united with Dan and Adam*" but how could she do that when "*you say you do not like Adam and do not trust him.*" Mr Collier's advice to Ms Green, as it was before, was to "*move on and not have this misery and this great risk of making a bad film which loses everyone money and makes everyone very unhappy.*" He said that if she got out then, she might be able to avoid being taken to court "*for all the money that has been lost.*"

79. But Ms Green’s mind was made up. She wanted to make the Film with the Former Directors and she did not accept Mr Collier’s advice. On 1 August 2019, she arranged to meet the Former Directors in Paris for dinner to discuss a way forward for the production. She agreed that it could go ahead in England based at Black Hangar. Mr Collier confirmed in an email dated 2 August 2019 to Mr Merrifield that Ms Green was happy to proceed with the Film with principal photography in England and approved Black Hangar in Hampshire. Mr Merrifield responded to say that they would need to amend the Artist Agreement to reflect the changes and requested that the Start Date be pushed back to the end of September 2019. Mr Collier agreed on behalf of Ms Green to a 30 September 2019 Start Date for principal photography.
80. Early in the morning on 3 August 2019, Mr Pringle messaged Ms Green to say that they were still in Paris and whether they could meet up that day because he “*had some bad news from Sherbourne [sic] the financier*”. They did meet up and the “*bad news*” was that SMC’s lawyer, Ms Anwen Griffiths of Lee & Thompson, had told the Former Directors that SMC wanted Mr Seal to be appointed as a producer on the project. Mr Pringle said that he had interpreted this as SMC requiring Mr Seal to be the “*de facto lead producer*” on the Film and that this needed to be communicated to Ms Green. They told Ms Green that they considered that Mr Seal would not have the best interests of the Film at heart. Ms Green said that they made clear to her that they did not trust Mr Seal and his involvement could be very damaging for the project. They were also concerned that Mr Seal was busy on other projects and he might not be fully committed to the Film.
81. There was therefore a fair amount of opposition to Mr Seal’s involvement and a discussion ensued about possible ways of making the Film without him and without SMC being the financier. This was when the possibility was mooted of Ms Green returning the Fee to SMC in return for the rights to the script, which were effectively owned by SMC through its Share Charge. The fact that this was being discussed shows Ms Green’s commitment to making the Film with the Former Directors, as the only way, as they saw it, of producing a high-quality product of the sort they all envisaged.
82. This discussion was followed up by an email from Mr Merrifield on 5 August 2019 in which he referred to an “*unpleasant*” call with Sherborne that evening which meant he was recommending a proposal to remove them from the Film. He said that Sherborne were “*not interested in what type of movie I am thinking of making, the only thing which is important to them is an exit strategy for their funds. They were very aggressive and not interested in anything creative.*” Mr Pringle had also messaged that day to say that “*Piccadilly are 100% behind us and will help finance prep in the coming weeks once we’ve got rid of Sherbourne [sic].*”
83. On 6 August 2019, Mr Merrifield sent a “*Without Prejudice*” letter by email to Ms Green outlining four potential options. These were: (1) return the Fee and walk away; (2) work with production to make the Film with Mr Seal as an additional producer (this may include a lower budget and fewer crew approvals for Ms Green); (3) keep the Fee and the Film does not proceed, which was recognised as being tricky; and (4) settle the SMC loan in exchange for the rights to the script. Both the Former Directors preferred option (4). However, Mr Collier replied to the letter to say that he did not agree with the options set out therein but that an alternative proposal had been put forward by Piccadilly “*to try to save the film*” but that this would require Ms Green cutting her fee to \$750,000. However, and despite further messages between Ms Green and Mr Collier

and his colleagues at Tavistock Wood to the effect that Ms Green could not work with Sherborne or Mr Seal, the various proposals for removing Sherborne from the Film did not proceed at that time.

*(e) The Further Amendment Letter*

84. As noted above, the Artist Agreement needed to be amended to reflect the change of location and other matters. On 13 August 2019, White Lantern’s lawyer, Mr Michaels, produced a draft of the amendments that SMC was effectively seeking. This was unacceptable to Ms Green as it sought unilaterally to reduce the Fee to \$750,000.
85. In relation to Mr Seal, Ms Green had been told by Mr Pringle on 10 August 2019 that SMC wanted Mr Seal in as “*lead producer*”. Ms Green responded immediately: “*No fucking way*”. Two days later, however, Mr Pringle messaged that Mr Seal was being “*more amicable and collaborative*”. But this did not satisfy Ms Green who replied: “*I do not want Jake Seal to be involved at all and we need to shoot in Scotland*”, that being a reference to where they would shoot the Film if Ms Green acquired the rights. And on 14 August 2019, early in the morning, Ms Green messaged Mr Pringle to say: “*The big worry is also Jake Seal. We need to get rid of him and shoot in Scotland. We are wasting so much time and at that pace it doesn’t look [sic] we will be shooting mid-October in Scotland.*”
86. Ms Green was saying the same to Mr Collier and others at Tavistock Wood, as revealed by the late disclosure. On 10 August 2019, she messaged Ms Angharad Wood after she had heard that SMC wanted to change the wording to “*attach Jake Seal as lead producer*”. She said: “*I want Jake Seal OUT NOW.*” Later in the day, Ms Wood responded: “*I feel the same. My only concern is protecting the legal position and also your control. There is no way you are working with Shelborne [sic] and I have told Charles this 400 times.*” On the same day, Mr Collier told Ms Green to wait for Piccadilly to buy out SMC which would remove Mr Seal. Ms Green responded by saying: “*But for some obscure reason, Shelbourne [sic] has been given lots of power...?! That guy Jake Seal owns the studio in Hampshire and wants to fire Adam and have creative approval...*”
87. On 14 August 2019, Mr Collier spoke to Piccadilly and they told him that they would not replace the SMC money. What they said to him was recorded in an email of the same date that Mr Collier sent to Ms Green. Piccadilly had told him that the Film would not be made “*without the Jake money*”. But they also went on to say that Ms Green should not:

“worry too much about Jake. The fact is that he cannot take control of the film. Why? Because unless Piccadilly get the script that they approved and your [sic] approved, unless they and the exchange and all the pre-buyers get the quality film that we investing in, then they will all pull out. They only want the version of the film that you want. So if Jake does try to take control then all the financiers will walk away and the film will collapse and Jake will never get his money back. Therefore, Jake will come back into line because unless he agrees to shoot the film as Dan and you want to shoot it, then the investors will walk away. He will burn and the best way you have to control Jake is that you hold on to that escrow and stick to enforcing the current contract with the version of the script you approved many months ago...



6. Chris and Rob are going to Hampshire to make Jake aware of this. Jake does not control the film. They will only finance and make this film if Jake does what they tell him. And Jake will do that: because if he does not he will lose all his money...

So it is clear that Jake will be put back in his box by Piccadilly and The Exchange and Adam must find a way to work with Jake, because not to do so would be just one of many reasons that brings this crashing down...

In the meantime time [sic], you should Hold the line and don't breach your contract. Or walk away completely."

88. Ms Green was being told that Mr Seal would not be in full control of the production and that he would have to work alongside Mr Merrifield. He was being "*put back in his box*", so far as Ms Green understood. She confirmed in her oral evidence that this was good to hear. I believe that it was on this basis that she thought she was agreeing to Mr Seal being an additional producer.
89. There was further to-ing and fro-ing on the amendments to the Artist Agreement in particular over whether there should be a reduction in the Fee. But finally a revised version was produced and this was agreed and signed on 22 August 2019 (the "**Further Amendment Letter**"). This amended the Artist Agreement to provide for inter alia:
- (i) A postponement of the Start Date of principal photography to one week either side of 14 October 2019;
  - (ii) To record Ms Green's consent to filming in the UK;
  - (iii) To record Ms Green's approval of a revised script;
  - (iv) To record Ms Green's approval of Mr Seal as "*an additional producer*";
  - (v) That Ms Green may request the services of an additional senior producer to act as an Executive Producer on the Film at her own cost; Mr Stephen Burt was pre-approved but Ms Green could alternatively request the services of Mr Boyd as a producer with a producer credit, but again at Ms Green's cost;
  - (vi) That both White Lantern and Ms Green approve the engagement of Mr Boyd as First Assistant Director and Mr Xavi Giménez as DOP; and
  - (vii) To provide for a minimum of 30 days' shooting time.

The parties, together with Mr Giménez and Mr Boyd, had been preparing on the basis that there would be a 4-week period of pre-production. That meant, if principal photography was to start on 14 October 2019, pre-production would commence on 16 September 2019.

(f) *Early September 2019*

90. The Former Directors were immediately concerned at the lack of preparation being carried out at Black Hangar in early September 2019. Mr Seal worked with a Mr Terry

Bird at Black Hangar. At the time they had been using the studios to film a sci-fi TV production called *Salvage Marines* and were hoping to be able to re-use some of the sets and costumes, as well as the crew employed by Black Hangar for the Film. Mr Cullen KC cross-examined Mr Seal on the poor reviews for *Salvage Marines*, including criticism of the production values and the amateurish look of the series. In fairness there were a couple of better reviews, although they too were unimpressed with the quality of the production.

91. Mr Creagh, the potential Production Designer, had visited Black Hangar on 29 July 2019. He said that Mr Seal was very late for the meeting. Mr Creagh was most concerned about the lack of soundproofing on the walls of the studio which was formerly an aircraft hangar. He was told that temporary soundproofing could be installed on the walls but with an open ceiling. Mr Creagh was distinctly unimpressed with the set-up at Black Hangar and the proposed use of local crew.
92. Mr Boyd travelled to Black Hangar in the week of 2 September 2019. This was the only time he visited and he too did not like what he saw. This was six weeks before the start of principal photography and he said he would have expected the studios to be busy with activity but he found them to be like “*a morgue*” which was shocking to him. He also thought the facilities there were inadequate to make the Film and he was concerned about the soundproofing. Mr Seal told him that they would bring in a tent the size of the hangar and that this would block out all the sound. Mr Seal defended this proposal in his evidence but it did strike me as being somewhat unlikely that such a tent would be appropriate. Mr Boyd said that he was “*in no doubt that Black Hangar was not fit for the purpose of making a major motion picture*”. Having said that, Mr Boyd accepted that, as of 23 September 2019, the Film could have been made at Black Hangar, and was prepared to attend for pre-production. Mr Boyd’s views as to the capabilities of Black Hangar as a suitable production facility were perhaps influenced by his view of Mr Seal who he described as “*deceitful, dishonest and despicable*.”
93. Ms Green’s position is that, throughout September 2019, there was a serious lack of preparation for the Film at Black Hangar and doubt as to the competence of Mr Seal and his team to make the Film, certainly to the quality that she wanted. Although Mr Giménez and Mr Boyd had been engaged by way of Deal Confirmation memos, no other crew or cast were signed up. Furthermore, Mr Seal and SMC seemed only to be prepared to pay below standard industry rates of pay, which led to discontentment and delays in securing crew. This actually led to Ms Green offering to contribute towards crew member pay. She was also concerned about the arrangements for preparing for her role which required stunt and physical training sessions but in respect of which there seemed to be little progress.
94. The Defendants say that this has all been overblown and the facilities at Black Hangar were perfectly adequate for the production of the Film. (Mr Mann admitted that Black Hangar was a “*very basic facility*”.) They maintained that it is normal in the industry to engage crew and cast very late and that steps were being actively taken in that regard. In any event, there were existing crew employed by Black Hangar that could be used and also, as referred to above, there could be easy re-purposing of the facilities used on *Salvage Marines* to the Film. The Defendants say that Mr Seal’s and SMC’s principal focus at the time was preparing a budget, settling a finance plan and negotiating with potential financiers, such as Piccadilly and Ingenious, for the long term funding of the Film and which would enable SMC to be repaid.

95. There were two meetings on 5 September 2019: the first was a production meeting attended by the Former Directors, Mr Seal, Mr Boyd and Ms Green; the second was later in the day and it was a finance meeting at Lee & Thompson’s offices between the Former Directors, Mr Burlingham, Mr Raskin, Mr Seal and representatives from Piccadilly. The first meeting was the one and only time Ms Green met Mr Seal. He said in his witness statement that he told Ms Green that the net budget for the Film was £4.05 million on a cash strike basis (i.e. what was needed from that point on) and that SMC was prepared to finance the Film through to principal photography if that was necessary. Ms Green disputed that she was told this and said that she raised issues such as her personal and stunt training which Mr Seal assured her could commence the following Monday 9 September 2019. This did not in the event happen.
96. I do not think the budget or finance plan would have been shared with Ms Green. This would have been contrary to SMC’s and Mr Seal’s policy of not disclosing financial information to anyone else, particularly Ms Green. Furthermore it was only at the later meeting that day that Mr Burlingham and Mr Raskin confirmed that SMC would bridge the cash flow into principal photography, effectively to when they hoped there would be a financial close with Piccadilly. Mr Burlingham said that he “*understood*” that the commitment had been disclosed to Ms Green but I do not see why they would have done this. Furthermore, later emails from Mr Seal and Mr Burlingham suggest that SMC had not made any such commitment to fund all the way through to principal photography and there is no evidence, such as a cashflow forecast, or even a negotiation between SMC and White Lantern as to the terms of that financing that would indicate that SMC had actually committed to financing all the way through. On the contrary, their aim was to get long term finance from Piccadilly or Ingenious in place so that they could exit.
97. The attraction to SMC of using Mr Seal and Black Hangar was that they involved no, or minimal, cash outlay for their services because Mr Seal agreed with SMC that they would work on a deferred compensation basis and would recover as though they had provided equity, from the Film’s receipts’ “*waterfall*”. In other words, they would effectively be working for free in the hope that the Film was successful in which case they would be paid for their services. The value of those services became a big issue in the budget because it also determined the value of UK tax credits that might be available.
98. Various budgets had been produced for Mr Seal since he became involved. A first budget dated 29 July 2019, which reduced the shooting time to 25 days to save costs, came out at £6.6 million. Further budgets drawn up during August 2019 were at a similar level or higher, with one showing £7.9 million. A finance plan dated 2 September 2019 showed funding available of £6.181 million which was short of all the budgets then in existence. That finance plan included: a contribution by way of “*studio equity*” of £1.5 million; UK tax credits of £1.1 million (which would require approx. £5.5 million of UK expenditure); and a Spanish tax incentive of £840,000 (which was dependent on a Spanish spend of £3 million). “*Studio equity*” was basically the value being placed on the services to be provided by Mr Seal and Black Hangar that would be deferred and paid out of the waterfall.
99. Following the finance meeting at Lee & Thompson’s offices on 5 September 2019, a new “*gross*” budget was prepared giving a far greater total of £10,695,154. However, the associated “*cash*” budget gave a total cost of £5,805,572. The difference between

the two budgets is explained by the finance plan dated 12 September 2019, in which the “*studio equity*” had suddenly shot up to £5.1 million. This figure remained an integral part of the finance plan until 20 September 2019, when Mr Mann removed it as he did not see how it would “*pass muster at the moment*”. Mr Seal’s purported justification for the figure is dealt with below.

100. Another important aspect of the finance plan of 12 September 2019 was the figure of £1.5 million for the Spanish tax incentive to be provided through Elipsis Entertainment S.L. (“**Elipsis**”), a Spanish film investment company, with whom White Lantern had signed a deal memo. The finance plan indicated that in order to get the £1.5 million tax credit, there would need to be expenditure in Spain of £3.57 million. It is difficult to see how it would be possible to incur that sort of expenditure without impacting on the UK tax credits, upon which the finance plan was dependent. Mr Burlingham seemed at the time to be concerned about this and Mr Mann discounted it from his finance plan on 20 September 2019. In his oral evidence, Mr Seal remained optimistic that this could have been achieved but he explained that it would have required shipping out loads of film equipment to Spain for a certain amount of time, not doing any actual filming with it and then bringing it all back to resume production in the UK. To my mind, it seems extraordinary that this charade could produce such significant tax credits from both jurisdictions but that was Mr Seal’s plan and he said it was approved by lawyers. It would also have required at least three heads of department to have been from Spain, according to the Elipsis deal memo. By 20 September 2019, only Mr Giménez from Spain had been signed up.
101. The first drawdown on the Bridge Loan Agreement was approximately \$1.25 million, comprising mainly the funding for the Fee to be placed in escrow but also some other pre-production costs. From the time that Black Hangar was brought in by SMC until around 13 September 2019, the only cash advanced was a sum of \$24,000 which was paid to Mr Hubbard, the casting director who was essential to keep on board. On 10 September 2019, Mr Merrifield circulated a cashflow requirement for that week of £136,000. SMC provided a further drawdown under the Bridge Loan Agreement of £108,000, paid to a Black Hangar account. That was the last cash that the production received from SMC in relation to the Film.
102. The £108,000 gave rise to some confusing evidence from Mr Seal. He said that in order to claim UK tax credits it was necessary for some services to be actually paid for in the UK. Therefore Black Hangar was invoicing White Lantern for studio rental from the end of July 2019, even though White Lantern was not then using the studios (and may never have done). The invoices were paid by circulating the money from SMC into another company owned by Mr Seal called 3D Rights Limited which apparently loaned the money to White Lantern so it could pay Black Hangar. Mr Seal claimed in his evidence that these arrangements were documented, including a written loan agreement between 3D Rights Ltd and White Lantern. But that document has not been disclosed and when Mr Seal had been asked about the arrangements in October 2019 he had said in an email that there was only a “*verbal loan agreement*”. Mr Seal that this was “*shorthand*” for it originally being an oral agreement but that it was later documented. I do not accept that evidence as it is flatly inconsistent with any ordinary interpretation of his plain words, which itself demonstrates the lack of credibility in much of Mr Seal’s evidence.

