

DDJ (MC) M Studdert

IN THE THAMES MAGISTRATES COURT

B E T W E E N

Mr AZMAL MERT HUSSAIN

Applicant

-AND-

LONDON BOROUGH OF TOWER HAMLETS

Respondent

Advocates:

Simon Hill – Applicant

Jon Holbrook – Respondent

APPLICATION AND BACKGROUND:

1. By an Application of 19th November 2015 the Applicant (Ap) seeks to set aside the 10 Liability Orders (Orders) made against the Ap in favour of the Respondent (Resp) in respect of the ground floor and basement properties at 108, 118 to 122 and 124 – 126 Brick Lane, London E1 (The 3 Properties). The total amount involved is £250,307 and the breakdown of the amounts and dates is contained in the Appendix to the Resp's Closing Submissions. The requirement in Section 43(1) of the Local Government Finance Act 1988 is that the rate payer shall be the person in occupation of the premises.
2. I was the Judge sitting at Thames Magistrates Court on the 5th October 2016 when this matter was listed for an all day trial. I was provided with a substantial ring binder, the Application Bundle, and was directed to Skeleton Arguments on behalf of both the Ap and Resp and urged to read the Witness Statements of the Ap and Mr Alderson from the Council in particular. I was told I would be taken through the relevant exhibits and cross-examination of the live witnesses. I then heard oral evidence from Mr Moshin Miah, the Ap's accountant, the Ap and Mr Alderson and Mr Colechin on behalf of the Resp. All adopted their Witness Statements and were then cross-examined. I was provided with a bundle of authorities and then adjourned for written submissions from both parties which were provided as directed. I heard further oral submissions on 21st October 2016 and reserved Judgment.

LAW AND SUBMISSIONS:

3. There is no general statutory power to set aside an Order made by a Magistrates Court in civil proceedings. Nevertheless, the Administrative Court has held in the case of Hamdan that the Magistrates Court retains a power that may be exercised cautiously and exceptionally only if all of the following three issues can be established by the Ap;
 - (1) There is a genuine and arguable dispute as to his liability.
 - (2) The Order was made as a result of a substantial procedural error, defect or mishap.
 - (3) The application is made promptly after the Defendant knows that an Order has or may have been made.

GENUINE AND ARGUABLE DISPUTE AS TO LIABILITY:

4. The Ap's argument is set out in detail at paragraphs 6 to 23 of his Skeleton Argument and paragraphs 4 to 26 of his Closing Submissions. The Resp's argument is set out in detail at paras 3 to 8 of his Skeleton Argument and paras 3 to 20 of his Closing Submissions.
5. The Ap's case can be summarised that there is at least a genuine and arguable dispute that the Ap was the rate payer as he was not in occupation or paramount occupation of the 3 properties at the material times. His case is that there is sufficient evidence to show that the person in occupation was Hussaine UK LTD (HUKL) a company which held a Licence from Preem Limited for the period 1st July 2017 to 30th June 2015 and since the 4th Order (to use the designation in the Resp's Appendix) dates back to 15th May 2012, he also argues that Mendy Limited was in occupation of No.118 for a period of 6 weeks from 15th May 2012 to 1st July 2012.
6. The Ap states he was neither a director nor shareholder of HUKL but was an employee of Preem Limited and that in this capacity, part of his duties was to manage the 3 properties. Preem also provided through the Ap a premises licence holder and designated premises supervisor and that role extended to anti-touting and general behaviour. The Ap's son, Kenan Mert, is the sole director of HUKL and gave the Ap permission "to discuss and carry out works on behalf of the company" in a letter dated 28th February 2013 but this role did not translate into a formal relationship with HUKL.

7. In paragraph 8 of Ap's Closing Submissions, he details the evidence he says points towards the restaurant businesses being carried out at the 3 properties by HUKL.
8. The Resp's case, relying on Prest v Petrodel is that the Ap was the real actor and used HUKL as a façade to enable the Ap to hide the fact that he was in reality in occupation because he was carrying on the restaurant business at the 3 properties. This is based on the so-called concealment principle. In this case there are 4 elements to this argument:
 - (a) HUKL's sole director (Ap's son) took no sufficient interest in the running of the business.
 - (b) There is no or no sufficient evidence that the company was actually trading
 - (c) There is ample evidence that the Ap was the real actor, the person who was in reality running the business
 - (d) The Ap had an incentive to hide behind the façade of HUKL.

