

Neutral Citation Number: [2021] EWHC 1103 (Ch)

Case No: BL-2018-000648

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 27 April 2021

**Before:**

**Deputy Master Lampert**

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**Between:**

**Bernard J Carl**

**Claimant**

**- and -**

**Lorna Edwards**

**Defendant**

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The Claimant appeared in person

Mr Duncan Macpherson (instructed by Sillett Webb) for the Defendant

Hearing date: 22 April 2021  
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**JUDGMENT**

**DEPUTY MASTER LAMPERT:**

1. This judgment relates to two applications for summary judgment under CPR rule 24.2. The first is the Claimant's application issued on 3 March 2021 seeking reverse summary judgment on the Defendant's counterclaim. The second is the Claimant's application issued on 28 March 2021 in which the Claimant seeks summary judgment on his claim.
2. This claim (which is known to the parties and the Court as the 'Loan Claim') is being case managed and tried with claim no. HC- 2016 – 001261 (which I shall refer to as the Main Claim). The Main Claim is a claim by the Claimant against a

number of Defendants including Lorna Edwards and her husband, Richard Edwards. Mrs Edwards is the Defendant in the Loan Claim and the Fifth Defendant in the Main Claim and where I refer to the Defendant in this judgment it is Mrs Edwards to whom I am referring. The facts of the Main Claim are closely connected with the facts of the Loan Claim.

3. The Claimant has appeared at the hearing as a litigant in person. He is (or was) qualified as a lawyer in the US and appears to be an experienced litigant, although I note for the record that the Claimant retired from legal practice many years ago. Nonetheless it appeared to me that the Claimant was comfortable presenting his case, he has a detailed grasp of the evidence which has been filed by all parties in the Main Claim and the Loan Claim, and he was able to identify relevant legal authorities. He did not, in either his skeleton argument or his oral submissions, refer me to the Judgment in Easyair Limited v Opal Telecom Limited [2009] EWHC 339 (Ch) but I suggested that he review it over the lunch adjournment and address me on it if he wished.
4. I should mention that at the hearing of the applications on 22 April 2021 I gave the Claimant permission to produce and make written submissions in relation to (i) an email dated 6 December 2016 from Dan Fleming of Beesley to Mark Summerfield of Solomon Taylor & Shaw ("the Fleming email") and (ii) a witness statement dated 22 February 2021 the exhibit to which was said to include a witness statement from the Defendant in which she is alleged to have stated that she was the owner of an Alfa Romeo 8C Spyder car ("the Alfa 8C witness statement"). It was my understanding that both the email and the witness statement were in the hearing bundle but they could not be located by the Claimant during the hearing despite attempts to assist by the Defendant's counsel. It has subsequently transpired that neither the email nor the witness statement were included in the bundle. Contrary to my intention that the Claimant should be at liberty to provide a short note on the email and the Alfa 8C witness statement once they had been located, the Claimant has filed a lengthy letter dated 23 April 2021 which he says is to "*try to clean up a few of the loose ends from yesterday's hearing*" and to put the email (which is attached to his letter) in historical context. The letter also makes submissions on the content of Alfa 8C witness statement

and also reiterates points already made in relation to hearsay evidence of Mr Edwards and what is commonly known as the cheque rule. The Defendant has also filed a letter dated 24 April 2021 making further submissions on the cheque rule. The Claimant's letters have elicited further written submissions from the Defendant's Counsel who has raised a procedural objection to the Claimant's attempted reliance on additional evidence that was not before the Court at the hearing although it was foreshadowed in the Claimant's skeleton argument. He says that the evidence has caught the Defendant by surprise and she has been unable to deal with it properly. The Defendant's solicitor, Katherine Sillett, has filed a further witness statement dated 26 April 2021 in which she explains why the Claimant's 18<sup>th</sup> witness statement (which exhibits the Alfa 8C witness statement) was not in the hearing bundle and setting out the Defendant's response to the further evidence relied on by the Claimant. The witness statement exhibits correspondence which the Defendant has located following a further search of her emails. It appears to me that both parties have strayed well beyond the scope of the permission which I gave at the hearing and have proceeded in a wholly disproportionate and inappropriate manner. I have nonetheless reviewed this additional material, with the inevitable consequence that it has delayed the handing down of this judgment.

