

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
BUSINESS LIST (Ch D)
Neutral Citation Number: [2021] EWHC 1986 (Ch)**

Cloth Hall Court,
Quebec Street,
Leeds LS1 2HA

Date: 14 July 2021

Before :

**UPPER TRIBUNAL JUDGE MARK WEST
SITTING AS A JUDGE OF THE HIGH COURT**

Between :

**(1) KSH FARM LIMITED Claimants
(2) CLAIRE JOWITT**

- and -

**(1) KSH PLANT LIMITED Defendants
(2) RUPERT JOWITT**

Edward Bennion-Pedley (instructed by **Gordons LLP**) for the **Claimants**

James Fryer-Spedding (instructed by **Berrymans Lace Mawer**) for the **Defendants**

Hearing dates: 8-12 March 2021
Further written submissions: 26 March 2021
Further oral submissions: 29 March 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be at 10:30am on 14 July 2021.

Introduction

1. In this judgment the parties are designated as follows:

the First Claimant, KSH Farms Ltd: **KSHF**

the Second Claimant, Claire Jowitt: **Claire**

the First Defendant, KSH Plant Ltd: **KSHP**

the Second Defendant, Rupert Jowitt: **Rupert**

At all material times Claire has lived and worked at a farm at The Hall, King Sterndale, Buxton, Derbyshire (“the Farm”), a property owned initially by Claire and her late father and now owned by her alone. At one time Rupert had his own garage business, Froggatt Edge Garage Services Ltd (“the Garage”), which he sold for £55,000 on 3 May 2017.

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Summary of the Case

3. Claire and Rupert are husband and wife. They were married on 25 April 2017, but separated later the same year, in fact only 4 months later, over the August Bank Holiday weekend. These proceedings arise out of that separation. Divorce proceedings are pending, but not yet finalised. During their relationship they operated two businesses together, KSHF, owned solely by Claire and KSHP, owned solely by Rupert. KSHP was originally named Froggatt Edge Farm Services Ltd, but was renamed on 16 August 2017. For ease of reference I shall refer to it throughout as KSHP.

4. In broad terms there are three parts to the claim.

5. The first claim is a money claim for £102,714 in respect of various sums paid by Claire and/or KSHF to Rupert and/or KSHP between September 2017 and July 2018, as to which there is a dispute as to whether the sums paid were loans or not and whether £50,000 was paid pursuant to a document executed on 10 October 2017, referred to hereafter as “the October Agreement”. There is a dispute as to the status and enforceability of that document and the circumstances in which it was executed. There is a fundamental dispute between Claire and Rupert as to the nature of and the power balance within their relationship, both essentially alleging coercion against the other, although in very different ways. Claire describes a relationship in which Rupert was the dominant partner, exercising control over, amongst other things, her appearance and holding out the prospect of a relationship which she wanted with him in order to extract, for example, loans. She describes Rupert as volatile and prone to rages. By complete contrast, Rupert alleges that Claire isolated him from his friends and treated him appallingly by, for example, making him sleep on the kitchen floor and preventing him from buying food. On 10 October 2017 the parties executed the October Agreement. Again their accounts are completely at variance. Rupert says that Claire attended the site where he was working (“the Selden site”) and demanded that he sign the Settlement Deed (relating to a dispute with her brother) which he said he had not seen before. He refused to sign it on the basis that he wanted to obtain legal advice or get something from it. Rupert’s account was that it was Claire who proposed to separate them financially and that it was she who pressured him to sign the October Agreement. By contrast, Claire says that Rupert knew about the Settlement Deed in advance and that he needed to sign it, but that he went quiet when she asked him to do

so, avoiding her telephone calls. By 10 October she was facing an ultimatum from her brother, who was requiring her to sign or risk the deal going off. She denied that she had gone to the site and said that it was Rupert who required the October Agreement and who forced her to sign it and that she did so under protest, telling him that what he was doing was not legal and had no effect. She said that she spoke to her solicitor on the day and told him of the pressure which Rupert was applying to her.