PROCEDURAL ERROR:

9. The Ap's argument is set out in detail at paras 24 to 37 of Skeleton Argument and paras 27 to 48 of Closing Submissions. The Resp's argument is set out in detail at paras 9 to 12 of Skeleton Argument and 21 to 29 of Closing Submissions.
10. The Ap relies on 3 procedural errors:
 - (a) No proper service of the Summons
 - (b) No awareness of the proceedings
 - (c) Incorrect dates on 3 Liability Orders for 2013.

NO PROPER SERVICE

11. Regulation 13(2) of the relevant Collection and Enforcement Regulations 1989 provides the means that a Summons may be served including:
 - (a) By delivering to him
 - (d) That all or part of the sum to which it relates is payable with respect to a hereditament which is a place of business of the person, by leaving it at, or by sending it by post to him at, the place of business, or
 - (e) By leaving it at, or by sending it by post to him at, an address given by the person as an address at which service of the Summons will be accepted.

12. The Ap contends that (a) has not been satisfied as it had not been delivered to him. The Ap's evidence is that he did not receive the Summonses and there is no evidence of personal service or of anyone promising to pass the Summonses on to the Ap. The Resp asserted in Closing Oral Submissions that the test for Limb (a) delivery was "can the court be satisfied that the Summonses must have come to the Ap's attention?".
13. The Ap contends that (e) was not available as the addresses where the Summonses were served were not addresses given by the Ap for service. The Ap invites a narrow interpretation in paragraph 32 of his Closing Submissions. The Resp contends that by his conduct the addresses used satisfied Limb (e) and that the Ap had used the Brick Lane addresses for formal communication.
14. The Ap contends Limb (d) was not available as the Brick Lane addresses where the Summonses were sent were at "a place of business" of the Ap. The Resp contends that the Ap was running a business from the 3 properties. If I find in favour of the Resp on the first issue of genuine and arguable dispute, it follows that the Summonses were properly served by Limb (d).
15. The Ap makes a further argument in relation to 3 Summonses relating to No.108 which were all sent to 124 Brick Lane, when Summonses addressed to 108 Brick Lane were returned marked "Gone away". The Ap argues that service elsewhere i.e. at 124 cannot be good service for debts relating to 108. The Resp in his Closing Oral Submissions contended that there was no evidence of 3 separate businesses, but of 3 separate premises. If he received them, it does not matter where he received them.

NO AWARENESS OF THE PROCEEDINGS:

16. The Ap contends he was unaware of the 4 sets of Liability Order Hearings and that this amounts to a procedural mishap. The Resp contends on the evidence that the Court can be sure he was aware of the proceedings because of his communication with the Council in 2014 and that he was running a business from the premises where the Summonses were sent.

INCORRECT DATES ON ORDERS FOR THE 2013:

17. The Ap says that the fact the Notices of Liability Order for 2013 on the 3 properties are incorrectly dated 6th March 2013 (presumably rather than 12th June 2013) is a significant procedural mishap. The Resp states that as these

are Notices which the Ap says he did not receive, then this was not a significant error.

DELAY:

18. The Ap's argument is set out in detail at paras 38 to 52 of Skeleton Argument and paras 49 to 57 of Closing Submissions and the Resp's at paras 13 to 17 of Skeleton Argument and 30 to 36 of Closing Submissions.

19. Under Hamdan delay is measured in "days or at most a very few weeks, not months" and time starts to run when the payer knows that "an Order may have been made". The application was made in relation to all the Orders on 19th November 2015. The question is when did time start running i.e. when was the Ap aware that an Order may have been made?

20. The Ap contends that no Notice or Summons was received by the Ap and that his awareness:

- (a) in relation to 2015 Orders was on 16th November 2015 on receipt of the letter from Tower Hamlets solicitors (D104)
- (b) In relation to 2014 Liability Orders it was on 14th October 2015 when he received the Bankruptcy Petition.
- (c) In relation to 2012 and 2013 Liability Orders, was sometime after 10th June 2014 when the Ap had email communication with the Council about a Statutory Demand dated 12th March 2014 (as he did not receive it), or alternatively that 16 months was prompt in all the circumstances.