5. Counsel for the Defendant submits that I should refuse permission for the Claimant to rely on additional evidence and disregard it. I decline to do so in relation to the Claimant's 18<sup>th</sup> witness statement and the exhibited Alfa 8C witness statement since, despite the manner in which it has been drawn to my attention, it is not new evidence and it was open to the Defendant to address it in her evidence for trial which is the same evidence she relies upon to oppose the summary judgment application. I have more sympathy in relation to the Fleming email if this is not evidence previously disclosed but it seems to me that on the face of it this email does nothing to support the Claimant's case for the reasons I shall explain below. I shall also permit the Defendant to rely on Ms Sillett's witness statement and the attached correspondence. The additional evidence and submissions filed by the parties have served to reinforce the view that I had reached at the conclusion of the hearing, that there are complex disputes of fact

that cannot be determined on a summary basis and that the evidence needs to be tested by cross-examination at trial.

## **Background**

6. The Main Claim is complex and involves multiple parties. In summary, the Claimant claims to be the owner of eight classic cars. He claims that during 2014 and 2015 Richard Edwards, the Defendant's husband, defrauded him while acting as his broker for the purchase and sale of classic cars. Other Defendants in the Main Claim were privy to the frauds, carried out a separate fraud, received money as a result of fraud and/or received one of the cars on notice of a fraud.
7. The Claimant claims damages from Mrs Edwards for unlawful means conspiracy and/or dishonest assistance by having been privy to the alleged fraud perpetrated by her husband and it is said against her that she conspired with the other Defendants in the misappropriation of an Orange Porsche Touring car and gave a false account of the provenance of monies advanced by her to the Claimant in July 2015. Those monies totalling £198,000 are alleged by the Claimant to have come from the wrongful pledge of the Orange Porsche Touring by the Fourth Defendant in the Main Claim, a Mr Howarth, and not from Mrs Edwards' own resources. It appears that Mr Howarth claims in his Defence and Counterclaim to the Main Claim that the £198,000 was a loan by him to the Claimant.
8. In the Loan Claim the Claimant claims that in 2012 he agreed to make a loan to the Defendant by way of a payment to Consolidated Steel Products Limited ("CSPL") in the sum of £221,000 on terms that the Defendant would repay the loan within two weeks and that no interest would be payable if the loan were repaid in full and on time. The Defendant subsequently sent the Claimant a cheque for £221,000 and around the same time she sent an email asking the Claimant to send the proceeds from the cheque to CSPL.
9. The Claimant subsequently presented the cheque for payment and it was dishonoured. The Claimant claims to have a right of recourse against the Defendant under s.47(2) of the Bills of Exchange Act 1882. The Claimant

subsequently sought to present a bankruptcy petition against the Defendant which was opposed on the grounds of the Defendant having a cross-claim against the Claimant for the £198,000 which I have already referred to in the context of the Main Claim as being a loan from the Defendant to the Claimant that is also subject to the claim by Mr Howarth.

10. The Claimant acknowledges in the Particulars of Claim that "as a matter of accounting" the £198,000 is deemed to have come from the Defendant in July 2015 and is to be set off against the £221,000 loaned to her in 2012.
11. The Claimant claims interest on the 2012 loan amounting to £67,000. The rate of interest of 12% appears to derive from a Bill of Sale entered into between the Claimant and the Defendant in 2013 by which the sum of \$350,000 was purportedly secured on an Alfa Romeo 8C car.
12. He also claims in the Particulars of Claim that if the £198,000 is found to have been a loan to him from Mr Howarth rather than the Defendant then the sum of £198,000 is also due to him. However, by his summary judgment application it appears that the Claimant no longer accepts that £198,000 is deemed to have come from the Defendant and he seeks judgment for that sum together with interest.

## **Defence**

13. The Defendant claims that she never owed money to CSPL and that it must have been a debt due from her husband. She claims that her husband had arranged the loan of £221,000 from the Claimant and that the cheque she provided for that amount was a sham in circumstances where it was well known to the Claimant that the Defendant did not have £221,000. She says that it was never intended that the Claimant would present the cheque for payment. Alternatively she says that the parties intended that the Claimant would hold the cheque pursuant to an oral guarantee.

14. The Defendant believes that the Claimant and her husband settled the liability for the £221,000 since it was not pursued for many years until the relationship between the Claimant and Mr Edwards had broken down.
15. The Defendant also contends that the 2013 Bill of Sale was a sham because it did not reflect the reality of the position as between the Claimant and the Defendant at the time that the Bill of Sale was signed.
16. The Defendant avers that in July 2015 her husband asked her to make a loan of £198,000 to the Claimant and that that sum was held on her behalf by Mr Howarth. Mr Edwards made arrangements with Mr Howarth for payment to be made to the Claimant.
17. By her counterclaim the Defendant claims payment of the £198,000 from the Claimant.