(g) *The delay of pre-production by a week*

103. As of 10 September 2019, the only heads of department that had been signed were Mr Giménez and Mr Boyd (although Mr Boyd did not actually have a signed contract). Mr Creagh had not been engaged as the Production Designer and was in dispute over sums due to him for work he had done. Mr Seal maintained that he had engaged a Production Designer, as one would have thought was necessary to do well before pre-production, in the form of Mr Sivo Gluck. However, Mr Gluck seems to have been an employee of Black Hangar and had worked on *Salvage Marines*, but there is no evidence that he had been engaged by White Lantern. As late as 24 September 2019, when Mr Seal was asked about Production Designer candidates, he said that “*Terry has someone standing by. Sivo is ready*”, indicating that he had not been signed up. The only cast member attached at this time was Ms Green.
104. On 6 September 2019, Ms Green was upset to hear that her preferred line producer, Mr Paul Sarony, would not be hired full time. She contacted Mr Figg at Piccadilly to see if he could review the budget to see if Mr Sarony could still be hired. Mr Figg replied by saying that they did not get involved in that sort of detail on a production and he queried whether Mr Sarony was really needed given the services to be provided by Black Hangar. Ms Green remained very dissatisfied that her personal team were not being offered standard industry rates and that they would not be prepared to work on the Film for less. She emailed Mr Collier on the same day, saying that she needed “*her team around me so that I can handle anything evil Jake throws at me.*” She went on, using an unfortunate description which she said in her oral evidence referred to Mr Seal’s inexperienced local crew members, as follows:
- “I understand he’s stalling and will continue to stall until we will be nearly ready to shoot. My team will have had to pull out and I will be obliged to take his shitty peasants crew members from Hampshire...
- So please use all force necessary to fight the Chaos.”
- Mr Collier responded by saying that she was entitled to her team but that the only thing she could do if they did not agree would be to walk away and keep the Fee. However if she did that, he advised that they would certainly sue for breach of contract.
105. During the course of the next two days, Ms Green continued to rail against the involvement of Mr Seal and Mr Bird, and in particular their failure to agree to pay her personal crew the standard industry rates. She emailed Piccadilly complaining of Mr Seal’s and Mr Bird’s “*lying and stalling*” and she messaged the Former Directors with similar disparaging comments. She said that Mr Seal “*needs to get fired as a producer and just needs to remain a financier.*”
106. As indicated above, pre-production was due to commence on Monday 16 September 2019. The crew, including all heads of department, whether formally engaged or not, were expected to attend at Black Hangar on that day. The Former Directors were becoming concerned as to whether suitable travel and hotel arrangements had been made for Mr Giménez and Mr Boyd for them to be there on the Monday.
107. On 13 September 2019, the Former Directors met with Ms Green to update her on the preparations. They brought a schedule with them showing the differences between the potential crew members’ standard rates and what White Lantern, under the control of SMC, was prepared to offer. The difference amounted to a total of £133,485. As many

of the crew had been introduced by Ms Green and she felt responsible for them, she readily agreed to the Former Directors' suggestion that she would pay the difference out of her Fee. The Former Directors thought this to be a magnanimous gesture by Ms Green, again demonstrating her commitment to making a high quality movie with them. Mr Collier made clear in emails that day that Ms Green was prepared to fund the difference but that she would expect to be repaid "*in equal first position from the waterfall*", that the money would be used only for that purpose and that the crew would not be "*pay or play*".

108. Somewhat bizarrely, Ms Green's offer was rejected out of hand by SMC and Mr Seal. Mr Burlingham did not want Ms Green to become an equity investor in the Film as he was worried that it would give her more financial and creative control over the Film. He also was apparently concerned about the amount of time and money that would need to be spent on documenting these arrangements. Nevertheless, in emails over the next week or so, both Mr Seal and Mr Burlingham seemed to take into account "*Eva's reinvestment*" which could only be a reference to the offer that they had summarily rejected.
109. It was on this day that SMC decided to bring in Mr Mann to serve as a general troubleshooter on the production. He had previously done some minor work on the Film on behalf of SMC. However, Mr Mann lived in Australia and he would have to fly in from Melbourne in the next few days. Strangely, he agreed with SMC that he would pay his own expenses, including travel costs, which would be reimbursed later.
110. On 13 September 2019, Mr Boyd sought confirmation that he should be at Black Hangar on the Monday morning. At 6.31pm, Mr Bird emailed him back to say "*Realistically Monday wont [sic] happen, but we definitely would like you here sooner [sic] than later, mid next week would be great.*" Mr Merrifield reacted strongly to this, saying that he should have been told about the delay, that this risked losing crew and "*Dan and I can not operate in this way*". Mr Seal pushed back on this in an email sent at 8.15pm in which he referred to the "*major task to convince Sherborne to continue to fund*" but said that only "*a small amount of cashflow has been unlocked – it will cover the absolutely imperative stuff.*" He set out a revised production schedule covering the tasks that needed to be done during the course of the coming week but essentially delaying the arrival of Mr Giménez and Mr Boyd until the following weekend, whereupon pre-production would start on Monday 23 September 2019. It was his intention to cut pre-production by a week and to reduce Ms Green's stunt training to only one week.
111. Later in the evening, there was a telephone conversation between the Former Directors, Mr Burlingham, Mr Raskin, Mr Seal and Mr Mann. Mr Pringle said that cancelling a week of pre-production might constitute a breach of Ms Green's and/or Mr Boyd's contract. Accordingly, they decided to push back the start of principal photography to 21 October 2019, as they were entitled to do under the Artist Agreement, meaning that there would still be 4 weeks of pre-production starting on 23 September 2019.
112. On 14 September 2019, Mr Boyd had been told not to travel and to work from home that week. He thought this was a "*ludicrous*" suggestion and was aghast at the state of the production. He said in his witness statement that he had "*never experienced such a dire situation in all my years in the film business.*" In an email that day to Ms Green he said he did not "*see a way forward working with Jake as he is making decisions that*

*are ludicrous with the line “of keeping within the fiscal nature of this movie.”*” He continued to say that he thought they ought to move the project away from Mr Seal and that he was *“happy to offer my resignation but is this the best ploy? If it is I will do it. I don’t want to leave you alone on this farcical production but I honestly can’t see a way forward.”*

113. Ms Green forwarded Mr Boyd’s email to Mr Collier, asking if Mr Boyd should give in his resignation or not and saying: *“Jake is a mad dictator who is planning to make a cheap B movie”*. Mr Collier responded that Mr Boyd probably did not have a contract to resign from. He also said that Mr Boyd was completely right about the production but that the best thing to do was nothing and to let White Lantern go into breach.

*(h) The arrival of Mr Mann and the loss of long term finance*

114. On 17 September 2019, Mr Mann arrived in the UK and went straight to Black Hangar. Both Ms Green and the Former Directors saw this as a breath of fresh air and they hoped that he would be able to get the production back on track, principally by putting Mr Seal back into his place. Maybe they were over-optimistic as to what Mr Mann could achieve in a short space of time but they were obviously desperate for someone other than Mr Seal to take control of the production. From her emails sent to Mr Collier on 19 September 2019, Ms Green was clearly under the impression that things were much *“healthier”* with Mr Mann on board and that Mr Seal had now been pushed into the *“background”*.
115. However there was also bad news that week. On 18 September 2019, the bond company, EFB, refused to provide a completion bond for the Film. Ms Sudie Smyth of EFB sent an email that day to Mr Seal explaining why it could not provide the bond, citing a number of issues including the state of preparedness of the production with key cast and heads of department still not in place, and confusion over the budget and finance plan and whether there really would be actual available cash to cover all the costs including finance fees. On the same day, SMC received Piccadilly’s revised offer of finance which was much reduced in the light of the lower pre-sales/deposits and tax credits. This was unacceptable to SMC so they abandoned Piccadilly as an option for long term finance. The removal of the bond would have made it virtually impossible for Piccadilly to agree to finance the production.
116. The Defendants say that Ms Green and the Former Directors wanted to make the Film unbondable and for it to collapse, so that they could pursue their alternative vision of making the Film without the involvement of SMC and Mr Seal. From WhatsApp messages passing between them on 16 to 18 September 2019, it appears as though they did approach EFB and Piccadilly that week, secretly. Mr Merrifield had spoken to Ms Smyth in the morning of 18 September 2019 and he told her that if EFB were to say that the Film was *“not really bondable in its current shape or form, Dan and I would be very happy with that as an outcome today or tomorrow.”* Mr Merrifield’s oral evidence that this was a *“business phrase”* was unconvincing. In the conversation he went on to say that he wanted *“to be able to put Alastair in a horrible place and go to him with Eva and Charles. Well, we’ll give you the money back, but we want the script. We need him to feel that he can’t really progress in his, in its current form with Jake.”* The earlier option, considered in August 2019, of Ms Green acquiring the rights to the script in return for the Fee, and then proceeding to make the Film with the Former Directors and other funding in place, had been revived. But it is clear from the

conversation that Ms Smyth had already come to the view that EFB could not provide a bond because of serious dissatisfaction with Mr Seal about whom she was scathing.

117. Mr Pringle reported on that conversation to Ms Green saying: “*spoke to the bond this morning, this bomb ain’t got much left on the clock.*” Ms Green responded: “*Ok so let’s hope we get the fuck out of his evil claws and re-locate to Scotland and shoot in November.*” She also seemed to think that with EFB and Piccadilly pulling out, it would be very difficult for SMC and Mr Seal to find another investor. However, SMC did approach another bond company, Media Guarantors, and sought to progress what they considered to be a more generous offer of finance from Ingenious together with Elipsis for the Spanish tax credits.
118. From the time he arrived in the UK until 20 September 2019, Mr Mann was engaged in detailed discussions with Mr Seal as to the financing of the Film, in the light of the withdrawal of Piccadilly and EFB. The quote that they had from Ingenious was dependent on the “*studio equity*” of £5.1 million and the assumed effectiveness of the Spanish tax incentive. But, as stated above, Mr Mann told Mr Seal that the £5.1 million of “*studio equity*” would not “*pass muster*”, and this was after Mr Seal had purported to provide some figures to justify the amount. Mr Burlingham had thought that the figure was too aggressive and there was an agreement between him, Mr Mann and Mr Seal that a more appropriate valuation of the services to be provided by Black Hangar would be around £1 million. Mr Seal continued to maintain in his evidence that the £5.1 million could have been substantiated but it is a huge disparity, and therefore unsupportable, as Mr Burlingham and Mr Mann realised at the time. As for the Spanish tax incentive, they also recognised that this was stretching things, albeit that it seemed to have been done for other films and had the approval of the lawyers. Mr Mann said that if they did manage to get that tax benefit, it would be a “*wonderful bonus*”, but he recognised that for both logistical and legal reasons, it was best not to rely on this source of finance.
119. By 20 September 2019, both Mr Seal and Mr Mann were proceeding on the basis that there was no long term financing then in place and would not be for some time, so the only way that the Film could be made was for SMC to finance it, unbonded, all the way through. Mr Mann produced a budget and finance plan, excluding “*studio equity*”, that showed that SMC would have to fund £3.3 million of expenditure, on top of the \$1.6 million that was then outstanding on the bridge loan. The only way that SMC would be repaid under that scenario would be from new financiers, such as Ingenious, agreeing to fund the Film at some later stage, or from the receipts of a successful Film. This was therefore an enormous risk for SMC, particularly if the budget was going to be trimmed to such an extent that it would only be a low quality Film that was produced, with limited chance of achieving the sort of success that would enable SMC to recoup its outlay.
120. The Defendants say that SMC always knows that it may have to fund films through to completion and that, even though it is principally a provider of bridge finance until long term finance takes over, it nevertheless has to be prepared to provide that extra finance should the circumstances require it. Mr Burlingham said that he, on behalf of SMC, agreed that SMC would finance the production all the way through on this occasion as this was their only option to recover their existing bridge loan. That was always their goal, and the bulk of the loan was the Fee in escrow. It would go a long way to the repayment of the loan if Ms Green returned the Fee. That is why there were serious



negotiations in that respect after the weekend of 21/22 September 2019. But I think it is important to keep in mind that SMC's sole objective was to recover its loan.

121. Pre-production was due to commence on 23 September 2019, with Mr Giménez, Mr Boyd and others scheduled to be at Black Hangar that day. Expenditure would therefore be increasing rapidly from that point on. At 10.36pm on Friday 20 September 2019, Mr Seal emailed the Former Directors asking them to meet at 2pm the next day "*to discuss some urgent production matters*". Not unreasonably for such late notice, Mr Merrifield asked Mr Seal for an agenda, to which Mr Seal replied: "*Well we are working all weekend on the film. Would you like the film to happen.*" Then at 11.23pm Mr Seal emailed to the Former Directors: "*I'm very happy to cancel the film. Don't play with fire. You will get burnt. We are requesting a meeting tomorrow. We are working on the film all weekend. If you cannot make it, then tell me right now, because there will be a completely different course of action by the time you wake up tomorrow. The agenda for tomorrow is 'the only way this film can happen'.*" The exchange encapsulates Mr Seal's aggressive and sarcastic nature.
122. It appears that on 19 September 2019, a decision was taken to push back principal photography to start on 21 October 2019, rather than 14 October. Ms Green was notified of this on 20 September 2019, and it was seen as positive by her, as it gave an extra week for pre-production which was still scheduled to start on Monday 23 September 2019. However she remained concerned about the state of preparations and the crew that had not yet been engaged. Those concerns were set out in a letter dated 20 September 2019 sent by Mr Collier to the Former Directors, Mr Seal and Mr Figg of Piccadilly.
  - (i) *The New Production Structure: 21 September 2019*
123. In accordance with Mr Seal's request, at around 2pm on Saturday 21 September 2019, the Former Directors met with Mr Mann and Mr Seal at Black Hangar. The meeting was recorded on Mr Merrifield's phone. Mr Seal and Mr Mann wished to put to the Former Directors what the Defendants have termed the "**New Production Structure**". This consisted of the following elements:
  - (1) SMC would fund the production through to permanent financial close which was expected to be after principal photography; SMC did not require a completion bond, so the Film would be unbonded while SMC was the only financier;
  - (2) A new production services company would be formed by SMC and the script rights would be moved from White Lantern to the new company, which would discharge White Lantern's debt to SMC; the Former Directors would not be directors of the new company;
  - (3) Mr Seal would be the lead producer in full control of the production;
  - (4) Mr Merrifield could either step back and support Mr Seal or leave the Film entirely, upon terms to be negotiated;
  - (5) Mr Pringle would remain as the director of the Film; and

(6) Mr Boyd would not be a producer.