21. The Resp contends:

- (a) 4 of the earliest Orders were mentioned in the Statutory Demand of 12th March 2014 (D103). The Ap clearly received this as he responded by quoting the reference in an email (D106) and he then made offers of payment (D106 and 107).
- (b) An email of 3rd July 2014 drew Ap's attention to "additional debts totalling £73,988 (D108). The Ap's behaviour in not questioning this can only be explained on the basis that he had received the Summonses dated 19th May 2014 (D58, 78 and 91) and Notices dated 11th June 2014 (D60, 80 and 92).
- (c) As he received all Summonses and Notices shortly after they were posted, he did not act with sufficient promptitude by not applying until 19th November

2015, even in respect of Summonses sent on 14th May 2015 (D64, 83 and 94) for which Notices were sent on 12th June 2015 (D67, 84 and 96).

EVIDENCE

22. **Mr Moshin Miah** gave evidence in person and adopted his Statement dated 3rd March 2016 (D41a and b) in which he states he is a chartered accountant and partner in Mohammed Shah & Co LLB. His firm is the accountant for HUKL incorporated with his professional assistance on 29th June 2012. HUKL took licences from Preem Limited, for whom his firm also act, to run the restaurant business at the 3 properties. He asserts HUKL owned and operated the restaurant business at the 3 properties from 3rd December 2012 and employed staff, owned stock and equipment, contracted for supplies and received payment for meals.
23. In cross-examination, he was referred to a letter from his firm dated 7th April 2016 exhibited by the Ap in his Second Witness Statement (D227). It states "We can confirm that Preem Limited receives rent from various tenants for various properties. The following properties (3 properties) are included in the portfolio and we can confirm HUKL was the tenant for these properties since 2012". His evidence was that the Ap had asked him to confirm what he knew of Preem Limited. He acknowledged the letter did not say HUKL paid rent to Preem and did not know why not.
24. He was further referred to a letter from the Council's solicitor to the Ap dated 7th September 2016 (E1) requesting information and said the Ap showed him the letter and asked him to provide the documents requested. He confirmed he gave no information requested at paragraph (f) regarding payment of the Licence fee to Preem limited for the 3 properties. He further agreed he did not provide information at (e), (ii), (iii) and (iv) that HUKL owned stock, and contracted supplies for the business or received payments for meals served to customers.
25. In relation to payroll, he was referred to various P45's (E13 to 50) showing the employers HUKL all dated 9th September 2016 with a leaving date of the employer 14th September 2014. He confirmed this information was requested by the Ap and he thought 9th September 2016 was the date they were printed off as they were copies. He could not remember why he was taking

instructions from the Ap, an employee of Preem Limited, to provide information about HUKL. He said it was a mistake on his part.

26. **Azmal Hussain** gave evidence in person and adopted his 3 Witness Statements (D2, D161 and D292). In his first Statement of 19th November 2015 he asserts he was “not properly served” with any of the Summonses. He later asserts in his oral evidence that he did not receive any of the Summonses. He further asserts that he did not receive any demand notices or reminders for payment of the sums in the Orders. He states the first time he received “the majority of the relevant documents” was on or about 16th November 2015 when his solicitors obtained them from the Council’s solicitors. He asserts he only received the Bankruptcy Petition on or about 13th November 2015 but later in his Third Statement dated 3rd October 2016 he says that he received it on or about 14th October 2015 and apologises for the mistake.
27. He accepts that he engaged in correspondence with the Council between 27th June and 18th August 2014 in relation to an alleged liability to pay rates at the 3 properties but states “These were merely emails” and that in an email dated 15th July 2014 having spoken to HUKL’s accountant he wrote “I will need you to rewrite all the invoices/demand notices to the company HUKL” and signed himself as “Manager Hussaine Limited”.
28. He states he helped out as Manager of the restaurants at the 3 properties. His son is the director of HUKL. The Ap is not employed and is not a director or shareholder of HUKL. He is employed by Preem Limited. He asserts HUKL owns and runs the business, employs staff, owns stock and equipment, contracts all supplies and receives payment for meals. He confirms he is the “designated premises licence holder” for the premises.
29. At exhibit AMH/1 he exhibits:
 - (a) D9-13 correspondence from the companies relating to the 3 properties addressed to Kenan Mert and HUKL t/a Preem Prithi.
 - (b) At D14-19 Nat West bank statement for HUKL t/a Preem Prethi for July/August 2014. This shows a payment in on 15th July 2014 from A Mert in the sum of £16,900 and later on the same day a payment of £20,000 to J E Baring, the Council’s solicitors. It also shows an active account including a number of withdrawals by A Mert (the Ap).