#### **CPR Rule 24.2**

18. The principles that apply to applications under CPR Rule 24.2 which relates to summary judgment are well established. The burden is on the Claimant to show that the defendant has no real prospect of success on her counterclaim or of defending the claim at trial and that there are no compelling reasons why the claim should go to trial. The principles that the Court must apply are set out in the judgment of Mr Justice Lewison (as he then was) in *Easyair Limited v Opal Telecom Limited*. That judgment concerns an application for summary judgment made by a Defendant but the principles that are summarised are equally applicable to an application made by a Claimant. The summary of the *Easyair* principles was approved by the Court of Appeal in *AC Ward & Sons Limited v Catlin (Five) Limited*.
19. The relevant principles are set out in paragraph 15 of Lewison J's judgment and, in the context of these applications, the approach to be taken is as follow:

- i. The Court must consider whether the Defendant has a realistic as opposed to a fanciful prospect of success on her counterclaim or in defending the claim;
- ii. A realistic claim is one that carries some degree of conviction. It must be more than merely arguable;
- iii. In reaching a conclusion the court must not conduct a mini-trial;
- iv. This does not mean that the Court must take at face value and without analysis what the Defendant says in her witness statements or, for that matter, in her statements of case in the Loan Claim and the Main Claim which are before the Court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.
- v. In reaching a conclusion the Court must take into account not only the evidence placed before it on the application for summary judgment but also the evidence that can reasonably be expected to be available at trial.
- vi. Finally, as regards this case, although the case may turn out at trial not to be particularly complicated, it does not follow that it should be decided without a fuller investigation into the facts at trial than is possible or permission on summary judgment.
- vii. Where there is a short point of law or construction to be determined, if the court is satisfied that it has before it all the evidence necessary for a proper determination and the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it.

### **The Claimant's Application**

20. The Claimant submits that the Defendant has no reasonable prospect of showing on the admissible evidence that she is:
  - i. Not liable for payment of the £198,000 balance of the £221,000 loan (after giving credit for £23,000 paid on her behalf).
  - ii. Not bound by her obligations under the terms of the 2013 Bill of Sale; and
  - iii. Entitled to repayment of £198,000 sought by way of counterclaim.
21. He contends that he is entitled to summary judgment on the basis of admitted or undisputed facts. It is important to note again at this stage that it is not the role of the Court on hearing a summary judgment application to conduct a mini-trial but

it is open to the Court to order summary judgment where facts are admitted, not in dispute or where factual assertions are without substance particularly if contradicted by contemporaneous documents. As I noted during the course of the hearing, it appeared to me that that Mr Carl was giving evidence and asking me to make findings of fact rather than making submissions at certain points in the hearing. I take the same view of the submissions filed on 23 and 24 April 2021.

22. The Claimant submits that the Defendant was indebted to him for the sum of £221,000 and that the cheque written by the Defendant for £221,000 constitutes an unconditional promise to pay the Claimant that sum on demand and that a cause of action arose under the Bills of Exchange Act 1882 when the cheque was not honoured. He submits that there are limited defences available in such a claim even on a summary judgment basis. The difficulty with his position is that he appears on the face of the statements of case to have accepted that the entirety of the £221,000 has been repaid to him. He says at paragraph 20 of the Particulars of Claim that the £198,000 was paid by the Defendant in July 2015 via the means of Mr Howarth and in paragraph 21 that the balance of £23,000 was paid by Mr Stockdale.
23. The Claimant now says that having received disclosure in the Main Action it appears that the £198,000 was not paid by Mr Howarth on the Defendant's behalf but was instead money borrowed from a Mr Cole and pledged on Mr Carl's Orange Porsche Touring.
24. It seems to me that the primary issues to be determined are whether the Defendant is (or has ever been) indebted to the Defendant in the sum of £221,000 and whether the cheque for £221,000 is a valid instrument under the Bills of Exchange Act 1882 or a sham as Counsel for the Defendant contends. If the cheque is a valid instrument then it is necessary to consider whether one of the limited defences to an unpaid cheque is available to the Defendant. In that regard the Defendant's counsel accepted at the hearing that the only defences available would be fraud or failure of consideration. The Defendant contends that if the cheque is a valid instrument then it is unenforceable by reason of a failure of consideration. Fraud is not relied upon. The assertion that the cheque is a sham is made in



support of the contention that the cheque is not a valid instrument not in support of an allegation of fraud.