124. Mr Mann and Mr Seal were well aware of Ms Green's views as to Mr Seal and whether he should be in control of the production. There was discussion at the meeting as to what her reaction might be to the New Production Structure and in particular the elevation of Mr Seal to lead producer in full control. Everyone would have known that she would not like that and it looks very much like this was an attempt to "*box her into a corner*", as Mr Seal put it in an email sent on 23 September 2019. But there was an alternative to the New Production Structure and this was actually discussed at the meeting.
125. The alternative was to consider what had been discussed between Ms Green and the Former Directors earlier in August 2019 and then again in the week before this weekend meeting, namely the purchase by Ms Green of the script rights in return for the Fee. This was a potential way of making the Film but without the involvement of SMC and Mr Seal, which was what Ms Green and the Former Directors were desperate to do. It would also substantially improve White Lantern's debt position, which was something that worried the Former Directors particularly.
126. So far as SMC was concerned, it was something that had been considered before the meeting. Mr Burlingham said in his oral evidence that Mr Mann had asked him before the meeting if he could discuss the potential script rights purchase at the meeting. And he went on to say that such a potential deal would be "*well received*" by SMC; this was a message that Mr Mann passed on throughout the weekend. It is difficult to understand why such a deal would not be a good outcome for SMC, where although there might be a shortfall from the full amount it had lent to White Lantern, it avoided the huge risk of providing over £3 million more in cash with a real possibility of the Film not achieving sufficient success for such sums to be repaid.
127. It was Mr Mann who first raised the possibility in the meeting of Ms Green exchanging the Fee for the script. A little bit later in the meeting, Mr Merrifield asked if he could have a private conversation with Mr Mann. It was during the course of that conversation that Mr Merrifield discussed with Mr Mann the possibility of Ms Green acquiring the script rights in return for the Fee. Mr Mann said: "*if that is a viable plan that you would like to get your material back, as long as Eva gives the money back, I think that will be well received.*" Then when Mr Merrifield asked whether Mr Burlingham would prefer this sort of deal to the New Production Structure, Mr Mann said that: "*it weighs more in that direction than moving forward*" and he then agreed that he could help it being achieved. They both understood that Mr Collier would have to be on board with any such deal.
128. The Former Directors were given until 5pm the next day, 22 September 2019, to respond to the proposals. It was anticipated by all that they would speak to Ms Green and Mr Collier at some point to find out their reaction, although because Ms Green was at a film festival in San Sebastian and Mr Collier was away for the weekend as it was his birthday, they may have been difficult to get hold of.
129. In opening and in the Defendants' pleadings, Mr Mallin KC put forward the New Production Structure as though it represented, as the term implied, a departure from the existing production structure. Most importantly, it was putting Mr Seal front and centre of the production and it was side-lining Mr Merrifield. They knew that Ms Green was

expecting to start pre-production in less than two days' time without Mr Seal in full control. That was why they needed a response by 5pm on Sunday 22 September 2019, in case the production had to start under that new structure. But in his closing submissions, Mr Mallin KC was suggesting that the New Production Structure was not new at all, as everyone, including Ms Green, had been working under Mr Seal's control ever since he was brought in by SMC and he was always the "*de facto lead producer*". That is quite a change of position and it seems to have come about because of Ms Green's position that she was not obliged to accept the New Production Structure under the Artist Agreement. I will address these arguments below.

130. The relevance of the point at this stage is as to the factual context at the time and what people knew or were expecting. There is no doubt that Ms Green, and indeed the Former Directors, had become more comfortable with making the Film at Black Hangar, with Mr Seal involved, but "*back in his box*". As of Friday 20 September 2019, they had seen the arrival of Mr Mann and his approach to the production as confirming that Mr Seal was not in full control of the production. Mr Mann and Mr Seal knew that Ms Green would not just walk away from the Film to which she was committed and hand back the Fee. So the point of the New Production Structure was suddenly to put Ms Green and the Former Directors on the spot and to choose either to do a poor quality film under Mr Seal or to negotiate over the script rights. The latter was obviously going to be the only palatable option for Ms Green, although it involved great risk on her part. But in her mind it was a lot better than working with Mr Seal.
131. Following the meeting, Mr Merrifield's immediate reaction was that he would step aside for the sake of the production if the New Production Structure went ahead. He was fairly certain that Ms Green would not agree to the New Production Structure and was willing to take forward the option of Ms Green buying the script, in which case he would remain the producer of the Film and they would be able to do it their own way, without SMC and Mr Seal.
132. At 3.16pm, he tried to call Mr Collier but was unable to reach him. At 7.36pm, he left a voicemail for Mr Boyd who was scheduled to arrive for pre-production on the Monday. The voicemail explained the New Production Structure and that he thought Ms Green would not agree to it and that neither he nor Mr Pringle were keen on working under Mr Seal. He then said that:
- "it's more than likely tomorrow afternoon that they will cancel prep, yet again, but permanently this time, and cancel your flight and they won't travel you. And we will then enter into a negotiation, hopefully with Eva's blessing and Charles Collier's blessing, to get the script back and then reconvene the production with Creative Scotland up in Glasgow or Edinburgh, at which point we'd very much like to talk to you about coming on board and working alongside us properly as a producer."
133. At 8.06pm, the Former Directors spoke to Mr Boyd who had picked up his voicemail from Mr Merrifield. They discussed what they had been told about the New Production Structure, how Mr Seal and Mr Mann were trying to box everyone into a corner and the option to negotiate over the script rights. The Former Directors told Mr Boyd that Mr Seal and Mr Mann were only focussed on getting the Fee back. They also said that Mr Boyd would not be travelling to Black Hangar for Monday. It is clear that the Former

Directors must have spoken to Mr Giménez that evening and told him that he too probably would not be flying the next day.

134. These conversations with Mr Boyd and Mr Giménez in which they were told that they would probably not be travelling so as to be there for the start of pre-production happened before the Former Directors had spoken to either Ms Green or Mr Collier. That shows that this was not a decision of Ms Green to stand them down but also indicates that the Former Directors were reasonably sure that Ms Green would want to pursue the option of purchasing the script rights. Mr Pringle objected to the notion that crew members were being stood down by them or in some way that their engagement had been cancelled. On the contrary, Mr Pringle's view was that they were pausing the involvement of crew while the production was reconfigured with them back in control, whereupon these valued crew members would be re-engaged.

*(j) Sunday 22 September 2019: the call with Ms Green at 1.30pm*

135. In the morning of Sunday 22 September 2019, Mr Mann was travelling down to Brighton for a day at the races. At 10.55am, Mr Merrifield rang Mr Mann and they spoke while Mr Mann was driving. Mr Merrifield confirmed that he did not want to be part of the New Production Structure and he would prefer to step away entirely, if that was the way the Film was to proceed. The conversation concentrated on the alternative iteration of Ms Green acquiring the rights to the Film. Mr Mann made the point that the casting director, Mr Hubbard, should be stood down so as to ensure that any offers that had been made to potential cast members were not accepted for Monday. That rather indicates that Mr Mann was assuming that pre-production would not actually be starting on the following day. They agreed to speak at about midday together with Mr Seal and Mr Pringle.
136. There was a conversation between the Former Directors, Mr Seal and Mr Mann at around midday on 22 September 2019. There is no recording of this conversation. This was still before the Former Directors had managed to speak to Ms Green or Mr Collier. Mr Merrifield reconfirmed his decision to step away from the production if the New Production Structure was going ahead. Mr Pringle said that he would be happy to remain and have his contract as director of the Film transferred to the new corporate vehicle, if Ms Green agreed to the New Production Structure.
137. At 1.25pm, the Former Directors spoke to Mr Giménez and told him not to fly that day to the UK. They told him that they had not yet spoken to Ms Green and so did not know what her decision was but they made it clear that they were hoping she would "*make the right decision and allow us, her and Dan, you and me to – to take control of the script. So hand her money back and we can move forwards as a – as a team.*" They had to cut short the conversation because Ms Green had just messaged them to say she could speak then.
138. So at about 1.30pm, the Former Directors spoke to Ms Green and it is this conversation which the Defendants say was a renunciation by Ms Green of her obligations under the Artist Agreement. Unfortunately there is no recording or transcript of the conversation. The Defendants' case was therefore based on inference from what happened subsequently but principally on what their witnesses said they had been told by the Former Directors. As explained above, that evidence, and therefore a crucial plank of their case, was completely undermined by the recording of the conversation between

Mr Mann and Mr Merrifield at 5pm. Mr Mallin KC submitted that the relevance of the Defendants' witnesses' evidence in this respect diminished as a result of Ms Green's admission as to what she said on the call.

139. The call was a relatively short one. The Former Directors told Ms Green about the proposed New Production Structure that had been put to them by Mr Mann and Mr Seal the previous day and by which the script rights would be transferred to a new company in which they would not be involved. They told her that Mr Merrifield would be stepping down as a producer and that Mr Seal would be in sole charge of the production. Mr Merrifield also said that he had had a private conversation with Mr Mann about whether SMC would be interested in a deal on the script rights in return for the Fee, indicating that SMC would be so interested.
140. Shortly after the conversation, and at Ms Green's request, Mr Merrifield summarised the position in an email timed at 2.02pm which she wanted to forward to Mr Collier. The email said the following:

“Sherborne have decided to fully finance the movie and move forwards without a Bond with an option to bring onboard Ingenious (and a bond) at the post-production stage.

The script rights have been moved to a new company (under the security Sherborne have over the SPV which is in place through the bridge loan). Jake Seal is the Producer of the new company supported by Terry as Line Producer all financially backed by Sherborne. Jake and Andrew Mann have confirmed that Harry would not be a co-producer or producer moving forward but would have access to information. They have also confirmed that no other Line Producer will be considered.

To facilitate this, I need to either fully step away or support Jake as the producer. This remains a point to be negotiated but I would have no authority within the new company and personally I would prefer to fully step away. Dan will fulfil his contractual obligations as a Director on the basis that you decided to continue.

We have spoken to Andrew Mann who represents Sherborne about the above and also, I have had an “off the record” conversation with Andrew regarding whether Sherborne would consider returning the script IP rights if Tavistock Wood agreed to return the full escrow. Andrew intimated that this would be considered favourably. The residual hard cash spent along with the interest and other fees would need to be discussed and a proposal made regarding how these are returned but the emphasis from Andrew was an ”unofficial” but positive one.

Please let me know how you wish to proceed, I would recommend that I schedule an urgent call between Charles, Andrew and myself as soon as possible, this could be today if Charles is available (although I appreciate it is his birthday weekend!).”

141. Mr Merrifield was under the mistaken impression that the script rights had already been transferred to a new company. Nevertheless, it is striking that he nowhere refers to Ms Green having made a decision to withdraw her services from the Film. On the contrary, he is assuming that this would need to be discussed with Mr Collier before any decision

was made. If he and Mr Pringle had understood Ms Green to have already decided to withdraw, then such a momentous decision would have been recorded somewhere in this email (or elsewhere). Instead the way the options were put to Ms Green is clear from the email and the alternative of her acquiring the script rights was one that they indicated might be looked on favourably by SMC.

142. The call came out of the blue and Ms Green did not know that a New Production Structure had been put to the Former Directors the previous day. When it was presented to her, it was, as it was probably intended to be, shocking to her and, as she said in her witness statement, “*a complete turnaround from the position I understood existed on Friday.*” This was a reference to Mr Seal being in full control. All the participants in the call are agreed that Ms Green said words to the effect that it was “*impossible*” and that there was no way that she would ever do the Film with Mr Seal “*in control*” or “*in charge*”. She had thought, as everyone knew, that as of Friday, the Film would go into pre-production on the Monday with Mr Seal not in full control. She thought that Mr Mann would have control over Mr Seal. Her reaction to being told that Mr Seal was to be in full control would obviously have been emotionally intense. But there is no suggestion that she said she was withdrawing her services from the Film. On the contrary, she wanted to pursue the option of purchasing the script rights so that she could make the Film without Mr Seal and SMC.
143. Following Mr Mann’s oral evidence to this effect, the Defendants suggest that this was essentially a “*binary*” choice that was being put to Ms Green, namely that: she either makes the Film under the New Production Structure with Mr Seal in full control; or that she withdraws and pays back the Fee. However, the Former Directors’ evidence is that they did not put it in such a way to her, and they were not cross-examined on this. To understand what Ms Green meant by using the word “*impossible*” (for example) during the call, it is necessary to understand the context, which includes both what was put to her and what was known about how she used those words. A more reliable guide than memory is contained in the email sent shortly after by Mr Merrifield, in which it can be seen that even he was confused about the New Production Structure and in any event the New Production Structure was only one of the options available to the parties and a viable alternative was the script rights’ purchase.
144. The Defendants’ case in closing was to accept Ms Green’s and the Former Directors’ consistent evidence that Ms Green said during the conversation that “*it was impossible and there was no way [she] would ever do the film with Mr Seal in control*” or words to such effect. They say that those words in themselves amounted to a renunciation as they evinced an unequivocal intention not to perform her obligations under the Artist Agreement. She was, they said, effectively put to her election by the Former Directors as to whether she would perform her obligations under the Artist Agreement or not, and she decided, there and then, without consulting Mr Collier, that she would withdraw.
145. But that, in my view, ignores the context, the reality of what was being put to her and everybody’s actions, reactions and words that followed her alleged decision to withdraw. In particular there was clearly not just a simple binary choice or election being put to her. The alternative iteration of her purchasing the script rights so that the Film could be made with the Former Directors in the way they wanted was proposed to her as something that would have traction with SMC and therefore as a way to make the Film. They all agreed that this was their preferred option and wished to pursue that, rather than making the Film under Mr Seal’s control. There is an air of unreality to the

Defendant's case on this which fails to take into account what was communicated to Ms Green, the different options available to her and the Former Directors' understanding as to her exaggerated use of language. But most importantly, it is perfectly obvious that no definitive decisions were taken during the conversation and they all knew that it was necessary for Mr Collier to be involved in any decision related to Ms Green that had legal implications.

*(k) Sunday 22 September 2019: after the call with Ms Green*

146. Shortly after the call, at 1.57pm, Ms Green sent a message to Mr Collier:

“I just spoke to Dan and Adam. Jake is a real sociopath as you know and has sabotaged the movie. Would you please ring Adam today? It is extremely urgent. The ONLY solution to get out of this nightmare is for you to speak to Andrew Mann tomorrow morning first thing and tell him we give ALL the money back in exchange of the script. They implied yesterday that they would agree if you suggested it. This would then be sorted in a couple of days and we would be OUT. We would then be able to start shooting end of November in Scotland. I do not want any money at all. Not one penny (otherwise it will take months). BUT I want the script. So would you please ring Adam today? It is super urgent.”

This indicates Ms Green's mindset immediately after the call: for Mr Collier to seal the deal on the script rights and for them to get straight on to make the Film shortly thereafter.

147. I have already set out in full Mr Merrifield's email to Ms Green at 2.02pm which summarised what had been discussed on the call. And I have made the point that there is no indication in that email that Ms Green had come to a settled view as to her intentions in relation to the Film. As all appreciated, that would only happen after consultation with Mr Collier.

148. At 2.14pm, Ms Green forwarded that email to Mr Collier and said, echoing her earlier message:

“I had a long chat with Adam and Dan. (I sent you a text on your mobile). I absolutely want to return the full escrow. All this has become far too toxic (Please see Adam's email below) I want to make the movie ASAP, all this could apparently be sorted in the next couple of days if we give the FULL escrow back. I do not want any penny. I just want to get out of this nightmare and get the script rights so that we are able to shoot in Scotland in November”.

149. At 2.17pm, Mr Pringle messaged Mr Boyd to say that he had spoken to Ms Green and that “*shes [sic] instructing Charles to get script back and go again. NO travel needed tonight/tomorrow. Keep you posted*”.

150. At 2.20pm, Ms Green responded to Mr Merrifield's email of 2.02pm. She confirmed that she had forwarded it to Mr Collier and then said: “*We need to get out of this Jake nightmare ASAP. I really want to move to Scotland ASAP. Start Shooting mid-end of November.*” She urged Mr Merrifield to speak to Mr Collier that day.

151. At 2.30pm, Mr Pringle texted Mr Collier in graphic terms:

“Hi Charles been some developments this weekend. Essentially Jake has made the film unbondable and they are now proposing that the film be entirely financed by Sherbourne [sic]. This grants Jake full control. They have given Eva, Adam and I until 5 to decide whether we wish to proceed with the new structure or not...but as of right now obviously all three of us would rather eat tumours. Be great to chat if you’ve got a moment.”

Mr Pringle said in evidence that he regretted using such words while purporting to speak on behalf of Ms Green and Mr Merrifield as well as himself. Much reliance was placed by the Defendants on this text and the earlier messages as confirming the alleged renunciation by Ms Green. To my mind, however, they indicate that final decisions had not been made, although their strong preference was for the script rights’ purchase.

152. Then at 5pm, the deadline imposed by Mr Mann and Mr Seal on the Former Directors, Mr Merrifield called Mr Mann to tell him what the position was, having had the call with Ms Green earlier in the day. I have referred to this important conversation above, as showing that the Defendants had not told the truth about this conversation and what was reported to them about Ms Green’s alleged renunciation. All four had said that they were told on 22 or 23 September 2019 that: Ms Green no longer wished to make the Film at Black Hangar with Mr Seal; she did not wish to work on the Film “*unbonded*”; she was withdrawing her services from the Film; and she would be returning the Fee. This could only have stemmed from the conversation at 5pm between Mr Merrifield and Mr Mann, as the Defendants accept. But the transcript of the call does not support those statements at all. Mr Mann had claimed in his witness statement he “*vividly remember[s]*” the substance of the call. Nevertheless he had forgotten that Mr Seal was not even on the call.