6. The sums involved in the money claim and the dates on which they were paid are as follows:

(a) from KSHF to KSHP:

27 September 2017	£10,000
1 November 2017	£ 9,000
25 November 2017	£10,000
26 November 2017	£10,000
29 November 2017	£ 8,500
1 December 2017	£ 1,500
4 December 2017	<u>£10,000</u>
	£59,000

(b) from Claire to KSHP:

14 September 2017	£ 500
1 October 2017	£ 1,000
1 October 2017	£10,000
4 October 2017	£15,000
7 February 2018	£ 2,214
12 July 2018	<u>£10,000</u>
	£38,714

(c) from Claire to Rupert:

17 October 2017	£ 5,000
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7. The second claim is an asset claim for delivery up and/or damages in respect of 14 items of farm machinery and equipment and a Ford Transit van, together with logs and hay, removed from the Farm in or about August 2018, as to which there are disputes about the beneficial ownership of the assets and whether KSHF was bound to transfer the items to KSHP pursuant to the October Agreement.

8. The third claim is a trespass claim arising out of Rupert and KSHP's continued use of the Farm after Claire says that she asked him not to, the removal of significant quantities of topsoil and logs, the removal of an oil tank and the dumping of building waste and other damage.

9. In fact the ambit of the third claim was much reduced because, in opening for the Claimants, Mr Bennion-Pedley accepted that the general trespass claim could not be made out and he withdrew paragraphs 54, 55 and 56 of the Amended Particulars of Claim and the claim for aggravated damages in paragraphs 61 and 62.

10. What was therefore left of the trespass claim was the claim for damages for the removal of significant quantities of topsoil and logs, the removal of an oil tank, damage to two stone walls and the dumping of rubble (or building waste) and stone.

The Court's Approach To The Evidence

11. Given the personal rancour involved in the dispute between the two estranged spouses and the stark and irreconcilable conflict of evidence between them, in writing this judgment and reaching my conclusions, I have particularly borne in mind the recent guidance of Warby J (as he then was) in *R (Dutta) v. GMC* [2020] EWHC 1974 (Admin) at [39], notably in relation to basing factual findings on inferences drawn from documentary evidence and known or probable facts:

“There is now a considerable body of authority setting out the lessons of experience and of science in relation to the judicial determination of facts. Recent first instance authorities include *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3650 (Comm) (Leggatt J, as he then was) and two decisions of Mostyn J: *Lachaux v Lachaux* [2017] EWHC 385 (Fam) [2017] 4 WLR 57 and *Carmarthenshire County Council v Y* [2017] EWFC 36 [2017] 4 WLR 136. Key aspects of this learning were distilled by Stewart J in *Kimathi v Foreign and Commonwealth Office* [2018] EWHC2066 (QB) [96]:

“i) *Gestmin*:

- We believe memories to be more faithful than they are. Two common errors are to suppose (1) that the stronger and more vivid the recollection, the more likely it is to be accurate; (2) *the more confident another person is in their recollection, the more likely it is to be accurate.*
- Memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is even true of “flash bulb” memories (a misleading term), i.e. memories of experiencing or learning of a particularly shocking or traumatic event.
- *Events can come to be recalled as memories which did not happen at all or which happened to somebody else.*
- The process of civil litigation itself subjects the memories of witnesses to powerful biases.
- Considerable interference with memory is introduced in civil litigation by the procedure of preparing for trial. Statements are often taken a long time after relevant events and drafted by a lawyer who is conscious of the significance for the issues in the case of what the witness does or does not say.
- *The best approach from a judge is to base factual findings on inferences drawn from documentary evidence and known or probable facts. “This does not mean that oral testimony serves no useful purpose ... But its value lies largely ... in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth”.*

ii) *Lachaux*:

- Mostyn J cited extensively from *Gestmin* and referred to two passages in earlier authorities.⁴⁵ I extract from those citations, and from Mostyn J’s judgment, the following:
- “Witnesses, especially those who are emotional, who think they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that *with every day that passes the memory becomes fainter and the imagination becomes more active.* For that reason, a witness, however honest, rarely

persuades a judge that his present recollection is preferable to that which was taken down in writing immediately after the incident occurred. Therefore, *contemporary documents are always of the utmost importance ...*"

- "...I have found it essential in cases of fraud, *when considering the credibility of witnesses, always to test their veracity by reference to the objective fact proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities ...*"
- Mostyn J said of the latter quotation, "these wise words are surely of general application and are not confined to fraud cases ... it is certainly often difficult to tell whether a witness is telling the truth and I agree with the view of Bingham J that *the demeanour of a witness is not a reliable pointer to his or her honesty.*"

iii) *Carmarthenshire County Council:*

- The general rule is that oral evidence given under cross-examination is the gold standard because it reflects the long-established common law consensus that the best way of assessing the reliability of evidence is by confronting the witness.
- However, oral evidence under cross-examination is far from the be all and end all of forensic proof. Referring to paragraph 22 of *Gestmin*, Mostyn J said: "... *this approach applies equally to all fact-finding exercises, especially where the facts in issue are in the distant past.* This approach does not dilute the importance that the law places on cross-examination as a vital component of due process, but it does place it in its correct context.

⁴⁵ The dissenting speech of Lord Pearce in *Onassis and Calogeropoulos v Vergottis* [1968] 2 Lloyd's Rep 403, 431; Robert Goff LJ in *Armagas Ltd v Mundogas SA* [1985] 1 Lloyd's Rep 1, 57."

I have emphasised passages that have particular resonance in this case."

12. I have also borne in mind that this is not an ancillary relief claim in matrimonial proceedings, but a claim in relation to a narrowly pleaded case in duress (or undue influence). Mr Bennion-Pedley invited me in closing not to limit my findings of fact to a very narrow field of inquiry because the plea of undue influence could not be properly assessed without making

findings of fact as to the nature and power dynamics of the relationship between Claire and Rupert. The problem with that submission, however, as I shall explain in more detail in due course, was that the Claimants' case was not pleaded in that way, either antecedently to the events of 9 and 10 October 2017 or subsequent to those dates. As HHJ Matthews said in *De Sena v. Notaro* [2020] EWHC 1031 Ch at [27]:

“... a court must give reasons for its decisions. That is what I am doing now. But judges are not obliged to deal in their judgments with every single point that is argued, or every piece of evidence tendered. Moreover, it must be borne in mind that specific findings of fact by a judge are inherently an incomplete statement of the impression which was made upon that judge by the primary evidence. Expressed findings are always surrounded by a penumbra of imprecision which may still play an important part in the judge's overall evaluation.”

Claire Jowitt

13. I heard at length from both Claire and Rupert, the main protagonists in the action. I am bound to say that I found Claire to be a most unsatisfactory witness, as will become apparent hereafter. Frankly I found Mr Fryer-Spedding's cross-examination of her to be little short of devastating. Her evidence on many of the crucial issues in the case was so at variance with the handwritten notes which she made after Rupert had left the Farm, the events which I find actually to have taken place on 10 October 2017 and the plethora of contemporaneous text messages, which were flatly contrary to her pleaded case in duress or undue influence, as well as her propensity to make allegations from which she then to resile, such as the allegation that Rupert had trespassed at the Farm between August 2017 and August 2018, which again could not have stood in the light of the numerous text messages to the contrary, mean that I must regard her evidence with particular caution. I accept that someone who has now had two broken relationships in the recent past and who is understandably emotional about the predicament in which she now finds herself, could in significant measure unconsciously reinterpret events to conjure up legal rights which did not exist and that with every day that passes her memory might become fainter and her imagination more active. However, she has not persuaded me that her present recollection is preferable to what was recorded in writing (in particular in the form of text messages) when, or immediately after, crucial incidents occurred.