(c) A letter dated 26th February 2013 from Keenan Mert “authorising Azmal Hussain to be able to discuss and carry on works on behalf of HUKL”.

(d) At exhibit AMH/2 he exhibits (a) Licence Agreements for the 3 properties dated 1st July 2012 granted by Preem Limited where his wife Fatima Mert is the director and shareholder, to HUKL. (b) P60 for year ended 5th April 2015 in name Azmal Mert showing the employer as Preem Limited and the annual pay of £8,400. At AMH/3 he exhibits the company documents of HUKL confirming dissolution on 26th May 2015.

30. In his Second Statement dated 22nd April 2016 he exhibits a number of further items:

2AMH/1 (D170-176) Nat West account in the name of A Mert for period 1st January 2011 to 20th April 2016 and showing little activity.

2AMH/2 (D178) opening of Lloyds Bank account in May 2014.

2 AMH/3 (D180-182) the Ap’s discharge from Bankruptcy 16th April 2009.

2 AMH/4 (D184-188) – 5 cheque stubs from cheque book of Nat West account of HUKL showing 5 payments over 5 month period June to October 2013 to Newlyn, the bailiff in relation to 2 Liability Orders for 108 and 124 Brick Lane earlier in time than the Orders which the Ap now applies to set aside.

2 AMH/5 (D190-193)

(a) Extract from Statement of Sarah Isabella Daniel dated 3rd September 2013. She is a public health inspector having dealings with the Ap regarding food safety management at the 3 properties and conducts a PACE interview on 21st May 2013 during which the Ap confirms that the food outlet is owned by the company. He also confirms he is in charge of the daily running of the restaurant, that he is there almost all the time, staff should report pest activity to him and that he is the manager.

(b) Application for Registration of Food Business Establishment dated 26th February 2013 for 124-126 Brick Lane in name of HUKL (D200). This appears to be signed by the Ap and leads to an application for Hygiene Emergency Prohibition Order being issued against that name by the Council on 27th February 2013 (D201).

2 AMH/6 (D204-209) extract from Companies House showing Prova Limited incorporated 16th April 2010, dissolved 15th May 2012, Company Director Kenan Mert and registered office 124 Brick Lane.

HUKL incorporated 29th June 2012, dissolved 26th May 2015, director Kenan Mert and registered office 100 Mile End Road London E1.

2 AMH/7 and 2 AMH/8 (D210-225) deals with the leasehold title to 118 Brick Lane and evidence that Preem have been paying rent to the freeholder Mr Talukar.

2 AMH/9 (D227) is the letter from the accountant which is significant as it purports to support the contention that rent was paid by HUKL to Preem, whereas in fact it does no such thing (see Mr Miah's evidence above).

2 AMH/10 (D251-290) shows Licences were granted by Preem to others following the dissolution of HUKL.

2 AMH/11 (D291) shows the Ap receives £17,000 from Preem on 15th July 2016. He later transferred that money to HUKL who paid £20,000 to the Council.

31. In cross-examination, he reiterated that "he had no relationship with HUKL". When asked about his relationship to Preem he said my wife owns the company, I am employed as manager as a paid employee. When asked about his annual salary of £8,400 he said "What I need I take out. This means the salary is enough for me. If I need I can ask my wife to do it". He said he looked after the tenants for Preem.
32. He is referred to D127, anti-touting code and 10th August 2011 where he has written his position of Preem at 108 Brick Lane as "owner". He said he meant owner as is in premises licence holder. He purported not to know how many staff worked at the restaurants. He said he would be most of the time 100 yards away at his office at 47 Hanbury Street. He clarified his position as looking after the properties, getting rent from the flats and dealing with the repair of those properties.
33. When asked if staff saw him as boss, he said no but they respect me as the owner's dad. He is referred to D155, Witness Statement of Gareth Colechin, Revenue Inspector of London Borough of Tower Hamlets of "a further visit was made on 17th July 2012....the staff present could only give a number for their boss Mr Azmal Mert Hussein". He said he can't answer that question.