153. The relevant parts of the short transcript were as follows:

**Adam** ...so we’ve managed to speak to Eva

**Andrew** Yep

**Adam** And as expected she’s not, not keen on um moving into that model and more keen to try and err return the money and err get the rights to the script, um so she can explore shooting it either here ...up in Scotland where, where she’s, that was the original plan or yeah in Eastern Europe.

**Andrew** Yep

**Adam** Hence, hence my request for both budgets erm.

**Andrew** Yep, Yep

**Adam** But I have to caveat that with, we haven’t been able to speak with Charles Collier who obviously owns the keys to the Eva Green castle, so to speak.

**Andrew** Yep, Yep



**Adam** She is certainly instructing him to enter into a discussion about returning the escrow for the script. Erm, but it's his birthday and we can't get hold of him. Erm, so...

**Andrew** Yeah, Yeah. Fair enough

**Adam** Yeah

**Andrew** Okay. Erm. Do you wanna erm, put a little two liner together and just circulate that, erm to Jake?

**Adam** Yep. Yep, erm, how do I do that so I don't get sued for the script..thing err...

**Andrew** The script? The script thing? What do you mean?

**Adam** Well, like am I allowed to say we wanna enter into discussions to return the escrow for the script or...

**Andrew** Ermm, look I think...

**Adam** I just have to go for it don't I? Sorry, you're breaking up Andrew sorry.

**Andrew** Yeah, sorry. Ermmm, I can't imagine why Alastair would be averse to that. You know if you put yourself in his position, ya know, to give a script that's useless to him, back for exchange of a million dollars, I don't see how he could, ya know, object to any of that. It's just a function of where he sits in the waterfall.

...

**Andrew** Alright cool. Well, um, that's good that she's responded. Good we've got some clarity and we'll speak to Alastair tonight or over the next few hours when he wakes up and let him know of the broad concept."

154. There is no suggestion in that conversation that Ms Green had decided to walk away from the Film or that she was refusing to work on the Film with Mr Seal. There was no mention of Mr Seal; nor was there any mention of her unwillingness to work on the Film unbonded; nor did she say that she was withdrawing her services and would be returning the Fee. The most that was said was that she was "*not keen*" on the New Production Structure and she would prefer to return the Fee for the rights to the script. That was what Mr Mann had clarity on and was going to discuss with Mr Burlingham later. Mr Mann's valiant attempt in the witness box to suggest that "*not keen*" indicated clearly to him that Ms Green had elected to withdraw her services from the Film is simply not credible and I do not believe that that is what he thought at the time.
155. As requested, Mr Merrifield sent an email to Mr Mann and Mr Seal at 5.17pm and he marked it "WITHOUT PREJUDICE". This confirmed what he had said in the call at 5pm and emphasised the need to speak to Mr Collier and that nothing was final or binding until he had been consulted and agreed with his client, Ms Green. He said:

“Having spoken to Eva Green I can report that she was not enthused by the new structure or the decisions regarding the producers, line producer or Harry Boyd. At the time of writing, I have not spoken to Charles Collier which is imperative as Charles does represent Eva and needs to formally make a final decision which is legally binding.

In our conversation Eva did intimate that she would be keen to explore returning the funds in escrow and obtaining the rights to the script. How this is negotiated would be down to further discussions between Charles Collier, SMC and White Lantern Film. Again, this is not a decision, my comments here are not legally binding but an indication of a potential path ahead.

At this stage, I would recommend we pause prep due to start tomorrow pending further discussions.”

156. Mr Seal responded to the email at 5.48pm as follows:

“It’s good news that Eva is keen to explore returning the money. As discussed yesterday – I feel that this end goal could be achieved, although it will need to happen quickly. Currently Sherborne has an exit (shooting the currently financed movie) and by not starting prep ASAP this week, that exit plan is being threatened.

Do you have any idea of when today you’ll get contact with Charles?”

157. By this time, Mr Seal’s evidence was that he had heard that Ms Green had withdrawn her services from the Film and would be handing back the Fee. But that is inconsistent with what he is saying contemporaneously in this email which is to the effect that Ms Green was looking to do a deal in relation to the script rights and no decision had yet been made in relation to doing the Film under the New Production Structure, not least because Mr Collier had not yet been spoken to. Mr Seal said that he did not mention the fact that Ms Green had already decided to withdraw her services because the Film could still have been made without her, as she could have been replaced with another “*like-for-like actor of the same or bigger stature.*” Not only did this not make sense, it also lacked any credibility.

158. At 5.41pm, Mr Collier finally made contact and sent a text message to Mr Pringle. Mr Collier said as follows:

“Eva will give them their money back on condition that they give her the script with clean chain of title and no further premium / debt attached. It can then be a clean slate. But it has to be clean. If they continue to insist on their premium or other debts incurred then Eva should just keep the money and let them find their own way. Let’s discuss.”

Mr Pringle responded to say “*Agreed*”, indicating that he understood that Ms Green was entitled to the Fee. He forwarded the text to Ms Green later that evening.

159. At 5.59pm, Mr Merrifield called Mr Giménez’s agent and there is a recording of this conversation. Mr Merrifield made clear to the agent that Ms Green wanted to proceed with the Film but that she was going to be buying SMC out following which she would make the Film with the Former Directors and with Mr Giménez as the DOP.

160. At 6.30pm Mr Seal sent a WhatsApp message to Mr Burlingham in which he referred to a “*Productive weekend with the white lantern people.*” If he had thought that Ms Green had withdrawn her services from the Film, that would be a most odd thing to say. He then said that he had put the details in an email to Mr Burlingham but the Defendants have claimed privilege over the contents of that email on the basis that the dominant purpose of the communication was to seek legal advice and/or in respect of contemplated litigation. Mr Burlingham was flying from New York to Los Angeles and only managed to speak to Mr Seal and Mr Mann the next morning, UK time (which was around midnight in Los Angeles).

*(l) Monday 23 September 2019*

161. This was meant to be the start of pre-production. But attention had switched the night before from producing the Film at Black Hangar to negotiating in relation to the script rights being transferred to Ms Green in return for the Fee. Everyone knew that this was the most sensible way for the Film to proceed: SMC would get a large amount of their money back and would not have to risk more than £3 million to cashflow the production all the way; and Ms Green and the Former Directors would get back control of the Film and would have the opportunity to make the sort of Film that they had all along envisaged making. However the deal had not yet been done and both sides realised from early on that in order to protect their respective positions should the deal not be concluded, that they would have to give the impression that they were complying with their contractual obligations in the meantime. I think that both sides realised that that was what they were each doing, merely play-acting in order to preserve their own interests while the negotiations over the script rights were continuing. This can be seen throughout the course of the following week.

162. It is demonstrated by the following comments during a telephone conversation between Mr Mann and Mr Merrifield at 11.04 on 23 September 2019:

“**Andrew Mann** Yeah, well, but what you’ve got to understand is the very important and subtle difference is we are not going to put anything in writing that indicates that we’re the ones that are pulling out, slowing down, not moving forward because that leaves us with a terrible legal predicament with Eva

...

**Adam Merrifield** the off the record line is she won’t proceed and they will negotiate to return the money, but on the record, we have to all play this ridiculous playable – well, legal game, isn’t it. But I hope you and I can always have off-the-record candid conversations over the next week or two ‘cause it will speed things up.

**Andrew Mann** Yeah, no absolutely. If we got to wait for the charade to evolve, we’ll take three times as long.”

163. After speaking to Mr Burlingham at around 8am, Mr Seal then emailed Mr Bird and his father Michael in the following terms:

“So. After non stop meetings about this across the weekend, with hard deadlines for the White Lantern people to adhere to...we managed to box Eva into a corner.

She is going to return her escrow asap this week. SO, at the moment, it looks like it will NOT be going ahead. We are on pause, with immediate effect.

We will charge some money for weeks of studio, for wrap etc.

I have a call with Alastair/Gary (Sherborne team) at 430pm, which will agree a way forward. I also expect us to hear more from Charles Collier (Eva's agent) today, about the refunding of the escrow."

When Mr Seal referred to Ms Green returning the escrow, he clearly meant as part of a negotiated deal over the script rights. There is no suggestion that Ms Green would be returning the Fee for nothing in return because she had withdrawn her services. It is also interesting that Mr Seal recognised that those negotiations were likely to bear fruit and that it was therefore sensible to pause the production until that happened. That seems to have been their strategy in putting forward the New Production Structure.

164. There were a series of emails, texts and WhatsApp messages throughout the course of the day that each side said supported their case. There were the following, in chronological order:

- (1) At 10:11am, Mr Merrifield told Mr Michaels of Lee & Thompson over the phone: "*Eva is not going to be taking part in the production under any circumstances moving forwards unless Jake and Terry don't have positions of influence and that wasn't what was on offer*" and "*Eva would never have ever turned up to shoot the film with Jake as producer and Terry as line producer*".
- (2) At 11.04am, Mr Merrifield spoke to Mr Mann (this is referred to above) and he further said that the Former Directors "*accepted your offer [...] it's Eva that's not accepted that for progression*", and that Mr Collier had confirmed "*Eva doesn't want to do this so can we negotiate – which he has said, I mean I don't have it in an email, I have it in a text - so I do want to, off the record, assure you there will be a negotiation and the money will be returning [...] But the way forward, I can categorically say on the record, is to negotiate an exit and not to proceed with production*".
- (3) At 11.06am, Mr Pringle emailed Ms Joan Bergin, the proposed costume designer, although she does not appear ever to have been engaged by White Lantern. Mr Pringle's email was in response to Ms Bergin's of the night before in which she expressed annoyance at the way she had been treated by the production to date. Mr Pringle told Ms Bergin of the script rights negotiations: "*Eva and I have had enough of this Black Hangar situation. Terry has almost single handily [sic] pissed off every person involved in the film from crew to financiers. That all said, if Eva and Charles can successfully negotiate the rights to the script back from the bridge lender in the next 48 hours then I see a glorious path forwards!*"
- (4) At 11.49am, Mr Merrifield emailed Ms Jeanette McGrath, the proposed script supervisor who was also never engaged by White Lantern, responding to her email of 20 September 2019 in which she was seeking details as to the production. He told her that he was: "*[w]orking with Eva and Dan I will be reconfiguring the production to shoot in a different way in a different location*

*in the near future. Happy to discuss this in more detail but please stand down and secure other work*". He made it clear that he hoped to work with her on the reconfigured production.

(5) At 12.04pm, Ms McGrath messaged Ms Green saying she had received the above email from Mr Merrifield and asking if she was okay. Ms Green responded at 12.08pm as follows: "*We had to get out as the main investor was a fucking nightmare... Truly mad... We are going to get back the script rights and relocate in Scotland or Ireland... November or after Christmas... will let you know as soon as I have news... So sorry for the madness...*". Ms Green was cross-examined about what she meant by "get out" but from her slightly confused response it is reasonably clear that she was referring to her intention to proceed with negotiations to purchase the script rights and so to get out of the production under the control of Mr Seal. She admitted that she was "*probably very naïve*" but thought that "*we could conclude a deal very quickly and we would be able to make the film in Scotland*".

(6) At 1.04pm, Ms Green sent a message to her driver, Mr John Ward: "*The movie has definitely been postponed. We don't know yet ... We had to get out as the investor and Terry were evil ... it might happen next year now*". The same phrase "*we had to get out*" was used and what I have said above applies equally to this message.

165. There was some attention at the trial to the communications between Ms Green and Mr Collier, together with his colleagues at Tavistock Wood during the course of the 23 September 2019. Further such communications came to light in the late disclosure, which had itself come about because of Mr Collier's references in his oral evidence to telephone conversations that evening with Ms Green before the first letter of offer on behalf of Ms Green in relation to the script rights was sent.

166. At 3.36pm, Mr Collier emailed Ms Green with the first draft of the offer letter, under the subject line: "*here's the draft – let's discuss xxx*". By the draft, which was said to be without prejudice and subject to contract, the Artist Agreement and Escrow Agreement were said to "*remain in full force and effect and both remain fully binding on the parties*" and Mr Collier asserted that Ms Green remained entitled to the Fee. It then went on to offer to repay the Fee in return for clean title to all the rights to the Film in full and final settlement. Just 5 minutes later at 3.41pm, Ms Green responded: "*Ok this is good. Do you think we could insist on this getting settled in the next 24/48h? I do not want to waste any more time.*"

167. At 4.25pm (the email says 5.25pm but this must be wrong) Mr Collier's assistant, Ms Grace Cavanagh-Butler, having spoken to Mr Collier, emailed a new draft of the letter to Ms Green. A new paragraph was added as follows:

"Ms Green is aware that Andrew Mann is now on location at the studio space putting plans in place for the immediate production of the Film, such that it may become possible for the film to commence principal photography on or before 21 October 2019. For the avoidance of doubt, therefore Ms Green reiterates that she remains ready, willing and able to perform contractual obligations and provide her services in accordance with the [Artist] Agreement."

The phrase “*ready, willing and able*” became the subject of extraordinary prominence in the submissions on behalf of the Defendants in relation to their tort claims.

168. At 5.03pm, Mr Collier sent an email to Ms Green, advising her as follows:

“Andrew Mann knows what he is doing.

Andrew said that they can make the film at the same budget and they can start now. They were ready to start prep today and he says the only reason they did not was because Adam said you did not want to make it and you want to walk away!!

If you want to make the film they can make the film now at the budget with all the things you want in the contract. However, if you don’t make it now you do risk that all momentum will be lost, no one will want to touch the film, it will be considered toxic, and the market will walk away. It would be very high risk that if it dies now it will die forever. The only way to be sure to make this movie is that you make it now – with Sherbourne [sic] as lead financier.

Also, given that Andrew is saying they are ready to cashflow [sic] prep tomorrow, whilst nicely giving them the option of you giving the money back, the letter should cover you by also saying you are ready and willing to make the film in accordance with the existing contract. Otherwise there is a risk that you look like you want to walk away and bring the whole thing crashing down and that you are using your offer to buy the script as a means to break your own contract.

People will say: she has had so many proper legal opportunities to walk away from the film, so why does she walk away now when the financiers are committed to funding it? Really, if they agree to cash flow Andrew into prep and hire Harry and all your team, then you are very possibly going to be in breach of agreement if you don’t make the film.

I am speaking to Dan and will get him to call you also.

If you do want us to send the letter per the current draft please let us know and let’s get it out before 5.30pm London time.”

169. Four minutes later, at 5.07pm, Ms Green replied “*No I CANNOT make this film with SHERBOURNE [sic]. Impossible*”. The Defendants rely on this as further evidence of her alleged renunciation. Ms Green says that it shows that she much preferred to buy the script rights than to work with SMC and Mr Seal.

170. Also at 5.07pm, Mr Collier texted Mr Pringle to confirm that SMC “*can fund it now*” and that the only way to be sure the film gets made “*is to make it now*”. At 5.10pm, Mr Pringle forwarded a screenshot of this message to Ms Green. At 5.10pm and 5.11pm respectively, Ms Green responded: “*Fucking unbelievable*” and “*If Jake was not present, maybe but now that for some obscure reason Jake is back... no way*”.

171. At 5.22pm, Ms Green left a voicemail on Ms Cavanagh-Butler’s phone (this was only disclosed as part of the late disclosure). This is heavily relied upon by the Defendants and I have listened to the recording, as they suggested a number of times, and it is right to say that Ms Green sounded insistent and urgent. She said as follows:

“Hello Grace, its Eva, I just got Charles’ email. It’s absolutely impossible what he is saying. He is not listening, he has to speak to Dan. He doesn’t listen. He presents it like as if Jake is not in control again, which is the case. This is why I cannot work. We... I have to pull out. If Jake is not in the game it would be fine but now he's back in the game and he rules again. So that’s not possible. But as usual, I don’t know what he’s on at the moment, he doesn’t fucking listen. So... he has to call Dan. There’s no way he is going to send that email right now. He needs to call Dan. Dan cannot get involved, get in touch with him. Please force him to call Dan. Thank you”.

172. In the space of 3 minutes, Ms Green sent three ever more desperate messages to Mr Collier to try to get him to call Mr Pringle.

(1) At 5.23pm, Ms Green messaged Mr Collier as follows: “*CAN you please call Dan now? It is very urgent. He will explain. Now that Jake is back in the game, I cannot and will not [sic] the film with them. Therefore I need to give them back their 1 M now and get the rights*”.

(2) A minute later at 5.24pm, Ms Green sent a WhatsApp message to Ms Cavanagh-Butler saying: “*We cannot send the current email. Charles does not listen. Will you please insist he calls Dan right NOW?*”.