Rupert Jowitt

14. Rupert I found to be a much more straightforward witness. That is not to say that I accept all of Rupert's evidence as given. Although he sought to downplay the issue, it was clear to me

from a comment of one of the other witnesses that he very much did not like Claire dressing up, at least in front of other men. It was also apparent to me that he was extremely sensitive to the continued presence (or otherwise) in Claire's life of her former long-term partner. Similarly, the importance ascribed by him to what became known as "the breakfast incident" is not, I find, made out on the facts. Although as a general principle, where their evidence differs, I prefer that of Rupert to that of Claire, this not a case where one can simply say that the evidence of A is preferred to that of B as if that were conclusive of the entirety of the case, particularly where the allegations range over a number of months and involve a wide variety of contested actions in the context of the breakdown of a marriage.

Mark Jones

15. For Claire I also heard evidence from Mark Francois Jones, a partner in the firm of Gordons LLP, the firm which was acting for her in the litigation. He was admitted to the Roll in September 2010 and is now head of the firm's Food and Drink team. It is, of course, highly unusual for a solicitor who is acting for one or more of the parties in litigation to give evidence on behalf of those parties. Mr Fryer-Spedding for the Defendants invited me to consider his evidence with careful scrutiny because he was not a disinterested bystander, but was involved in the transaction now sought to be impugned as Claire's solicitor and was involved in two conversations with her which impact on the duress/undue influence claim. I am perfectly satisfied that there was no contravention by Mr Jones of the Solicitor's Code of Conduct, although I will refer in much more detail to his involvement in the transaction and the two conversations with Claire later in this judgment.

Matthew Sheldon

16. On Claire's behalf I also heard from Matthew Sheldon ("Mr Sheldon"), a self-employed landscape gardener and farm contractor, who undertook ploughing, mowing and baling work for farming customers. He had been served with a witness summons and had not given a witness statement. Although a witness summary had been served in respect of his anticipated evidence, he attended Court in any event. His witness summary was verified and put in as his witness statement and he was then cross-examined by Mr Fryer-Spedding.

17. He had known Rupert about 7 or 8 years in all, from about 2014. He worked for Rupert at the Garage in 2015/16, at a time when Rupert also undertook farm contracting work with which Mr Sheldon assisted, and found him to be a good man for whom to work. He confirmed

that Rupert worked long hours – exceptionally long hours - and 7 days a week most weeks. He said that Rupert effectively took him under his wing. Mr Sheldon last worked for him in 2018 and now works for himself. After Rupert met Claire, Rupert told him that Claire needed someone to do farm contracting work for KSHF one day a week. Rupert introduced Mr Sheldon to Claire and he started to undertake work for KSHF, but initially continued to work for Rupert as well.

18. After Rupert sold the Garage, Mr Sheldon had done agricultural work for him, including general farm work and tidying lawns and hedges and doing gardening when the previous gardener reduced his hours. When undertaking work for KSHF he collected farm machinery from the Farm and returned it the same day. He had helped Rupert to clear up soil which had been tipped down in the second field at the Farm, although he did not know who had left the soil there. Although they did not socialise together, he was still friendly with Claire.

19. The remaining witnesses all gave evidence on behalf of Rupert.

Nathan Murray

20. Nathan Murray (“Mr Murray”) was a groundworker who had worked with Rupert for about 5 years on various projects, having known him since he started working for him at the Garage. They became friends, although he did not see Rupert much at first. He had known Claire through Rupert since they had met, but had only seen her once at the Garage. He stayed at the Garage for only 2 weeks after Rupert sold it. In 2017 he was working with Rupert on a job at a factory warehouse and office extension at Selden Research Ltd in Buxton (“the Selden site”).

Ian Foden

21. Ian Foden (“Mr Foden”) was a fully qualified carpenter and joiner who worked his way up through the ranks and for the last 5 years before his retirement he had been a construction site manager for Jarvale Ltd running jobs with a contract value up to £5 million. He retired due to ill-health and gave evidence remotely by video. In April 2017 he had set up the site at Selden to construct a new hi-bay warehouse, new offices and a car park.