34. Referred to D200, application for registration of food business in the name of HUKL but signed by the Ap, he was asked who was running the business at that time, he said "only my son, he was going to university at the time, sometimes he said he was busy, can you do it, like a family". He said his son was at Stockholm University and graduated in 2010 but was continuing doing a Masters in computer engineering. He did this through the internet and is still living at home aged 29. Later It was put to him that in his PACE interview in May 2013 he had said my son "goes to University" which is not the same as a correspondence course. He said "I accept he went somewhere, why do I ask him every day?".
35. Referred to D199, letter of authority to Ap dated 28th February 2013 to carry out works on behalf of HUKL, he said his son did not want to give a lot of time to the business.
36. Referred to D192 when asked why in his PACE interview he "confirms he is in charge of daily running of the restaurant" he said in evidence, "no, if I say it's a mistake".
37. Referred to D103, he denies having received the Statutory Demand.
38. He is then asked about the e-mail correspondence with Tower Hamlets in June/July 2014. Referred to D106 in which he quotes the reference in the statutory demand letter and seems to accept his indebtedness. He said "My son came with this one – it was in my name, I'm not making business so why I get one and he said I had to talk to you....". When put to him the email states "I confirm I will be liable...." He said "I wrote in wrong form should have been my son, the company, my mistake".
39. Referred to D107 "I am proposing...." And D109 "I am struggling as business is not very efficient...", he said "My son said exactly the wording I am narrating I should write company", When asked why not question the son's demand he said "I asked many times why you not pay your debt, he said he never get demand note from Tower Hamlets".
40. When asked why not say I'm not liable in the email?, he said "If I'm not personally responsible, why I have to pay?". When put to him that the reason he didn't question the additional 3 amounts was that he had received the letter of 11th June 2016, he said "I cannot have received letter – my address is Lambs Lane South, why I have to look for letters?".

41. D14 asked why he exhibited HUKL bank account and he got it he said "I asked my son to get copy. Asked why it does not show evidence of rent payments from HUKL to Preem he said he didn't know".
42. D113, asked why he described himself as employee and DPS of HUKL he said "wrong that. I made a mistake".
43. D130, Standard newspaper article when he was described as the owner of 4 Brick Lane restaurants, it was put to him that he gave this information to the Standard, he said "They can write what they want".
44. D202, Company Breaches of Anti-Touting which led to £500 fine which the Ap paid he said "I'm the DPS, I sign for not touting what can I do?".
45. D239, asked why he described himself as "director, on behalf of Preem" when he signed a Licence Agreement for 108 Brick Lane on 1st September 2015 he said "I'm an employee, I'm a kind of director, I'm not legally director, I am employed as director".

D290a, asked why he is described as "attorney" for Preem Limited he said he was the authorised person.

46. **Gareth Colechin** is Revenue Inspector and adopted his statement. He is only relevant in that he reports the staff at the restaurant on 17th July 2012 referring to the applicant as boss. In cross-examination he confirmed he would have got the Ap's telephone number from one person.
47. **Michael Alderson** is Revenue Manager of London Borough of Tower Hamlets and adopted his Statement dated 4th April 2016. He exhibits the relevant bills, reminders, Summonses and Notices of the Orders. In relation to 108 Brick Lane he states "As a result of the Council's Summons for the period 2012/13 being returned from the property mentioned "gone away" all subsequent NNDR documentation was sent to 124 Brick Lane".
48. He further exhibits the Statutory Demand and the email correspondence between the Ap and Council's solicitors in June and July 2014. There were other relevant documents which he exhibits which are referred to in cross-examination of the Ap above.
49. In cross-examination, Mr Alderson accepted that he was simply providing a number of documents with a commentary and acknowledged that the documents did speak for themselves.