(3) At 5.26pm, Ms Green emailed Mr Collier (forwarding her own earlier email of 5.07pm) saying: “*Will you please call Dan right now? He will explain. I cannot work with Jake. No WAY. Harry is pulling out anyway if Jake is on board. That’s very simple. You do not realize how evil and insane this guy is. I want to get out and give them their million. And I want the script rights*”

173. While she was sending these messages, Mr Collier was actually speaking to Mr Pringle. From his telephone logs it appears that they spoke between 5.21pm and 5.29pm. Neither gave evidence in relation to this call and there is no recording.

174. At 5.40pm, Mr Collier sent an email to Ms Green in relation to the draft letter: “*Okay – let’s send the letter. Hope it works!! Remember. You must not be seen to breach or walk away. You have to make them breach first. If they are in breach you are fine. If you go into breach of contract then none of this will work*”. And at 5.44pm, Mr Collier said: “*Hi Grace, per Eva’s instructions please send the letter!! We will get hit by their lawyers tomorrow. I fear a legal dispute might be coming right down the tracks at us*”. It appears this was immediately followed up by a call from Mr Collier to Tavistock Wood (presumably Ms Cavanagh-Butler) at 5.45pm, in a call lasting 4 minutes and 25 seconds. The letter was then sent at 5.52pm.

175. Mr Mallin KC put to Mr Collier in cross-examination that his evidence that he spoke to Ms Green about this between 22 and 23 September 2019 was “*disingenuous*”, “*dishonest*” and “*fabricated*”. Mr Collier was offended by the suggestion that he might put forward dishonest evidence. Even though the late disclosure of his telephone records do not appear to show that Mr Collier called Ms Green between 5.29pm, when he finished speaking to Mr Pringle, and 5.40pm when he sent the email to Ms Green saying “*Okay – let’s send the letter*”, it seems to me there must have been some form of communication. Those words suggest that Ms Green had given her approval to the letter, and Mr Collier referred to “*Eva’s instructions*” at 5.44pm. Ms Green’s phone records are not available, but she was sending increasingly desperate messages

beforehand, but none afterwards, all of which suggest that she was satisfied with the terms of the letter and had communicated that to Mr Collier. I consider the suggestion that this was all made up by Mr Collier to be unfounded.

176. In any event, this episode shows that, whatever had been said before, having taken advice from Mr Collier, which was what everyone was expecting to happen before any decision was made, Ms Green was intent on pursuing the alternative option of purchasing the script rights in return for the Fee. In the meantime, while negotiations in such respect were continuing Mr Collier had advised and she had accepted that she remained bound by the Artist Agreement, as did White Lantern, which meant she had to be prepared to perform her obligations under it, should she be called upon to do so.
177. At 10.20pm, Ms Griffiths of Lee & Thompson on behalf of SMC, responded to Mr Collier's letter which sought to open formal negotiations on the purchase of the script rights. Instead of making a counter-offer, Ms Griffiths went on the offensive, accusing Ms Green of causing Mr Pringle, Mr Giménez and Mr Boyd to breach their performance obligations by not reporting for work that day. Interestingly, Ms Griffiths did not allege that Ms Green was herself in breach of the Artist Agreement or that she had expressly withdrawn her services from the Film the day before. Mr Burlingham's evidence was that they were concerned that the alleged renunciation had not yet been documented and so it could be denied or recanted by Ms Green. However that provides no credible reason why SMC's lawyers would not have referred to it in this aggressive response to the offer by Ms Green. If they truly believed that Ms Green had renounced her obligations under the Artist Agreement, as they asserted, they would surely have used that as leverage in the negotiations that were to follow. But it is never once mentioned in all the without prejudice or open negotiations in relation to the script rights. On the contrary, those negotiations proceeded on the basis that Ms Green was entitled to the Fee which she was going to use as her consideration for the purchase of the script rights.
178. In fact, it appears that the New Production Structure put forward to the Former Directors on 21 September 2019 had not been authorised by SMC. At 8.17pm on 23 September 2019, Mr Pringle sought clarity from Mr Seal as to the terms of the New Production Structure. He seems to have been under the same impression as Mr Merrifield that the rights were being transferred from White Lantern to a new company owned by SMC. He, like Mr Merrifield, was most concerned at that time with their personal liabilities as directors of White Lantern with a substantial amount owing to SMC. They wanted to know where they stood, particularly in relation to the debt to SMC, while also being keen that Ms Green negotiate the alternative iteration which would be another way of removing that debt.
179. At 8.59pm, Mr Seal responded by distancing himself from the New Production Structure. He said that: "*unless and until a different structure is put in place, we are all living under the current one with the production activities to continue as required. I can't change that.*" He did not mention any alleged renunciation.
180. On the following day, 24 September 2019, at 11.51am Mr Merrifield sought the same clarity that Mr Pringle had sought, explaining the confusion that had arisen but saying that he had continued to work on the production under the existing structure. Again Mr Merrifield did not mention the alleged withdrawal by Ms Green and his assertion that he was working on the production assumes that there had been no renunciation that he had accepted. Mr Seal then responded at 12.03pm regarding the New Production



Structure. He said: *“To be clear. It was not an offer. It was a proposal and a proposed methodology. Until it is signed off by Sherborne, everything continues as per usual.”* Mr Burlingham also responded to Mr Merrifield’s email as follows: *“For the record, there have been no proposals or offers (formal or informal) made to you by Sherborne or extended to you via 3<sup>rd</sup> parties on behalf of Sherborne regarding the treatment, waiver or transfer of the Sherborne debt and any discussion of the debt would be held with Gary and myself plus our attorney Anwen and would then be documented”*. Mr Burlingham said in his oral evidence that the only element of the New Production Structure that SMC had not agreed to was in relation to the transfer of White Lantern’s debt to the new company but that this was a *“sub part of that which we hadn’t fleshed out”*.

181. The above indicates that the New Production Structure required quite a bit more work on it before it could even be implemented. So far as the Former Directors were concerned the settling of the debt owed by White Lantern to SMC was of immense importance. Clearly Ms Green’s prime concern was whether Mr Seal was in control of the production, something which also troubled the Former Directors, although Mr Merrifield was prepared to step aside if it meant the debt being sorted out. So far as SMC was concerned, it simply wanted its debt repaid, but the New Production Structure would not achieve that. In any event, it is clear that it was not in place during the week of 23 September 2019 and there was no further discussion of it after the above emails.

*(m) Tuesday, 24 September 2019 onwards*

182. On 24 September 2019, Mr Collier responded to Ms Griffiths’ email of the night before. He refuted the allegations made against Ms Green and expressed doubt as to the ability of SMC and White Lantern to complete production of the Film in accordance with the Artist Agreement. He asked whether SMC was really rejecting Ms Green’s offer and if so how they proposed to move the Film into production.
183. After some telephone calls and without prejudice discussions, Ms Griffiths responded in writing by email on Friday 27 September 2019. In that email, she said that if Ms Green did not want to continue with the Film in the current iteration, SMC would accept repayment of the Fee. Alternatively, if Ms Green wished to acquire the rights to the Film, she said that SMC would accept an *“acquisition fee”* of \$1.5 million, based on a valuation of the White Lantern debt owed to SMC, such to be funded as to \$1 million by return of the Fee. SMC also agreed to reduce the acquisition fee to \$1.25 million but with a lien for the balance.
184. Later in the day on 27 September 2019, Mr Collier confirmed that Ms Green remained *“ready, willing and able”* to perform her services for the Film in accordance with the Artist Agreement and asked to be provided with a work schedule for the following week. Ms Green also offered to pay an extra \$250,000 in two tranches on top of the Fee to acquire the script rights. As to the production schedule, Ms Griffiths said that this was a matter for the production team, i.e. the Former Directors and Mr Seal, not her client, SMC, which was only interested in the script rights negotiation.
185. At 9.10pm on Sunday 29 September 2019, Ms Griffiths emailed Mr Collier, alleging breaches of the Artist Agreement and the *“poor conduct”* of Ms Green. It threatened to sue Ms Green if she did not return the Fee. Curiously, there was again no mention of Ms Green’s alleged renunciation the week before or at any time since. Mr Collier

responded by letter dated 30 September 2019. He proposed on behalf of Ms Green, return of the Fee, plus \$250,000 cash, plus an entitlement to share in the Film's gross receipts as the consideration for the script rights. On Tuesday 1 October 2019, Ms Griffiths wrote to say that this latest offer was "*broadly acceptable*" to SMC. From this point on, it was common ground that all purported preparations for the production of the Film at Black Hangar had been abandoned.

186. Going back to Tuesday 24 September 2019, the Defendants sought to focus on the private messages of Ms Green that they said provided support for their case on her alleged renunciation or alternatively their tort claims. Early in the morning, Ms Green and Mr Pringle were messaging each other. In one, Ms Green said "*We need to prove that they [Sherborne] are not reliable and that is why I am pulling out*". Similarly, she said (referring to Mr Seal, Black Hangar and/or SMC): "*we need to attack them. They are little sad people*". Mr Pringle responded, "*It's very sad and I am happy to support you if you want to take them on*". On the same day, Ms Green emailed Mr Collier to say: "*I cannot make this movie with this sociopath*". From the context, when Ms Green said that she was "*pulling out*", it seems to me that she was referring to not wanting to make the Film under the New Production Structure with Mr Seal in control and preferring to negotiate for the script rights so that she would not have to work with them.
187. The Former Directors had been advised by Mr Michaels that, until a deal was done on the script rights, they had to proceed with preparations for the production of the Film at Black Hangar so as to avoid any personal liability. SMC had been told the same by its lawyer, Ms Griffiths. That is why they were both making it look as though they were ready to proceed. On 24 September 2019, Mr Merrifield sent a WhatsApp message to the group with Ms Green and Mr Pringle explaining why they could not attend a meeting at Tavistock Wood with Ms Green and Mr Collier: "*we are going to the Studio today as we need to make it look like we are all still "trying" to make the movie until lawyers say otherwise, I will call Charles but Grace thought we should go to the studio instead of London*". Mr Merrifield then sent a further message saying: "*really sorry we cant [sic] be there today, it's better for us that we keep up appearances*".
188. Mr Pringle spoke to Mr Collier and then messaged Ms Green in the early hours of 26 September 2019, saying: "*Call with Charles went well. They are all being adults. Sherbourne's [sic] position is weakening by the day. Just need to keep playing filmmaking for a bit longer. I might need your support with some of this. Let's talk early in the morning. Sweet dreams Eva Green xx*". Ms Green responded: "*They will ask me to go to the Studio maybe for stunt ect [sic] ...? Jake will want to test me and see if I am really going to do this... I cannot go to the Studio ect [sic] ... my soul will die ...*".
189. Also that day, in a WhatsApp message to Mr Ward, Ms Green stated that she was "*playing a game with these evil producers ... I am trying to get the rights of the script back so we can shoot it with a healthy production*". That night, Mr Merrifield discussed with Ms Green bringing Mr Giménez over to the UK on Sunday with Ms Green as part of "*Operation Fake It! And for no other reason*", saying that this was not authorised but that they could show up at Black Hangar on Monday to "*demonstrate that we (Dan, You, Me) are all 'working' towards making the movie. The longer this charade can be maintained the weaker Sherborne's negotiating position ... we are applying loads of pressure to weaken their ability to negotiate*". Mr Merrifield then sent Ms Green a message saying: "*You will NEVER do this movie with Jake, he lives in a world with*

*unicorns and flying pigs, it's never going to happen. Next week is the last week I promise".*

190. The late disclosure revealed some more messages between Ms Green and Mr Collier during this week, showing the lengths Ms Green was prepared to go to ensure she did not have to work with Mr Seal. On 27 September 2019, Mr Collier outlined to Ms Green that he considered there remained four options: which he described as “run” (hand the money back); “litigate” (which Mr Collier advised against); option “(a) agree to make the film – and then pray that they fall apart so you can pick up the rights for nothing more than the escrow cash” and option “(b) you agree to pay the \$1.5M” (that was the then offer on the table). Ms Green’s response made clear what she thought of Mr Seal: “he has done everything to sabotage the movie...we are dealing with a mad man...Not one actor would agree to work in these conditions. Jake is mad”.
191. Also on 27 September 2019, Ms Green sent WhatsApp messages to Mr Collier to say “I am so so worried the movie is going to go ahead. They are stupid and unprofessional enough to go ahead. I know you say it is impossible to change my position if they announce they are going to go ahead. But please please think what we can say to just RUN on Monday if we get bad news”. Ms Green emphasised: “If I am forced to do this move with Jake, I would have sold my soul. I cannot do this. I can’t”. Although Mr Collier played down this possibility in response, in reply Ms Green appeared to contemplate faking a broken arm or a rash in order to avoid her having to perform.
192. Indeed, as at 28 September 2019, Ms Green was so concerned about what would happen if she were expressly called upon to perform that she suggested that Mr Collier invent a story about Ms Green being hospitalised (and appeared to suggest evidence be fabricated to this effect): “IF they come back to you and say they are going to go ahead with the movie, what can we say...? Could we say this situation has made me ill over the weekend? We could say I had to go to hospital as I had a serious rash all over my body? Would Doctor Harris help...?”
193. The following day, Ms Green sent a message to Mr Collier, having been told by Mr Merrifield that “the movie might go ahead (and it is true as we are dealing with Jake, a real mad dictator who wants to prove he is right so he could be ready for anything” and she said that: “Jake cannot win. Impossible. I need to get the rights and get the fuck out of this nightmare. I will NOT shoot in Jake’ [sic] studio. Let’s get the fuck out. And bring this wonderful script to a safe place. Far from Evil.”
194. Mr Mallin KC submitted that these communications provide compelling evidence of the alleged renunciation and the fact that Ms Green’s position remained unchanged throughout the course of the week. In my view, however, they provide little evidence in support of the alleged renunciation as they show that Ms Green was determined to avoid having to make the Film with Mr Seal and SMC, who she thought would produce a very bad quality Film, and that the way to avoid working with them was to negotiate with SMC for the script rights. Her position did remain constant throughout from the 22 September 2019 call that she did not want to make the Film under the New Production Structure with Mr Seal in full control.
195. But Ms Green was never called upon to perform any services for the production. Nor was she asked to attend any appointments or meetings. No one contacted her or her agent to give instructions as to when or where she should attend to provide her services

under the Artist Agreement. The Defendants therefore failed to test whether she had indeed withdrawn her services from the production and her private expressions of unwillingness to work with Mr Seal and/or SMC can have little or no bearing on whether she had in fact renounced her obligations under the Artist Agreement.

*(n) The end of the negotiations and the service of the Notice*

196. As noted above, from 30 September 2019 there is no dispute that all pretence of the Film being made at Black Hangar had been abandoned. Both sides were therefore concentrated on the negotiations in relation to the script rights.
197. Following SMC's agreement in principle on 1 October 2019 to Ms Green's offer of 30 September 2019, Ms Green engaged Mr Fraser Bloom of Bloom Media lawyers to finalise the contractual arrangements. Between 4 and 9 October 2019, there were various discussions and negotiations between Mr Bloom and Ms Griffiths, largely in which Mr Bloom on behalf of Ms Green was seeking documentation and information in relation to the production.
198. Mr Raskin claimed in his witness statement that it was only on 11 October 2019, in a call with Mr Bloom and Ms Griffiths, that he realised that Ms Green's offer to return the Fee was conditional on the script rights being acquired by her. He said that he thereafter became concerned that the whole negotiating process had been a "*subterfuge*" by Ms Green. This, in my view, is a gross exaggeration and involves him, an experienced lawyer in relation to film rights, misconstruing the offers made on Ms Green's behalf by Mr Collier on 23 and 30 September 2019. Throughout, Ms Green had been clear that she would only return the Fee in consideration (or part consideration) for the acquisition of the rights to the Film. Even if Ms Griffiths' counter-offers could be construed as not making the two conditional (although the references to the "*acquisition fee*" in her email of 27 September 2019 suggest otherwise), there could be little doubt that this was how it was being viewed by Ms Green and her advisors.
199. If Mr Raskin and Ms Griffiths considered that the Fee was repayable by Ms Green in any event, irrespective of the outcome of the negotiations over the script rights, the simplest thing to have said would have been that this was as a result of the alleged renunciation on 22 September 2019 and Ms Green's agreement to return the Fee. This was, after all, something that they were all apparently aware of at the time of the negotiations, yet there is no mention of it at any time.
200. This led to the breakdown and end of the negotiations. They were formally terminated on 18 October 2019 when Mr Bloom withdrew Ms Green's latest offer.
201. As a result of the failure of the negotiations, on 18 October 2019, SMC procured the Former Directors to sign a notice on behalf of White Lantern under the Escrow Agreement. The Defendants assert that this was a notice of termination of the Artist Agreement both at common law and pursuant to its terms. Until the first day of the trial, the notice was the only basis for the Defendants' case that the alleged renunciation had been accepted by White Lantern.
202. The notice was sent to Ms Green and Tavistock Wood, as Escrow Agent, and it was expressly stated to have been sent: "*pursuant to and in accordance with Clause 4 of the*

*Escrow Agreement.*” It notified the recipients of: “*an alleged material breach by [Ms Green] under the [Artist Agreement] and/or the occurrence of an event which would entitle [White Lantern] [sic] suspend or terminate its payment obligations under the [Artist Agreement].*” The alleged breaches were not specified; nor was there any reference to the alleged renunciation. This put Tavistock Wood on notice not to make any payment out of the escrow account “*until the occurrence of the first of the events set out in Clause 4 of the Escrow Agreement.*”

203. Following the removal of the Former Directors as directors of White Lantern and its takeover by SMC pursuant to the Share Charge, on 3 February 2020, Mishcon de Reya LLP wrote on behalf of SMC purporting to terminate the Artist Agreement under clause 26(a)(i) for alleged breaches of the Artist Agreement. Again there was no mention of a renunciation having happened on 22 September 2019; nor that such was allegedly accepted by the notice under the Escrow Agreement dated 18 October 2019.
204. On 3 June 2020, proceedings were issued by Ms Green. The first time that renunciation on 22 September 2019 was mentioned by the Defendants was in White Lantern’s original Defence and Counterclaim filed on 23 July 2020.