**Did the Defendant agree to borrow £221,000 from the Claimant?**

25. The Claimant says that certain facts should be considered undisputed which makes the case suitable for summary judgment. Those alleged facts are summarised at paragraph 24 of the Claimant's skeleton argument and are as follows:

- i. That in March 2012 Mr Edwards sought a loan of £221,000 from the Claimant to repay a debt to CSPL owed either by Mr Edwards or the Defendant, or both;
- ii. The Claimant refused to make a loan to Mr Edwards because he was a bankrupt;
- iii. The Claimant agreed to pay off CSPL by advancing £221,000 to CSPL provided he received a personal cheque from the Defendant;
- iv. The cheque was provided then the Claimant made the £221,000 transfer to CSPL;
- v. The Defendant asked the Claimant for proof of transfer to show to CSPL; and
- vi. The Claimant presented the cheque for payment and it was dishonoured.

26. The Defendant's case is that the Claimant made a loan to Mr Edwards and that the Claimant used her to circumvent a restriction on Mr Edwards raising funds in his own name as he was an undischarged bankrupt. She says that on 8 March 2012 Mr Edwards asked her to call the Claimant to ask him to settle Mr Edwards' debt to Mr Broadhurst of CSPL. She did as she was asked and during her call with the Claimant he asked her to write a cheque for 'accounting purposes' but said that he would not bank it. In other words, the cheque did not reflect the underlying reality of the loan that the Claimant was making to Mr Edwards and was a sham.

27. There are emails between the Claimant and Mr Edwards on 7 and 8 March 2012 which give something of an impression that it was Mr Edwards who was indebted to CSPL and Mr Edwards who was seeking a loan from the Claimant to discharge that indebtedness. There was then an email exchange between the Claimant and

the Defendant on 8 March 2012. The first email was from the Claimant to the Defendant at 15.09 on 8 March 2012 in which he states:

*"As you know, I have been very reluctant to make the last loan requested by Richard. It's not that I do not trust him, it is that I just do not think the who Braodhust [sic] story makes sense and worry that this is all a ploy for Broadhurst to get paid almost a quarter of a million pounds outside the bankruptcy proceedings. I truly hope I am wrong.*

*In the interim, I am going ahead – in part based on your confidence. However, I do not want this loan tied up in the bankruptcy proceedings. Please send me an email telling me to send the proceeds from the £221,000 check you wrote me on your behalf to Consolidated Steel Products, Inc which is apparently the prospective lender's company.*

*I need this right away so I can release the bank transfer.*

*Bernie"* (underlining included in the original)

28. In response to that email, less than an hour later at 15.57 the Defendant responded:

*"Dear Mr Carl  
Please could you send the proceeds from the £221,000 cheque I wrote out to you, on my behalf, to Consolidated Steel Products Inc.  
Many thanks.  
Lorna Edwards"*

29. This appears to be the only contemporaneous correspondence between the Claimant and the Defendant in March 2012 and, in my judgment, it is not determinative of whether the Defendant agreed to borrow £221,000 from the Claimant. The Claimant also submits that the Defendant acknowledged her debt of £221,000 in the bankruptcy proceedings and that the petition was dismissed by consent on the premise that the Claimant had or would receive that sum from the Defendant. He relies on a witness statement from the Defendant's brother-in-law, Mr John Stockdale but that appears to do nothing more than confirm that Mr Stockdale paid £23,000 to the Claimant in order to facilitate the dismissal of the bankruptcy petition. He also relies on the Fleming email that I have already referred to. That email states:

*"We have paid you funds totalling £45,000.00 which are to be used to clear Mr Edwards' bankruptcy debt of £10,293.70 and Mrs Edwards' bankruptcy debt of*

*£23,000.000 which is the petition debt of £221,000.00 less £198,000.00 in set off as per Mrs Edwards' witness statement".*

30. I do not consider the email to be an acknowledgment by the Defendant of a debt owed to the Claimant. It merely reflects arrangements being made by Mr Stockdale and I consider that the Claimant has significantly overstated its significance.