FINDINGS AND DECISIONS ON THE ISSUES RAISED;

GENUINE AND ARGUABLE DISPUTE

50. As mentioned above, the Ap's argument is that there is a genuine and arguable dispute regarding occupation in that there is sufficient evidence to point to HUKL running the restaurants rather than the Ap to trigger Stage 1 in the Hamdan test. The Resp's case is that HUKL is a façade and that the real actor running the restaurant businesses in the 3 properties is the Ap and there is no genuine or arguable position that HUKL was operating the businesses. I will consider the four elements of their argument.

HUKL's SOLE DIRECTOR

51. Kenan Mert is the Ap's son and he is a HUKL's sole director and shareholder. What evidence is there of his having involvement with the restaurant business run from the 3 properties?

52. His name appears as recipient of letters from gas and electricity companies from two of the properties (D9, 11). He has signed the Licence Agreements for the 3 properties on behalf of HUKL on 1st July 2012 (D25, 29, 33). He has signed a letter on 28th February 2013 sent from his home address in Rainham to Isabella, the Public Health Team Leader confirming all works have been carried out, but in the same letter authorises the Ap to be able to discuss and carry out works on behalf of the company (D20). I would agree with the submissions in paragraphs 5 and 6 Resp's Closing Submissions. I can find scant, if any, evidence of the Ap's son taking any part or certainly any significant part in the running of the business.

53. Given that the Ap's case is that there is effectively no one other than the Ap's son who has any formal role with HUKL, that is in owning and running the restaurant business, his failure to provide any evidence is significant.

NO SUFFICIENT EVIDENCE OF HUKL TRADING FROM THE 3 PROPERTIES:

54. It is noteworthy that the first time in July 2014 that the Ap alleged that HUKL was liable to pay the Orders following a visit to his accountant (D113), the Council responded requesting evidence of the same (D114) and he provided nothing in response to that request (D46 para 21) according to the evidence of Mr Alderson. A further visit by the Ap to the accountant took place on 9th September 2015 following the letter from the Council's solicitors dated 7th

September 2015 specifying a shopping list of documents required to verify the claim that HUKL was trading from the 3 properties.

55. The evidence of Moshin Miah is relevant in this regard. It is with his professional assistance that HUKL is formed on 29th June 2012. He makes certain assertions in his Witness Statement in relation to HUKL's role in owning and operating a restaurant business from the 3 premises, including owning stock and equipment, contracting for supplies and receiving payment for meals. However, he is unable to provide any documentary proof in this regard. His evidence is that he acted on the Ap's instructions to obtain evidence that HUKL employed staff. A number of P45 and P60's were generated by his payment department showing HUKL as employer. However I agree with the Resp's comments at para 10 of Closing Submissions that this evidence is unsatisfactory. The letter he provided to the Ap at D227 which purports to confirm that HUKL pays rent to Preem is accurately described by Mr Holbrook in his Closing Submissions as "slippery". It seems designed to mislead and, if that is the case, has some bearing on whether this is indeed a genuine argument that HUKL is running the business. There is no record of any rental payment of over £16,000 per month to Preem Limited, nor the security deposits of £50,000 nor any evidence of a company tax return, demand for or proof of payment of Corporation Tax or annual accounts for the company.

56. The evidence of the Ap is equally unsatisfactory in this regard. There is no evidence of Mr Miah taking instructions from anyone other than the Ap in relation to HUKL and then only as a response to requests for evidence or documents from the Council.

EVIDENCE THAT THE AP WAS THE REAL ACTOR:

57. The crux of the Resp's argument is that, even if HUKL exists as an entity having been incorporated, has taken on Licences for the 3 properties, appears as a name on the utility bills and on P45's and P60's for staff at the restaurants, and has a Nat West bank account and has paid liabilities relating to the 3 properties, the evidence points to the Ap being the real actor in running the restaurant business and therefore being in occupation and liable to pay the unpaid rates.