Kirstie Bannister

22. Kirstie Bannister (“Mrs Bannister”) also gave her evidence remotely. She was an administrative assistant and had known Rupert for some time since 2016 when she was recommended to take her car to the Garage to be fixed. After Rupert moved to the Farm, she would take cars to the Farm to be fixed. She had had brief chats with Claire and had eaten at the Farm on one occasion, but did not know her well and had not talked to her about her brother’s business.

Dale Mycock

23. Dale Mycock (“Mr Mycock”) was a joiner by trade and was employed by a joinery firm. He had known Rupert since school and done various additional joinery jobs at the Farm over the years. He had known of Claire for some years because they lived in the same area and she had been in a relationship with his cousin, Phil Gratton (“Mr Gratton”). He had done some joinery work for Claire and Rupert at the Farm in early 2017.

Nicholas Philps

24. Nicholas Philps (“Mr Philps”) was a HGV mechanic and prior to that had worked on cars and wagons as a fitter. He lived about 25 miles from the Farm. He had known Rupert since he was 17 and had worked with him for 12 or 13 years on various projects. Originally they worked in neighbouring garages and when Rupert sold the Garage he helped him move his tools out and continued to work with him on vehicle mechanics thereafter. They kept in touch regularly by phone. In 2017 they worked on a number of different jobs, each helping the other out and on one occasion they had worked through the night together. Their friendship had never gone wrong and they were always close.

Impressions Of The Subsidiary Witnesses Generally

25. I accept that all of the subsidiary witnesses were doing their level best to assist the Court and to recall events to the best of their knowledge.

26. I found Mr Foden to be a particularly impressive witness, perhaps the most impressive witness of all. He was clearly a meticulous man who had gone back to check his records before finalising his witness statement and he spoke with convincing authority when challenged in cross-examination.

27. Mr Sheldon and Mr Murray witnessed the signature of Claire and Rupert on the October Agreement, so I shall examine their evidence of that incident in particular detail. Both they and Mr Foden gave evidence about whether or not Claire had turned up at the Selden site on 10 October 2017, the day on which the October Agreement had been signed.

Caroline Gregory

28. I was also invited to read the witness statements of Caroline Gregory (“Mrs Gregory”) and Wayne Morris (“Mr Morris”), although they were not called to give oral evidence. Their evidence was in any event very brief and it is convenient to set it out here insofar as it is germane, although it does not call for any further comment or findings in the light of the abandonment of the trespass claim.

29. Mrs Gregory had worked in her family’s vehicle mechanic and body shop business until she retired in 2019 when her brother fell ill and the family decided to call it a day and closed the business after 63 years. She had known Rupert since he was a teenager and became friends with his mother, Barbara, through the carnival circuit in Derbyshire, although she had only really got to know Rupert when he took over the Garage. Her family business did Rupert’s bookwork, but each did work for the other when one or other was too busy to fit in a customer.

30. She confirmed that throughout 2017 and 2018 she had visited the Farm on numerous occasions to deliver vehicles back to Rupert and to discuss work and price up vehicle repairs. She would also deliver personal items, such as carnival trophies and invitations, for him pass on to his mother. It was her evidence that there was no animosity between Claire and Rupert even after they were not together and that whenever she stopped at the Farm she was always made to feel welcome by both of them. There were occasions when Claire would show her round the stables, pointing out all the work which Rupert had been doing, both before and after they had split up. At no time to her knowledge was it ever alleged that Rupert was trespassing at the Farm and if it had been she would have made alternative arrangements with Rupert to drop off vehicles and personal items.

Wayne Morris

31. Mr Morris started work in 2013 as a delivery driver for PCS Motor Factors, who supplied motor parts to garages and to repair shops. As part of his job he would regularly deliver motor parts to Rupert at the Garage. When Rupert moved to the Farm, he kept his account with PCS,

but as result of not doing so much motor repair work, Mr Morris delivered to him much less frequently than before.