**Was the cheque a sham or otherwise unenforceable?**

31. The evidence that the Claimant relies upon in support of his contention that the cheque written by the Defendant on 9 March 2012 is a valid bill of exchange rather than a sham, as contended for by the Defendant, is the cheque itself as well as the email correspondence of 8 March 2012 to which I have already referred. It is accepted by the Claimant that the Defendant did not write the cheque for £221,000 until the day after he asked her to "*Please send me an email telling me to send the proceeds from the £221,000 check you wrote me*" although he says that his email was written in anticipation of the Defendant writing him a cheque. Nonetheless, I consider that the email instruction from the Claimant to the Defendant asking her to send him an email and telling her what to say is something that requires further explanation by way of oral evidence at trial.

32. The Claimant also referred to an email from the Defendant to the Claimant sent at 07.40 on 30 April 2015 as a 'smoking gun'. In that email the Defendant states:

*"I am so sorry I was in the position I never ever in my worst nightmares wanted to get into and that was to write you a check that ended up not being covered. I remember the call to you distinctly saying it was all good, the deal was happening, money coming in etc as I was standing outside my friends' house at a tea date with my godson. I am sorry Bernie for getting you so involved in our shoddy life these past few years, I still to this day have no idea why you are so amazing to us but my thanks are never-ending."*[sic]

33. That email may well prove to be contrary to the Defendant's case that there was no intention for the Claimant to bank the cheque but in my judgment it is not on its own sufficient evidence on which to conclude that the Defendant has no realistic prospect of showing that the cheque was a sham.

34. In his submissions the Claimant referenced the rules of contractual interpretation which he says only allow me to look at the factual matrix in the event that the contract is ambiguous. He says that I must look within the four corners of the agreement constituted by the cheque when construing it. However, it seems to me that the issue to be determined is not one of contractual interpretation but rather a determination of whether the cheque is something other than it purports to be.
35. In my judgment it is not possible to conclude that the Defendant has no realistic prospect of showing that the cheque was a sham without making findings of fact. I do not accept the Claimant's submission that it is possible to reach such a conclusion on the basis of admitted or undisputed facts. There is clearly a substantial dispute of fact as to the true nature of the arrangement between the Claimant and the Defendant that resulted from their call and email correspondence on 8 and 9 March 2012 which merits fuller investigation at trial.
36. It follows that if the cheque was a sham, the 'cheque rule' that the Claimant seeks to rely upon would not apply and the Claimant would not have an immediate right of recourse under s.47(2) of the Bills of Exchange Act 1882. I am mindful that the Claimant has addressed me at length on the cheque rule both orally and in written submissions and I accept that there are limited defences available to the Defendant in the event that the cheque is determined not to be a sham.
37. The Defendant put forward the alternative case that the cheque (if not a sham) is not a valid Bill of Exchange because, on the Claimant's pleaded case, it was not to be payable on demand but only if the £221,000 loan had not been repaid within two weeks (which is admitted by the Claimant). Whilst this is potentially a short point of law that could be determined on a summary basis within the principles laid out in *Easyair* it seems to me that there is no advantage to this issue being determined independently and it is best left to the trial judge to determine.
38. I also make no finding on the Defendant's contention that the cheque (if not a sham) is unenforceable as it was provided as security for an unenforceable oral guarantee contrary to the provisions of s.4 of the Statute of Frauds Act 1677.

## **Bill of Sale**

39. The Bill of Sale dated 22 February 2013 is relied on by the Claimant as ratification of the Defendant's indebtedness for the £221,000 advance paid to CSPL and a variation of the original loan agreement entitling the Claimant to recover interest of 12% on the principle sum due.
40. The Claimant contends that the Bill of Sale should be taken at face value for the reasons set out at paragraph 53 of his skeleton argument. In particular, he says that the Bill of Sale was signed by the Defendant in the presence of an independent witness having been prepared by a well-respected solicitor, Mr Zaidi of Edwin Coe LLP, who is said to have acted for the Defendant in connection with a claim by her husband's trustee in bankruptcy. The \$350,000 advance referenced in the Bill of Sale is said to reflect the £221,000 already advanced by way of a payment to CSPL. The intention behind the Bill of Sale was to provide the Claimant with security for the Defendant's alleged debt by providing him with an interest in the Alfa 8C.
41. The Defendant contends that the Bill of Sale is a sham because she did not own the Alfa 8C and that the Bill of Sale was a device agreed between the Claimant and Mr Edwards to prevent the Alfa 8C being seized by Mr Edwards' trustee in bankruptcy.
42. The Defendant's denial that she owned the Alfa 8C appears to be inconsistent with her evidence in the Alfa 8C witness statement that she was the legal and beneficial owner of the Alfa 8C. However, that is something that must be tested by cross-examination at trial and is not something that can be determined on a summary judgment application.
43. I am also troubled by the Claimant seemingly having been a party to the legal advice that the Defendant received in relation to the application by Mr Edwards' trustee in bankruptcy in relation to the Alfa 8C. This is evidenced by an email from the Claimant to the Defendant's solicitor, Mr Zaidi of Edwin Coe LLP,