## **E. RENUNCIATION**

205. The case, in reality, turns on whether Ms Green renounced her obligations under the Artist Agreement on 22 September 2019. While Mr Mallin KC kept his other options open, such as whether there were other repudiatory breaches by Ms Green entitling White Lantern to terminate the Artist Agreement, he made no closing submissions on them and they were not actively pursued. Furthermore, in my view, the alternative tort claims are dependent on the Defendants establishing that there had been a renunciation on 22 September 2019 which they were in some way prevented from accepting. Mr Mallin KC said that they were not completely dependent on the renunciation, but he could not explain how they could work without there having been a renunciation by Ms Green.

### *(1) Legal Principles in relation to Renunciation*

206. There was no real dispute about the legal principles as to whether there was a renunciation or not. There is a useful summary in *Chitty on Contracts* (34<sup>th</sup> Ed) at [27-048]:

“A renunciation of a contract occurs when one party by words or conduct evinces an intention not to perform, or expressly declares that he is or will be unable to perform, his obligations under the contract in some essential respect. The renunciation may occur before or at the time fixed for performance. An absolute refusal by one party to perform his side of the contract will entitle the other party to terminate further performance of the contract, as will also a clear and unambiguous assertion by one party that he will be unable to perform when the time for performance should arrive. Short of such an express refusal or declaration, however, the test is to ascertain whether the action or actions of the party in default

are such as to lead a reasonable person to conclude that he no longer intends to be bound by its provisions. The renunciation is then evidenced by conduct.”

207. Renunciation is thus a species of repudiatory breach but normally occurs before or at the time performance is required under the contract. The renouncing party must evince an intention not to perform or expressly declare that they are unable to perform their obligations under the contract in some essential respect. The question whether there has been a renunciation depends on what a reasonable person in the position of the innocent party would understand from their words or conduct and the surrounding circumstances. And any such renunciatory words or conduct must be clear and unequivocal - see *Teekay Tankers Ltd. v STX Offshore & Shipbuilding Co Ltd* [2017] EWHC 253 (Comm) at [217] per Walker J.

208. There are warnings in the authorities about too much reliance on propositions derived from other cases that inevitably turn on their own facts. In particular Etherton LJ (as he then was) in *Eminence Property Developments Ltd v Heaney* [2010] EWCA Civ 1168 at [61] to [63] said:

“[61] I would make the following general observations on all those cases. First, in this area of the law, as in many others, there is a danger in attempts to clarify the application of a legal principle by a series of propositions derived from cases decided on their own particular facts. Instead of concentrating on the application of the principle to the facts of the case in hand, argument tends to revolve around the application of those propositions, which, if stated by the Court in an attempt to assist in future cases, often become regarded as prescriptive. So far as concerns repudiatory conduct, the legal test is simply stated, or, as Lord Wilberforce put it, ‘perspicuous’. It is whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract.

[62] Secondly, whether or not there has been a repudiatory breach is highly fact sensitive. That is why comparison with other cases is of limited value...

[63] Thirdly, all the circumstances must be taken into account in so far as they bear on an objective assessment of the intention of the contract breaker. This means that motive, while irrelevant if relied upon solely to show the subjective intention of the contract breaker, may be relevant if it is something or it reflects something of which the innocent party was, or a reasonable person in his or her position would have been, aware and throws light on the way the alleged repudiatory act would be viewed by such a reasonable person...” (emphasis added)

209. The question is highly fact-sensitive and context-specific. The innocent contracting party in this case is White Lantern, represented at the time by the Former Directors. They knew Ms Green well by this stage and in assessing objectively how reasonable persons in their position would have understood what she said on the call on 22 September 2019, that knowledge together with the surrounding circumstances and in particular the way the matter was put to Ms Green will be highly relevant factors.

210. If there was a renunciation by Ms Green, there is then an issue as to whether that was accepted by White Lantern and that it communicated to Ms Green that it was treating

the Artist Agreement as at an end. No particular form of acceptance is required but it must clearly and unequivocally convey to the defaulting party that the innocent party is treating the contract as terminated: see *The Santa Clara* [1996] AC 800, at 810-811.

211. As noted above, until the start of the trial the Defendants were simply relying on the notice dated 18 October 2019 served pursuant to the Escrow Agreement as constituting an acceptance by White Lantern of the renunciation. The question then arises whether there was a valid termination under the terms of the Artist Agreement despite the fact that no notice of termination under clause 26 of the Artist Agreement was served. If it was not a valid notice under the Artist Agreement, there is then an issue as to whether the notice could constitute a valid acceptance at common law, bringing into play such cases as *Stocznia Gdanska SA v Latvian Shipping Co* [2002] 2 Lloyd's LR 436. In any event, even under the common law, the acceptance has to be clear and unequivocal and it is difficult to see that the notice dated 18 October 2019 was.
212. That is perhaps why Mr Mallin KC applied for permission to amend to plead that the alleged renunciation had been accepted by the conduct of the Former Directors. Again, the test will be whether the Former Directors clearly and unequivocally conveyed to Ms Green that they were treating the Artist Agreement as at an end.
213. Mr Cullen KC relied on two further propositions, if (which Ms Green denies) there was a renunciation, namely:
- (1) The Artist Agreement was affirmed by White Lantern and/or the renunciation was waived by White Lantern before it was ever accepted;
  - (2) The renunciation was withdrawn before the time for performance had arrived and when there had been no intervening acceptance of the renunciation. Reliance was placed on *Norwest Holst Group v Harrison* [1985] 1 ICR 668.

(2) *What was put to Ms Green on the 1.30pm call on 22 September 2019?*

214. The Defendants' case now largely rests on what Ms Green has admitted saying on 22 September 2019, namely that "*it was impossible and there was no way [she] would ever do the film with Mr Seal in control*". She repeatedly said thereafter that it would be "*impossible*" to make the Film under those circumstances. That she said words to this effect was confirmed by Mr Pringle and Mr Merrifield.
215. Mr Mallin KC submitted that those words alone are sufficient in themselves to prove that she had renounced her obligations under the Artist Agreement, as amended by the Further Amendment Letter. That was because he said that the only way the Film was going to be made was under the New Production Structure. There is therefore an issue as to whether Ms Green was contractually obliged to accept the New Production Structure and to provide her services to the Film which was to be produced at Black Hangar under the full control of Mr Seal.
216. To recap, the New Production Structure was presented to the Former Directors at the hurriedly arranged meeting on 21 September 2019. Mr Seal had said in an email the night before that this was the "*only way this film can happen*". Its description as the

New Production Structure and its terms were pleaded as such by the Defendants. It was clearly proposing something different to what the Former Directors and Ms Green were expecting for the pre-production starting two days later on Monday 23 September 2019. In particular, Mr Seal being installed as lead producer in full control of the production was something that SMC, Mr Seal and Mr Mann knew would be deeply disturbing and unpalatable for Ms Green, and probably for the Former Directors too. After a long meeting where this and the alternative of a sale of the script rights were discussed, the Former Directors were asked for a response by 5pm the next day. As Mr Seal said on 23 September 2019, they were trying to box Ms Green into a corner.

217. By his closing written and oral submissions, Mr Mallin KC was putting a very different spin on the New Production Structure (as noted in [129] above). He was then maintaining that it was not such a major change and it was effectively continuing the position as it existed up to 20 September 2019, with Mr Seal as the de facto lead producer of the Film and with Black Hangar as the approved studios for the production. He said that Ms Green had approved Mr Seal as an additional producer in the Further Amendment Letter and that since that time everyone, including Ms Green and the Former Directors, had accepted that the Film would be made at Black Hangar under the effective control of Mr Seal and that therefore they had recognised that Mr Seal was the de facto lead producer in charge or control of the production of the Film at Black Hangar. When I put to Mr Mallin KC that, if that was so, there was no need for the New Production Structure, he said that the reason it was put forward was because Ms Green and the Former Directors had mistakenly assumed that, as a result of Mr Mann's arrival on the scene in the week of 16 September 2019, Mr Seal was no longer the lead producer. It seems to me however that this does not adequately explain the dramatic manner in which the New Production Structure was put forward and its other terms.
218. Mr Cullen KC submitted that the New Production Structure was not consistent with the terms of the Artist Agreement. This was for two main reasons: (i) it was part of the New Production Structure that Mr Boyd would not be a producer, whereas under the Further Amendment Letter, Ms Green had the right, at her expense, to have Mr Boyd as a producer in addition to his role as First Assistant Director; and (ii) Ms Green only approved Mr Seal as an "*additional producer*" in the Further Amendment Letter, which implied that there were other producers such as Mr Merrifield, whereas under the New Production Structure, Mr Seal was being put in sole charge of the production and Mr Merrifield was being ousted. It was presumably recognised that, as Ms Green's approval was thought to be required for Mr Seal's appointment as an "*additional producer*" in the Further Amendment Letter, so it would similarly be required for his elevation to "*lead producer*". Otherwise they would not have needed to have sought Ms Green's approval. Mr Cullen KC therefore submitted that Ms Green could not have renounced if she was being asked to render performance in accordance with a varied or different Artist Agreement or inconsistently with the existing one.
219. Mr Mallin KC's answers to these points were that the New Production Structure was not only consistent with the Artist Agreement but also that it was being put forward pursuant to the Artist Agreement. By that he meant that it was up to White Lantern, in the form of the Former Directors, to decide how the production was to work and who was to be in control of it. If the Former Directors accepted the New Production Structure with Mr Seal in sole charge they could require Ms Green to perform under that structure and in accordance with the Artist Agreement. In relation to Mr Boyd, Mr Mallin KC



said that this was a “*red herring*” as there was no evidence that this point was referred to on the call or that this was a reason why Ms Green was refusing to perform. (In fact, it probably was referred to on the call as evidenced by Mr Merrifield’s email at 2.02pm on 22 September 2019 and his later one at 5.17pm to Mr Seal and Mr Mann which show that it was an issue for Ms Green.)

220. However, the main flaw in this argument is that the New Production Structure was not being proposed by or on behalf of White Lantern. It is clear that, if anyone, it was being put forward by Mr Seal and Mr Mann purportedly on behalf of SMC, at least insofar as concerned the instalment of Mr Seal as lead producer in full control of the production. (Mr Burlingham said that it was only the proposals in relation to the move to another company and the settlement of White Lantern’s debt that had not been authorised by SMC.) That this was SMC’s proposal is apparent from Mr Merrifield’s email at 2.02pm set out in full at [140] above and which I have found to be the best evidence of what was said to and discussed on the 1.30pm call with Ms Green. Mr Merrifield thought that the script rights had already moved to another company and that Mr Seal had been installed as the producer. If that is what he thought, I do not understand how he could have been putting the New Production Structure forward on behalf of White Lantern, which he thought no longer had a place in the production. It is true to say that the Former Directors had given evidence they had felt under the de facto control of Mr Seal and SMC but that does not mean that they lacked legal authority to decide what they considered was in the best interests of White Lantern and the production of the Film.
221. It is obvious that the Former Directors did not like the New Production Structure and much preferred the alternative to it, which was the acquisition of the script rights by Ms Green whereupon they could make the Film in the way they envisaged without the involvement of Mr Seal and SMC. That was suggested to Ms Green by the Former Directors as an alternative to making the Film under the New Production Structure. If this was presented as an alternative, and more likely their favoured option, the Former Directors could not have been saying to Ms Green that they, on behalf of White Lantern, were requiring her to comply with her obligations under the Artist Agreement and make the Film under the full control of Mr Seal. Instead they were communicating to her that the Film could be made by them without Mr Seal and SMC if she was prepared to negotiate for the script rights in return for her Fee. That was the route that she enthusiastically wished to take.
222. It was suggested by Mr Mallin KC that the only way the Artist Agreement could be performed at that time was by Ms Green agreeing to make the Film under Mr Seal’s full control. He said that Ms Green could not have provided her services under the Artist Agreement in the alternative iteration because she would have bought the script rights from White Lantern and so she could not have contracted with White Lantern in the form of the Artist Agreement.
223. But that seems to me to be highly technical and divorced from reality. It was of the essence of the Artist Agreement that Ms Green would make the Film with White Lantern. If a deal had been done between Ms Green and SMC to acquire the script rights in return for the Fee, the expectation was that White Lantern would still be the producer of the Film, with the Former Directors in control, and therefore the Artist Agreement could be suitably amended to take into account the necessary agreed changes to timings, location and crew. As to the fact that White Lantern would have divested itself of the script rights in order to comply with the terms of the deal between SMC and Ms Green,

it would be straightforward, once SMC was removed from the scene, for the script rights to be licensed to White Lantern to enable it to produce the Film.

224. There was nothing in the Artist Agreement or Further Amendment Letter that bound Ms Green to make the Film at Black Hangar or under Mr Seal's full control. Both those matters were within the gift of White Lantern and there is no contractual documentation showing that White Lantern had actually bound itself to make the Film at Black Hangar; nor was there any written contract whereby White Lantern appointed Mr Seal as a producer. Therefore White Lantern remained at liberty to decide both such matters.
225. In my judgment it is not right to say that the only way the Film was going to be made in accordance with the Artist Agreement was under the New Production Structure and more particularly under Mr Seal's full control. That was certainly not the way the Former Directors presented the matter to Ms Green. What they did was explain the New Production Structure (perhaps not accurately) but saying effectively that Ms Green had a choice, either to make the Film under Mr Seal's full control and funded by SMC or to negotiate over the script rights which would inevitably mean handing back the Fee. It was not Mr Mann's "*binary choice*" of either making the Film with Mr Seal or walking away and returning the Fee. Quite apart from the shock at being presented with the New Production Structure, she was being given a substantive choice and they all probably knew exactly which option she would go for.

(3) *What would a reasonable person have understood Ms Green to be saying?*

226. I have set out in [138] to [145] above my factual findings as to what was put to Ms Green and her response on the call at 1.30pm on 22 September 2019. Whilst there is some uncertainty as to exactly what the Former Directors said to her, and whether it accurately portrayed the New Production Structure, there is no ambiguity as to how Mr Merrifield presented it in his email to Ms Green shortly thereafter at 2.02pm. Nor is there any doubt that Ms Green used the word "*impossible*" in relation to working on the Film under Mr Seal's full control.
227. Mr Mallin KC said that the word "*impossible*" can only be construed as meaning that Ms Green was categorically and unequivocally refusing to perform her obligations under the Artist Agreement. However that is to take the word out of context and ignores what it is referring to and how it would have been understood by reasonable persons in the position of the Former Directors. Furthermore, Mr Mallin KC's interpretation is not even the literal meaning of "*impossible*" which would be that she was incapable or unable to do something, rather than as indicating an intention not to perform. It should not be forgotten that English is not her natural language and she was known by the Former Directors to use highly emotional and hyperbolic language particularly in relation to the Film and Mr Seal.
228. There are two crucial points about what Ms Green said:
- (1) She was responding to a choice that had been put to her of either going along with the New Production Structure and making the Film at Black Hangar under the full control of Mr Seal or negotiating to buy the script rights in return for the Fee,

following which she could make the Film with the Former Directors in the way they wanted; and

(2) She expressly was not communicating a final and binding contractual decision as they all recognised that it would have to go through Mr Collier before any such decision was made. Ms Green said on the call that she wished to speak to Mr Collier and wanted Mr Merrifield to send an email explaining the choice and for this to be forwarded to Mr Collier. This was what happened and Mr Mann was told this in the call at 5pm with Mr Merrifield that Mr Collier owned “*the keys to the Eva Green castle*”.