32. He had visited the Farm twice in April 2018 when he had arranged with Rupert to visit the Farm to look at off-cuts of box profile sheeting (similar to corrugated metal) which Rupert had told him that he could have. He thought that Claire may have been present on the first visit, although he did not speak to her. On his second visit Claire had shown him where the cordless saw was and helped him with the cutting by standing on the sheeting to reduce the vibration from the sawing, although the noise precluded conversation. When he had cut most of the sheets he thanked her for helping him and he remembered specifically that she responded by saying that she wished that Rupert would let her help him. There was nothing obstructive about her behaviour and he felt welcome on the Farm. At no time to his knowledge was it ever alleged that Rupert was trespassing at the Farm and if it had been he would not have gone or stayed there.

33. Although I did not see either Mrs Gregory or Mr Morris give evidence and cannot therefore place as great a weight upon their evidence than might otherwise be the case, I have no reason to doubt the accuracy of their evidence in those regards.

The Expert Evidence

34. I have also read the expert valuation report by Mr Matthew Williams of Brightwells about the trade and retail valuations of the various items of Farm machinery and equipment both as at August 2018 and as at the date of his report, although in the light of the conclusions which I have reached about the issues in dispute, I have not needed to make any findings about the contents of his report.

The Facts

Rupert's Garage

35. Rupert left school at the age of 15 with minimal qualifications. Prior to leaving school he always worked on local farms or at home. He learned a number of skills working with his father at home, such as roofing, tree work, building work, plumbing, electrics, mechanics, fittings and fixing lawn mowers. He then went to Broomfield Agricultural College to learn how to be a tree surgeon. He was there for 2 years, with 1 year spent on the tree side and 1 year on management, fencing and other related skills. Whilst at College he continued working for people, sub-

contracting for them on various jobs, driving machines and doing general agricultural work and tree work. On completion of his College course he went to work for Underwood Tree Services which worked for Sheffield Council. He also assisted Michael Hibbs (“Mr Hibbs”) at Froggatt Edge Garage (which was then known as “Michael Hibbs Froggatt Edge Garage”). He later took a full-time position in the garage with Mr Hibbs around 2005 or 2006.

36. Rupert was there for about 18 months before he took on the running of the Garage on Mr Hibbs’ behalf since he was ill with cancer. Owing to Mr Hibbs’ illness he ended up purchasing the Garage along with another colleague, Terry Upton (“Mr Upton”), who ran the body shop. After 3 years Rupert bought Mr Upton out and ran the Garage on his own until he sold it in 2017. Although initially a self-taught mechanic, he later qualified to be an MOT operator and assessor.

37. The Garage business grew, but could not expand because there was only so much space to do work. As a result, Rupert would put any additional profit into purchasing the tractors and farm machinery which he used for contracting work. He also expanded the Garage business from just repair into recovery and bought 2 recovery trucks without finance. The Garage would for the most part buy machinery entirely out of profits, since Rupert was not paying himself very much and used the profits to buy machinery. It was only in 2015/2016 that the Garage purchased 2 tractors and a baler with a combined price of around £300,000. These were purchased with £50,000 being financed at 0%. Rupert confirmed that there was an accurate list of the Garage’s machinery and equipment at page 510 of the trial bundle.

38. Rupert ran another company alongside the Garage, which would for the most part invoice for the work which he did with the machinery - the baling, foraging and other agricultural contracting. This was Froggatt Edge Farm Services Limited, now KSH Plant Limited (“KSHP”). As mentioned above, I will refer to that company throughout as KSHP.