58. There is evidence from both the Ap himself and others to lead to this conclusion. The Ap states in his PACE interview on 20th May 2013 that he was “in charge of the daily running of the restaurant” and “was there almost all the times”. He was referred to by at least one member of staff as “the boss” when Mr Colechin visited the restaurant on 17th July 2012. He is described as “the owner of 4 Brick Lane restaurants” in a newspaper article in the Standard and this was presumably based on information he gave to the journalist. He is photographed standing “outside one of his restaurants”.
59. In addition, he took on certain formal roles for the business. He was the Designated Premises Supervisor which meant he had formal responsibilities under the Licensing Act 2003 noted in the Mandatory Conditions (D136, 141). He assumed responsibility for food hygiene, which led to his conviction for breaches of Regulations (D201) for which he said he was fined in February 2013. He signed the Council’s Anti-Touting Code of Practice in August 2011 (D127, 128, 129) and described himself as “owner” when signing the document.
60. Moreover he seems to be closely linked to the actions purported to be carried out by HUKL. The Bank statement of HUKL provided for July/August 2014 shows a number of withdrawals by A Mert (D14-19). Mr Miah seems to be acting on the Ap’s instructions in obtaining information about both HUKL in relation to the payroll and Preem (D227 letter). He was instrumental in receiving money from Preem (D291) and transferring money to HUKL who then paid the Council’s solicitors £20,000 in July 2014 (D15). He is authorised by his son “to be able to discuss and carry out works on behalf of the Company” on 28th February 2013 (D26). He signed the application form for registration of a food business establishment for 124-126 Brick Lane in the name of HUKL (D200) which directly led to a Prohibition Order being made in the Company’s name (D201).
61. He had previously accepted liability and made payment towards the Orders following service of a Statutory Demand on him of 12th March 2014 (D103). The email history is detailed in para 15 of the Resp’s Closing Submissions. In my view this is telling evidence that he saw himself as the person responsible for these liabilities. The Statutory Demand (D103-105) and the email of 3rd July 2014 regarding additional debts (D108) are sufficiently explicit for him to

know what is being referred to. He has responded to the Statutory Demand quoting the reference in his email of 10th June 2014 (D106) and the only sensible inference is that he had received that demand. In acknowledging the debt and making payment towards it, he had appropriately taken responsibility. The fact that a later visit to the accountant leads to an attempt to deflect the debt to HUKL (D113) does not alter my view that the Ap is the person responsible as the real actor.

62. I found the Ap's evidence unconvincing in cross-examination, particularly his assertion "I had no relationship with HUKL" and that his only formal role was as an employee of Preem. When asked to comment on his describing himself as "owner" or "running the business" he said it was a mistake on his behalf. When confronted with the email correspondence in June/July 2014 he said "I wrote in the wrong form, should have been my son, the company, my mistake". When asked why he stated in his email (D109) "I am struggling as business is not very efficient", his evidence was "my son said exactly the wording I am narrating". I found him to be evasive and conveniently deflecting any uncomfortable comments by him and attributing them to his son who of course has not given evidence himself.

THE AP HAD INCENTIVE TO HIDE BEHIND THE FAÇADE OF HUKL:

63. I agree with the submissions at para 20 of the Resp's Closing Submissions.

64. I find that the Ap was the real actor in running the restaurant businesses from the 3 properties and that the Orders were correctly made against the Ap. There is no genuine or arguable dispute as to who was running the businesses based on the evidence before me. I will now consider the additional points argued.

PROCEDURAL ERROR

65. As I have found that the Ap was running the restaurant business from the 3 properties, I therefore find that the Summonses were served in accordance with Regulation 13(2)(d) of the relevant Regulations as they have been sent by post to the place of business of the Ap. I accept the Resp's submission that there is no evidence of 3 separate businesses and that the Summonses

for 108 sent to 124 Brick Lane after being returned "Gone Away" were all properly served. I find as a matter of fact that all Summonses were received by the Ap because of his daily presence at the 3 properties.

66. It follows that I do not accept he was unaware of the Summonses.

67. There is nothing in the argument about the incorrect dates on the 2013 Summonses. I accept the submissions made at para 29 of the Resp's Closing Submissions in this regard.

DELAY:

68. As I have made clear that I find all bills, summonses, demands and notices to have been received by the Ap within a matter of days after being sent, I find that there has been delay and he cannot show that he acted promptly in making this application. This applies to all the Orders, including the 2015 Orders where the delay was 5 months, well outside the "days at most a very few weeks" stipulated in Hamdan.

Deputy District Judge (Magistrates' Court) M Studdert

2 November 2016