229. So when Ms Green used the word “*impossible*”, that was clearly understood by the Former Directors, and would have been so by reasonable persons in their position, as meaning that, given the options available to her at the time, she strongly preferred to pursue the script rights acquisition. As Mr Merrifield said to Mr Mann, she was “*not keen*” on the New Production Structure and, as everyone knew, she did not want to work with Mr Seal who she thought would produce a low quality “B” movie. She desperately wanted to make the Film because she was passionate about the script and her role. That was why she even contemplated giving up the Fee in return for that opportunity. But no one could sensibly have thought that she expressed a conclusive decision on the call not to perform her contractual obligations under the Artist Agreement. On the contrary, she wanted to make the Film with White Lantern but without Mr Seal and SMC. That was one of the choices before her and, if Mr Collier agreed, would be the one that she would want to pursue.

(4) *Subsequent evidence of renunciation*

230. The Defendants sought to bolster their case on renunciation by referring to communications, mainly in private WhatsApp messages and emails, that they said provided contemporaneous evidence of the renunciation and showed that Ms Green’s position did not change. In their pleading, they had alleged that these communications showed that there was a “*continuing or further*” renunciation of the Artist Agreement, but the notion of a new renunciation after the call at 1.30pm on 22 September 2019 was not pursued by the Defendants at the trial. Accordingly, the only issue is whether, contrary to my findings above, Ms Green did renounce her obligations during the call.

231. I have set out above my narrative chronology of the communications, both private and with other relevant parties, in the period following the alleged renunciatory call. Mr Mallin KC particularly relied on the following phrases used by Ms Green:

(1) That she needed “*to get out of this nightmare*” – message to Mr Collier at 1.57pm on 22 September 2019; and at 2.14pm: “*I just want to get out of this nightmare and get the script rights...*”

(2) The messages on 23 September 2019 between Ms Green and Mr Collier and others at Tavistock Wood concerning the opening letter of offer, including: “*No I CANNOT make this film with SHERBOURNE [sic]. Impossible*”; “*If Jake was not present, maybe but now that for some obscure reason Jake is back... no way*”; “*This*

*is why I cannot work. We... I have to pull out. If Jake is not in the game it would be fine but now he's back in the game and he rules again. So that's not possible".*

- (3) The messages she sent to some of her crew on 23 September 2019, including: to Ms McGrath “*We had to get out as the main investor was a fucking nightmare... Truly mad... We are going to get back the script rights and relocate in Scotland or Ireland...*”; to Mr Ward: “*We had to get out as the investor and Terry were evil ... it might happen next year now*”;
- (4) Early in the morning on 24 September 2019, Ms Green exchanged messages with Mr Pringle: Ms Green said “*We need to prove that they [Sherborne] are not reliable and that is why I am pulling out*”; referring to Mr Seal, Black Hangar and/or SMC, she said: “*we need to attack them. They are little sad people*”; Mr Pringle responded, “*It's very sad and I am happy to support you if you want to take them on*”.
232. The point about all these communications is that they either expressly refer to Ms Green’s preference for pursuing the script rights acquisition “*to get out of this Jake nightmare*” or they are clearly predicated on that. When she says “*we have to pull out*” or “*we are pulling out*” or “*we had to get out*”, these have to be understood in the context of a heightened emotional state where Ms Green is venting her fury at Mr Seal and the state of the production of the Film she is desperate to make. She is being open with the people she trusts. And she is clearly telling them that she has pinned all her hopes on the negotiations for the script rights succeeding whereupon she would be able to work with them on making the Film, away from Black Hangar, Mr Seal and SMC.
233. But she had also been strongly advised by Mr Collier not to break her contract and that meant, as she realised, that she may ultimately have been required to make the Film at Black Hangar if the negotiations did not have a successful outcome. She recognised that she could still be forced to make the Film in those circumstances, which itself assumes that she had not withdrawn her services under the Artist Agreement.
234. Furthermore, Ms Green’s negotiating position and the underlying premise of the negotiations on both sides, was that Ms Green was entitled to the Fee. So far as she was concerned, that meant it was essential that she did not renounce her obligations or fundamentally breach the Artist Agreement. SMC’s lawyer took a very hard line with her first response to Ms Green’s opening letter of offer, accusing Ms Green of inducing breaches of contract by various crew members. Even if SMC were maintaining that the Fee was due back to them irrespective of a deal being done on the script rights, it never alleged that there had been a renunciation on 22 September 2019 and the whole tenor of the negotiations was based on an assumption that Ms Green was entitled to the Fee.
235. When the communications are looked at in the round, they do not provide any further evidence that Ms Green had renounced her obligations on 22 September 2019. On the contrary, they show that she recognised that she was still bound by the Artist Agreement and could be forced to make the Film at Black Hangar with Mr Seal, which is why she was so determined to avoid that by negotiating for the script rights.

(5) *Conclusion on renunciation*

236. In my judgment, therefore, on the call with the Former Directors on 22 September 2019, Ms Green did not evince a clear and unequivocal intention not to perform her obligations under the Artist Agreement. Reasonable persons in the position of the Former Directors would not have understood that she was withdrawing from and refusing to perform the Artist Agreement.
237. The Former Directors did not think that this was what she had done and they did not report that she had withdrawn to Mr Mann, Mr Seal and SMC. Instead they knew, as did everyone, that she wanted to pursue the option that was said to be attractive to SMC of acquiring the script rights in return for the Fee and I do not believe that any of the Defendants' witnesses truly considered that Ms Green had withdrawn her services from the Film and renounced the Artist Agreement. If the choice was as simple as Mr Mann made out and they had genuinely understood that Ms Green had chosen to withdraw her services and hand back the Fee, it defies belief that they would not have immediately demanded a return of the Fee. SMC was only interested in recovering its debt and the return of the Fee would have gone a substantial way towards achieving that, without having to risk another £3.3 million on funding the Film to completion. If they thought they were putting effectively a "yes/no" binary question to Ms Green and then received a "no" by way of answer, then surely they would have followed up by immediately claiming the Fee or at least using it as leverage in the negotiations.
238. The renunciation allegation has the feel of being constructed after the event in order to be able to mount some sort of defence to the claim brought by Ms Green. It was based on false evidence adduced by the Defendants' witnesses as to what they had been told by Mr Merrifield and Mr Pringle. It was clear, not only from the recordings but also from the contemporaneous emails on 22 September 2019, both that there had not been a renunciation and that the Defendants' witnesses had not understood there to have been one. The Defendants rely on the objective nature of the legal test and the consequent assessment of the facts but that even more clearly shows that, placed in the appropriate context, there is no doubt that Ms Green did not make any conclusive decision or statement that she would not comply with her obligations under the Artist Agreement. Nor could anyone have reasonably understood her to have made such a decision. She strongly indicated that she wished to pursue the acquisition of the script rights, but this was an option open to her and seemed as though it would have been likely to succeed. But if it did not, she had not ruled out the possibility that she would have had to make the Film at Black Hangar.
239. I therefore reject the Defendants' case on renunciation.
240. If I had found there to have been a renunciation, I would have needed to go on to consider the following three issues:
- (1) Acceptance of the renunciation;
  - (2) Affirmation of the Artist Agreement; and/or
  - (3) Withdrawal of the renunciation.

As these issues do not now arise, I will deal with them shortly.

## F. ACCEPTANCE

241. I set out in [210] to [212] above the legal principles in relation to acceptance of a renunciation. The acceptance must be communicated to the renouncing party and this must clearly and unequivocally convey that the innocent party is treating the contract as at an end.
242. The Defendants' new plea of acceptance by conduct is heavily bound up with the facts relating to the renunciation itself, as both are said to have happened at the same time. It is therefore quite difficult to disentangle my findings in relation to the renunciation and then to make alternative findings on the assumption that there was a renunciation.
243. Mr Mallin KC submitted that the evidence showed that:
- (1) The Former Directors, to Ms Green's knowledge, immediately took steps to stand down crew members and ensure that they did not travel to Black Hangar for the first day of pre-production on 23 September 2019;
  - (2) The Former Directors' subsequent actions were consistent only with what they allegedly termed "*Operation Fake It*" or, as Mr Mallin KC put it, to give the false impression of film-making and they were only working towards their favoured iteration of the Film on the basis that Ms Green had acquired the script rights;
  - (3) The Former Directors took no real steps towards making the Film at Black Hangar.
244. As to the standing down of crew members, the Former Directors had already spoken to Mr Boyd and Mr Giménez on Saturday 21 September 2019 to warn them that they were unlikely to be needed on the Monday for pre-production (see [132] and [133] above). This was therefore done before they had spoken to Ms Green the following day and so could not have been a response to the renunciation. They also spoke to Mr Giménez at 1.25pm on 22 September 2019, just before the call with Ms Green and they told him not to fly to London. Mr Merrifield later confirmed the position with Mr Giménez's agent at 5.59pm and made clear that they would be proceeding with the Film when Ms Green had acquired the script rights.
245. As for the other crew members, such as Ms Bergin, Ms McGrath, Mr Ward and Mr Hubbard, it is clear that during the course of Monday 23 September 2019 they were spoken to by the Former Directors (and sometimes also Ms Green) and they were told that the production was paused for the time being while there was a negotiation in relation to the script rights. They were told that it was hoped that the production would be back up and running a little later and that it would probably be relocated to Scotland or possibly back to Ireland.
246. This "*standing down*" of crew members was seen as a sensible thing to do, to allow a little bit of time to see if the negotiations might progress swiftly to a conclusion. Mr Seal and Mr Mann seemed to think it was best to pause the pre-production for a short time in the circumstances. I do not see how that clearly and unequivocally conveys that the Former Directors were accepting that the Artist Agreement was at an end. The Artist Agreement does not provide for the pre-production schedules of other cast or crew members. This would have been understood by all concerned, including Ms Green, as providing time for the opening of the negotiations.

247. The real difficulty with the Defendants' case on acceptance is that it is inconsistent with their case on conspiracy. In relation to the latter, they say that a key part of the conspiracy was that the Former Directors wrongfully did not accept the renunciation. Whereas in relation to their case on renunciation, they say that it was accepted by the Former Directors. Mr Mallin KC sought to argue that this could be reconciled by the objective test for acceptance as compared to the subjective test for unlawful means conspiracy. But these contortions do not sit well with the need for credible evidence to establish serious allegations of deceit and conspiracy.
248. In any event, I think that the evidence shows that there was no clear and unequivocal communication by the Former Directors on behalf of White Lantern that they were treating the Artist Agreement as at an end. On the contrary, they still wanted to make the Film with Ms Green under an amended Artist Agreement, but without any involvement from Mr Seal and SMC. Accordingly I would have rejected the Defendants' case on acceptance by conduct if I had found there to have been a renunciation.
249. As to their original case of acceptance by the notice of 18 October 2019 under the Escrow Agreement, in my view this is hopeless. The relevant terms of the notice are set out in [202] above.
250. It was expressly given pursuant to the Escrow Agreement and relied on an "*alleged material breach by [Ms Green] under the [Artist Agreement] and/or the occurrence of an event which would entitle [White Lantern] [to] suspend or terminate its payment obligations under the [Artist Agreement].*" No particulars of the alleged material breach were given; and it is couched in tentative terms: only an "*alleged*" material breach; and an occurrence that "*would entitle*" White Lantern to suspend or terminate. It is not therefore clearly a notice of termination of the Artist Agreement; nor can it be construed as a notice under clause 26 of the Artist Agreement which would have to have specified the breaches relied on and given Ms Green the opportunity to cure any such defects in her performance. It did not refer to any alleged renunciation.
251. Mr Mallin KC argued that even if the notice did not take effect as a termination under the Artist Agreement, nevertheless it could take effect under the common law which does not require an acceptance of a renunciation or repudiatory breach to be in any particular form – see *Stocznia Gdanska*, supra and *Shell Egypt West Manzala GmbH v Dana Egypt Ltd* [2010] EWHC 465 (Comm). However, the notice still has to be a clear and unequivocal communication to Ms Green that White Lantern was treating the Artist Agreement as at an end. This notice did not do so.
252. Mr Mallin KC also sought to suggest that the notice could have had the effect of suspending the Artist Agreement until it was finally terminated by Mishcon de Reya's letter of 3 February 2020. However, the notice is ambiguous as to whether White Lantern would be suspending or terminating the Artist Agreement, and so it was not clearly and unequivocally doing either. Furthermore, a contractual suspension only makes sense in relation to a breach that is capable of cure, which itself would require a notice giving Ms Green a period of time to cure the breach.
253. The acceptance by notice is also subject to Ms Green's arguments in relation to affirmation and withdrawal, dealt with below. But in any event, even without considering those arguments, I reject entirely the Defendants' case on acceptance.

### **G. AFFIRMATION and/or WITHDRAWAL**

254. Mr Cullen KC raised these issues as a fallback to cover the situation if I had found there to have been a renunciation and in the context of considering whether there had been acceptance of it by the service of the notice dated 18 October 2019. They do not apply, or could not work, in relation to an acceptance by conduct, as that would necessarily have taken place by the time there could have been an affirmation of the Artist Agreement or a withdrawal of the renunciation. As I have found in favour of Ms Green on both renunciation and acceptance, these really are irrelevant issues and difficult to hypothesize about an alternative factual scenario upon which they are necessarily based.
255. As to affirmation, Mr Cullen KC relied on the correspondence particularly during the course of the negotiations to buy the script rights, in which Ms Griffiths on behalf of SMC continued to assert that the production of the Film at Black Hangar was continuing and that Ms Green's performance was still required (see her emails of 27 and 29 September 2019). On 30 September 2019, Mr Seal emailed Mr Collier with the latest production schedule. To a certain extent, these communications were part of the charade by both sides at that time that the Film could still be produced at Black Hangar.
256. Mr Mallin KC said that the communications were only made because the renunciation had been concealed from the Defendants. However, it is White Lantern that is said to have affirmed the Artist Agreement, not SMC or Mr Seal, who were not parties to it. In the circumstances, Mr Cullen KC's argument also misses the point because it is directed at what Mr Seal and SMC were doing, rather than White Lantern. In any event there is little doubt that the Former Directors on behalf of White Lantern were not treating the Artist Agreement as at an end but were instead affirming it. They had received advice from Mr Michaels that they had to continue to prepare for the Film to be produced at Black Hangar and that necessarily involved treating the Artist Agreement as still being in existence.
257. Mr Mallin KC referred to *White Rosebay Shipping SA v Hong Kong Chain Glory Shipping Ltd* [2013] 2 CLC 884 for the proposition that an innocent party is given a reasonable period of time to accept a renunciation and, even if the contract is affirmed in the meantime, a continuing renunciation can still be accepted. In that case the reasonable period was four days. But in this case, I think the proposition is inapplicable where there is no real continuing renunciation. The Defendants rely on an alleged renunciation that took place during the call on 22 September 2019. If that did happen, contrary to my findings, it must follow that the Former Directors knew of the renunciation but decided not to accept it and to continue with the production under the terms of the Artist Agreement. Once such an election has been made in full possession of the facts, I do not see that the innocent party has a further period of time to change its mind and assert that it now wishes to accept the renunciation.
258. As to withdrawal of the renunciation, this is becoming even more divorced from the reality of my factual findings. Mr Cullen KC's argument is that even if Ms Green renounced during the call on 22 September 2019, by the time of Mr Collier's letter of offer on 23 September 2019, such renunciation had been withdrawn before it was accepted. He relied on *Norwest Holst Group v Harrison* [1985] 1 ICR 668 for the



proposition that the right to terminate is lost if the renunciation is withdrawn before acceptance. Mr Mallin KC said that Ms Green never withdrew her decision not to provide her services to the Film at Black Hangar with Mr Seal in full control but this really depends on what is made of the statements by Mr Collier that she was “*ready, willing and able*” to perform under the Artist Agreement.