dated 9 July 2013 and a letter from Mr Zaidi to the Defendant dated 11 July 2013 which was copied to the Claimant. I can see no reason for that other than to influence the evidence given by the Defendant. In circumstances where the Claimant himself acknowledges in his skeleton argument that the Defendant may be a 'battered wife' – which I take to mean under the control of her husband - it seems to me that there is a need to treat the Claimant's evidence in relation to the Bill of Sale with some caution.

44. For these reasons it is not possible for me to find that the Defendant has no reasonable prospect of showing that the Bill of Sale is a sham and that she is not bound but her obligations under it (including the obligation to pay interest) without making finding of fact that I am not in a position to make.

### **The Counterclaim**

45. The final issue I have to consider is whether there is no prospect of the Defendant succeeding on her counterclaim for payment of £198,000 which she is said to have advanced to the Defendant
46. The counterclaim is made on the basis of the Defendant's understanding that liability for the loan of £221,000 made by the Claimant in March 2012 was settled as between the Claimant and Mr Edwards. She says that she subsequently made a loan of £198,000 to the Claimant which was paid by way of a transfer of funds held on her behalf by Mr Howarth.
47. In the Particulars of Claim the Claimant admits that he received the sum of £198,000 which he says was "*ostensibly from the Defendant*" being a sum which was held on her behalf by Mr Howarth. Mr Howarth, in his Defence and Counterclaim in the Main Action says that those monies came from him. The Claimant pleads that "*as a matter of accounting the £198,000 is deemed to have come from the Claimant and that sum can be set off against the Loan*" (by which he is referring to the March 2012 loan). The Claimant has not applied to amend his Particulars of Claim to withdraw his admission although he now says

that the £198,000 came from the wrongful pledge of his Orange Porsche Touring.

48. Putting aside the procedural difficulty that the Claimant faces in relation to his admission, it seems to me that there is a substantial dispute of fact between the Claimant, the Defendant and Mr Howarth.
49. The Claimant sent an email to the Defendant on 12 June 2015 thanking her for her loan and promising to pay it back to her "(or wherever you want it to go)". That email makes no reference to any liability for the dishonoured cheque and, as I noted at the hearing, it is curious that the Claimant did not simply request repayment of the sum that he now claims to be due to him from the Defendant. The fact that the Claimant went so far as to stress that repayment would be made in accordance with the Defendant's wishes may be evidence (and I put it no higher than a possibility) that the Claimant understood the Defendant to be under the control of her husband.
50. Counsel for the Defendant contends that the request for a loan was made by the Claimant to the Defendant and the fact that payment came via the source of Mr Howarth does not alter the Claimant's obligation to repay the loan to the Defendant. The Claimant's contention that the Defendant did not loan him the £198,000 is contrary to what is suggested by the email of 12 June 2015 and the circumstances in which the Claimant came to receive £198,000 from Mr Howard need further consideration.
51. These disputes of fact cannot be determined on a summary judgment application and need to be tested by cross examination at trial. It follows that I cannot conclude that the Defendant stands no realistic prospect of success on her counterclaim.

## **Conclusions**

52. For the reasons given above I dismiss the Claimant's two applications for summary judgment. Those applications were made on the flawed premise that they could be determined on the basis of admitted or undisputed facts when that

was plainly not the case and much of the evidence relied upon by the Claimant needs to be properly tested at trial.

53. Significant time and expense has been incurred in dealing with the applications a mere 8 weeks before a trial and it is difficult to see what advantage the Claimant would have gained from summary judgment on the Loan Claim in circumstances where the same factual issues need to be determined at trial in relation to the Main Claim. There comes a point in every case where disclosure has been given and witness statements exchanged in readiness for trial and that is not, in my judgment, the appropriate time to bring a summary judgment application save in very exceptional circumstances which do not exist in this case.