## **H. REPUDIATORY BREACH**

259. Aside from their claim that there had been a renunciation, the Defendants also plead a series of breaches by Ms Green of the express and implied terms of the Artist Agreement which they allege were repudiatory and entitled White Lantern to terminate the Artist Agreement and/or to claim damages. The plea is disparate and does not clearly identify the breaches that are relied upon. The broad themes are of Ms Green’s alleged unreasonable demands in relation to the production and her expressions of discontent while also apparently being insufficiently engaged in the production.
260. Mr Mallin KC had a short section of his opening skeleton argument on this issue but made no oral opening submissions on it. He merely confirmed that this part of the case was not withdrawn. His written closing submissions contained nothing on this and when I asked him in closing if repudiatory breaches other than the alleged renunciation were being pursued by his clients, Mr Mallin KC again confirmed that the allegations were not withdrawn but that he would not be making submissions on them.
261. Given that half-hearted approach to these allegations, I will not burden this judgment with a detailed account of this issue. Furthermore, even if there had been any repudiatory breaches, such would have needed to have been accepted by White Lantern in order for the Artist Agreement to have been terminated but the Defendants rely on the same arguments in relation to acceptance of the renunciation which I have already rejected.
262. The implied terms that White Lantern relies on are that Ms Green was obliged to act as follows:
- (1) To perform her services with reasonable skill and care;
  - (2) Not to undermine or frustrate the production of the Film;
  - (3) Not to act to undermine the Artist Agreement or the substance of the Artist Agreement; and
  - (4) To act in good faith.
263. Mr Cullen KC accepted the first implied term of reasonable skill and care but said that no breaches of this duty were identified by the Defendants; nor was Ms Green required to perform any services under the Artist Agreement.
264. As for the other alleged implied terms, Mr Cullen KC submitted that there was no basis for either construing the Artist Agreement as including such terms or for implying them. Referring to the stringent requirements laid down by the Supreme Court in *Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2016] AC 742,

he submitted that they were not necessary to give business efficacy to the contract; nor were they so obvious as to go without saying in the light of the express terms of the Artist Agreement. In particular, clause 17 of the Artist Agreement subjected Ms Green's approval and consultation rights to a duty to act in good faith, thus limiting such an obligation to those rights, which were, in any event, liable to be overridden by the Film's financiers. Furthermore, Ms Green was obliged under clause 31(d) of the Artist Agreement to comply with White Lantern's "*reasonable requests*" and if she failed to perform her contractual obligations, it had the right to terminate under the mechanism in clause 26.

265. Mr Mallin KC submitted that the first three implied terms were necessary to make the Artist Agreement work. I do not think that is so. The Artist Agreement contains the necessary mechanisms to ensure that Ms Green complied with her obligations which were fully and adequately set out therein.
266. As to the duty of good faith, Mr Mallin KC's skeleton argument asserted that the Artist Agreement was a "*relational contract*" such that an obligation of good faith should be implied. I do not need to opine on this issue as it seems to me that the implication of a wide obligation to act in good faith would be inconsistent with the limited express obligation in clause 17 of the Artist Agreement. Even if it was such a "*relational contract*" the same rules of interpretation would apply – see the Court of Appeal's recent decision in *Quantum Advisory Ltd v Quantum Actuarial LLP* [2023] EWCA Civ 12, at [46].
267. In relation to the substantive allegations of breach it is difficult to discern from the large amounts of evidence pleaded in the Re-Re-Re-Amended Defence and Counterclaim and Additional Claim the specific breaches that are said to have been committed. The following can be said:
- (1) Ms Green was said to have made unreasonable demands to hire her favoured crew members for fees that would be beyond the Film's budget. But quite apart from the fact that Ms Green was largely kept unaware of the Film's finances and budget, Mr Cullen KC effectively demonstrated that the standard rates for her proposed crew members had already been accommodated within the budget. It is also the case that Ms Green offered to fund the difference but this was rejected out of hand by SMC (see [107] and [108] above).
  - (2) Ms Green was said to have inappropriately communicated with Piccadilly on several occasions, going "*over the head of the team at Black Hangar*". However the team at Black Hangar were not the counterparty to the Artist Agreement and the only communications that Ms Green had with Piccadilly were together with the Former Directors or with their knowledge.
  - (3) The Defendants rely on the "*extreme*" language used by Ms Green, in particular in the way she referred to Mr Seal and his crew at Black Hangar and say that this was undermining of the Film and the Artist Agreement and in breach of the duty to act with reasonable care and skill. However these views were expressed to the Former Directors who largely seemed to agree with them insofar as they reflected concerns about Mr Seal's and Mr Bird's professionalism and capability of producing a high quality movie.

268. In short there is nothing in the allegations and, even if there were some breaches in such respects (which I do not think there were) they would fall well short of amounting to sufficiently fundamental breaches entitling White Lantern to terminate the Artist Agreement, which it did not even purport to do.

### **I. MS GREEN'S ENTITLEMENT TO THE FEE**

269. As set out in [53] above, by clause 12 of the Artist Agreement, Ms Green was “*pay or play*” for the Fee. That means, as is now accepted, that Ms Green is entitled to the Fee whether or not she was required to perform the contracted services under the Artist Agreement. By clause 13, White Lantern could terminate the Artist Agreement by written notice, but under the “*pay or play*” provision, Ms Green would be entitled to the Fee if such a notice was served. Alternatively the Artist Agreement could be terminated under clause 26 if Ms Green was in default. If notice was served under clause 26 and the breach was not remedied, Ms Green would not be entitled to the Fee.
270. As a result of my findings above, White Lantern did not serve a valid notice under clause 26 on 18 October 2019. The only notice that was served purportedly pursuant to clause 26 was on 3 February 2020 in Mishcon de Reya’s letter of that date. But this was well after the Stop Date in the Artist Agreement, which was 29 November 2019 as per the Further Amendment Letter. After that date, there can be no doubt that Ms Green was no longer obliged to provide her services to the production, and so there was no continuing engagement that was capable of being terminated. Alternatively, if such notice could be given, Ms Green was still entitled to the Fee which had become due and payable well before the notice was served.
271. The Defendants’ defence to Ms Green’s claim to the Fee was primarily based on the alleged renunciation and/or termination of the Artist Agreement before the Fee was due. I have found against them on that issue.
272. The Defendants also suggest that Ms Green is not entitled to the Fee in circumstances where she was not “*ready, willing and able*” to perform her services under the Artist Agreement. Mr Mallin KC submitted that this obligation arises as a matter of construction of the Artist Agreement or it is necessary to imply a term to this effect to give business efficacy to the Artist Agreement. However, such an implied term was not pleaded by the Defendants.
273. Mr Cullen KC again relied on *Marks and Spencer plc*, supra, to submit that it is not necessary to imply such a term to give business efficacy to the Artist Agreement. Furthermore, he submitted that a party is not required as a matter of law to demonstrate that at all times prior to being required to perform, they had an intention to perform when they were so required. Unless and until there was a renunciation - that is, a clear and unequivocal communication that they do not intend to perform when the time comes - their subjective beliefs as to their future intentions, which may change over time, are wholly irrelevant. It does not make sense to talk about being “*ready, willing and able*” at a time before being called upon to perform. When that time does come and the party does not perform, that will be a breach which the innocent party can rely upon and there would be no need for such an implied term.

274. I think Mr Cullen KC is correct. If it were otherwise, Ms Green could commit an act of repudiation, or anticipatory repudiation, through the possession of a particular mental state and that cannot be the law. The reality is that the only defence to Ms Green's claim is the alleged renunciation, which had to be communicated to and accepted by White Lantern. In any event, Ms Green's case is that she was at all relevant times, "*ready, willing and able*" to perform her services under the Artist Agreement and that was repeatedly made clear in Mr Collier's correspondence during the negotiations for the script rights.
275. In the circumstances, I have rejected all of the defences to Ms Green's claim and declare that Ms Green is entitled to the Fee which should be paid to her from the Escrow Account by the Escrow Holder, Tavistock Wood.

### J. THE TORT CLAIMS

276. Some two years after the proceedings were issued, SMC was joined as an additional claimant in order to bring, with White Lantern, further counterclaims in tort against Ms Green. These are serious allegations of conspiracy, deceit and unlawful interference. All the claims appeared to me to be dependent on there having been a renunciation, which was then allegedly concealed from the Defendants by Ms Green's insistence that she was "*ready, willing and able*" (that phrase again) to perform her services under the Artist Agreement. The Defendants allege that Ms Green and the Former Directors operated this "*Scheme*" of concealment in order to increase her leverage in the negotiations over the script rights and to bring about a situation whereby she would be entitled to the Fee.
277. Mr Mallin KC maintained in his oral closing submissions that the claims were not wholly dependent on proving that there had been a renunciation. However his written submissions made it reasonably clear that they are so dependent as they are all based on the allegation that, because of the Scheme, the Defendants were prevented from accepting the renunciation, terminating the Artist Agreement and recovering the Fee. If there was no renunciation, as I have found, it could not have been concealed and the Defendants would not have been able to accept it and terminate the Artist Agreement. Furthermore, if there was no renunciation, then Ms Green's bargaining position in the negotiations could not have been improved by the assertion that she was "*ready, willing and able*" to perform. The tort allegations do not get off the ground if there has not been a renunciation.
278. The allegations have an air of artificiality and legal construct to them. They do not sit well with the Defendants' main claim that there was a renunciation by Ms Green that was accepted by the Former Directors on behalf of White Lantern. Mr Mallin KC emphasised that they were alternative claims that only come into play if they were unsuccessful in proving that the Artist Agreement had been terminated pursuant to the renunciation. The Defendants are entitled to run alternative and inconsistent claims or defences. But it seems to me that where the alternative narrative is dependent on establishing one part of the main claim - the renunciation - but failing on the other part - acceptance - the factual contortions required to prove that the Former Directors deliberately decided not to accept the renunciation so as to improve Ms Green's negotiating position become almost impossible to reconcile.

279. The three tort claims are all in reality centred around the same issue, which is whether the statement by Mr Collier that Ms Green was “*ready, willing and able*” to perform her services under the Artist Agreement was true. The obsessive focus on that phrase, which does not appear in the Artist Agreement (although the Defendants are asserting that it should be implied) but is a shorthand for saying that a party will comply with their contractual obligations, is again something that has been alighted on much later and was not truly relied on at the time or affected the way the Defendants behaved.
280. The claims are put in the following way:
- (1) The conspiracy allegation is that there was a combination between Ms Green and the Former Directors to use unlawful means with an intention to injure the Defendants and causing loss to them. The unlawful means relied upon are the alleged misrepresentations/deceit that Ms Green was “*ready, willing and able*” to perform and the Former Directors’ alleged breaches of their duties to White Lantern in participating in and implementing the Scheme.
  - (2) The deceit claim is the same as the misrepresentation/deceit aspect of the alleged unlawful means part of the conspiracy claim, so adds little to the overall consideration of these claims.
  - (3) The unlawful interference claim is similarly based on the misrepresentation/deceit claim that is said to have interfered with White Lantern’s actions in not promptly terminating the Artist Agreement.
281. There are a number of problems with the proof of the elements of these claims. But there are two fundamental points that are fatal to the claims, quite apart from the fact that I have found that there was no renunciation: (i) whether there was inducement or reliance on the alleged misrepresentation; and (ii) whether the Former Directors were acting in breach of their duties to White Lantern in seeking to force SMC into accepting a lower price for the script rights.
282. As to inducement or reliance on the representation that Ms Green was “*ready, willing and able*” to perform her services under the Artist Agreement, Mr Burlingham said in his witness statement that: “*I absolutely did not believe Ms Green’s statement that she was ready, willing and able at the time and considered this to be posturing by and through her agent.*” Nevertheless, Mr Burlingham and Mr Raskin said that they relied on the representation by causing SMC to enter into the negotiations over the script rights rather than instructing White Lantern to accept the renunciation.
283. Mr Mallin KC relied on *Hayward v Zurich Insurance Co plc* [2016] UKSC 48 where the Supreme Court allowed the insurer’s appeal on the basis that it did not need to prove that it believed the representation to be true. The insurer had settled the claim despite doubting its validity and it was held that there was sufficient reliance where the insurer would have acted differently had no such fraudulent misrepresentation been made. Mr Mallin KC said that this was analogous to the present case.
284. Mr Cullen KC however referred to *Holyoake v Candy* [2017] EWHC 3397 (Ch), a decision of Nugee J, as he then was. Nugee J explained that *Hayward* was not a “*paradigm case*”, by which he meant “*where A lies to B in the hope of inducing B to do something, B will in fact usually only be induced to do so if he believes A’s lie*” ([390]

and [391]). He distinguished *Hayward* as being a three-party situation with the third party being the court that would have to decide whether it was a fraudulent claim or not. He described that situation as:

“where A lies to B and B is induced to act in a particular way because of the risk that A might tell the same lie to C and the effect that that might have on C. It is difficult to see that that principle can have any application where there is no third party or C involved. Where all that happens, as in the present case, is that A tells a lie to B, it is difficult to envisage the circumstances in which that can induce B to act in a particular way unless B is taken in and believes that what A says is true, or at least might be true.”

285. As *Hayward* makes clear, whether there was inducement and/or reliance is a question of fact. In the light of Mr Burlingham’s evidence, I do not see that SMC would have acted any differently if the statement that Ms Green was “*ready, willing and able*” had not been included in Mr Collier’s letter dated 23 September 2019. Mr Mallin KC dissected the course of communications in the afternoon of 23 September 2019 between Ms Green and Mr Collier and others at Tavistock Wood leading up to the inclusion of those words in the letter, in an effort to demonstrate that Ms Green did not want them in and that they did not represent her true intentions. But this is irrelevant so far as its effect on SMC was concerned as it did not know anything of this. Mr Burlingham and Mr Raskin, if they read the letter, would have seen those words after a paragraph that said: “*Ms Green states that both the [Artist] Agreement (as amended) and the Escrow Agreement remain in full force and effect, and both remain fully binding on the parties, such that in the event that principal photography of the Film has not commenced by 21 October 2019 then Eva Green has no further obligation to provide her services to the Film and is fully entitled to retain in full all monies held within the escrow account.*”
286. Mr Raskin said in his oral evidence that the words above were “*typical posturing...whereas when you say “I’m ready, willing and able,” you’re saying --- you’re posturing to a point where of complete absurdity based upon everything that we have been told over the weekend.*” He went on to suggest that the inclusion of the words “*ready, willing and able*” made all the difference because without them the letter would have indicated that Ms Green was accepting that the contract was at an end. This does not make any sense to me and I do not think that the inclusion of those words in the letter had any impact at all on the way SMC behaved thereafter in the negotiations or in relation to accepting the non-existent renunciation.
287. As to the alleged breaches of duty by the Former Directors, Mr Mallin KC submitted that their actions in seeking to improve Ms Green’s bargaining position in the negotiations so as to acquire the script rights at a lower price was not in the best interests of White Lantern as it was damaging the value of its asset. He also asserted that certain other actions taken by the Former Directors such as standing down crew members was also harming White Lantern’s value and so not in its best interests.
288. In my view this overlooks the difficult position the Former Directors were in. They had come to realise that White Lantern’s best interests were served by making the Film without Mr Seal and SMC involved which is why they favoured the negotiations proceeding in relation to the script rights. The only way to remove SMC was by those negotiations being successful and that would have meant agreeing as low a price as possible effectively to settle White Lantern’s debt to SMC. True it is that the script

rights were an asset of White Lantern, but so far as White Lantern was concerned, the successful outcome of the negotiations would have been that it was released from its large debt by the payment of a smaller amount, and the script rights would thereafter be returned to White Lantern without being subject to SMC's control. That was the commercial decision that the Former Directors took and I do not think that it can be said that that was a breach of their duty to act in accordance with what they perceived to be White Lantern's best interests.

289. In short I do not accept that there was any such Scheme agreed or acted upon by Ms Green and the Former Directors. As I have said above, all parties were playing at film-making during the turbulent week of 23 September 2019 because they all feared being held to be in breach if the negotiations eventually broke down. But they were only doing that so as to enable the negotiations to commence and proceed. Mr Merrifield probably called it accurately a "*Shakespearean farce*" and Mr Mann thought it was a "*charade*". Furthermore each side knew that the other was doing that and would obviously be trying to improve their negotiating positions as a result.
290. But this was not part of some unlawful conspiracy or deceit. Ms Green and the Former Directors desperately wanted to make the Film and were fully committed to doing so, to such an extent that Ms Green was prepared to consider, contrary to Mr Collier's advice, giving up her Fee in return for being able to make the Film in the way she and the Former Directors wanted. She may have said some extremely unpleasant things about Mr Seal and his crew at Black Hangar, but this was borne from a genuine feeling of concern that any film made under Mr Seal's control would be of very low quality and would not do justice to a script that she and the Former Directors were passionate about.
291. Accordingly, I dismiss the additional tort claims which, in any event, do not arise as a result of my finding against the renunciation.

## **K. CONCLUSION**

292. Ms Green's claim to the Fee succeeds and I will make a declaration to that effect. I reject all the Defendants' defences to the claim. In particular I find that Ms Green did not renounce her obligations under the Artist Agreement; nor did she commit any repudiatory breaches of it.
293. The Defendants' additional claims and counterclaims in tort are dismissed.
294. If the parties are unable to agree an Order or any other consequential matters arising out of this judgment, I will be prepared to consider such matters on paper or, if necessary, at a hearing to be arranged as soon as possible.