39. By Rupert’s account, which was not disputed and which was confirmed by a number of the other witnesses, he worked very hard and very long hours, but he had a very good cash flow from the Garage. He could go there at 7 am and work until midnight 7 days a week. In the 10 years before meeting Claire he said that he had 1 holiday of 14 days, but otherwise worked 7 days a week. Ultimately the Garage owned a lot of new and second-hand machinery and had £80,000-£130,000 in cash in the bank at all times. That was always his fallback as he knew that

there was plenty of cash flow in the business. The Garage had 3 ladies working for it who would help Rupert with the paperwork. Gill Ashton and Brenda Wagstaff would help with finances and Jess Wane did invoicing. They would come in every Saturday and reconcile the payments and help with the accounts. He would periodically ask how much money the Garage and KSHP had and would then speak to his accountant about whether purchasing machinery with the money was a good idea. Rupert admitted that he never had a particularly good overview of the finances on his own. He was, for example, unclear as to whether the Garage had had internet banking before he started his relationship with Claire. He had no real day to day cash needs at the Garage; his spending was always modest and he was always working (from 7 am to 12 midnight). If he needed cash when he owned the Garage, he would tell Gill Ashton and she would take cash out of till for him, so he had no need to trouble himself with the details of how the Garage account was run. He said that he spent very little, probably £30 per week, at most for day to day items. I gleaned from this evidence and from his evidence throughout that Rupert was not particularly interested in, and was not good with, paperwork. I noticed on more than one occasion that, when financial documentation was put to him, he took longer than one might expect to look at it and satisfy himself what it was about. He was simply not good with, and not at home with, paperwork.

Claire and Rupert's Meeting; The Beginning Of The Relationship

40. Claire's account was that, although she and Rupert first met in 2015 through her then partner, Mr Gratton, who visited Rupert's Garage, they did not meet properly until March 2016 when Rupert went to the Farm to view an item of farm machinery, a McHale Fusion baler, which was for sale by KSHF. She and Mr Gratton, who had had a 20 year relationship, had a daughter called Mia (who was then 7 or 8), but they parted in about February 2016. She and Rupert began a romantic relationship in May of that year. She allowed Rupert to use the machines owned by KSHF to undertake work which KSHP obtained. She thought that he had had a hard time in previous relationships and to make him feel secure she appointed him a director of KSHF on 13 June 2016. She said that she wanted him to trust her and accept that she intended them to be together for a long time.

41. Between May 2016 and April 2017 Claire and Rupert lived mostly between her home at The Hall and his house at Shuttle Cottage. As she had a young daughter, she was only able to stay at Rupert's home about once a week. Rupert rarely stayed at the Hall until after they were married as her father, Eric Miller, was still living with her until he moved into a care home in

October 2016. Rupert started to live with Claire and her daughter at the Farm around the time that they were married.

42. At the time they met, Claire said that KSHF was an established business undertaking farm contractor work such as ground works, mowing, baling, grassland work, winter maintenance and log and fodder sales. She said that Rupert was building up his contacts and undertaking similar work with his company KSHP.

43. From around September 2016 Claire agreed that Rupert could keep KSHP's machinery at the Farm as there was more space there.

44. Rupert agreed that he first met Claire around 2015 through her ex-partner, Mr Gratton, who visited the Garage. Rupert had too much other work and requests for agricultural work and so referred a few jobs to him.

45. On Rupert's account KSHF had no employees and only gradually built up a livery business after he became involved with Claire, having previously relied on Mr Gratton and occasional contractors. KSHF also had no permanent employees and almost all work was carried out by Rupert and contracting out for casual labour to assist him. He said that Claire wanted to progress the livery side of the business, but that there were no horses and nothing in the stables.

46. He said that, after Mr Gratton left her, Claire sold virtually all of the machinery, mainly to David Wardman of Matlock ("Mr Wardman"), because there was no one left to operate it. Before he left her, Mr Gratton did all the operating and Claire did all the bookwork; this pattern was in fact the same as with Rupert once he got together with Claire. The only other person who worked for them was John, the gardener, who did 2 days a week clearing up the garden. A tractor which KSHF owned was also on finance and without it bringing in any money Claire could not afford to keep it. Rupert believed that Claire's only income was her father's pension (as he lived with her) and the income from some commercial properties in Hathersage belonging to her father.

47. After most of the machinery and equipment had been sold to Mr Wardman, all that was left to KSHF was the McHale Fusion baler, a set of tedders and a rake, an old mower, a trailer, a small tractor and the Bobcat digger.

48. Rupert said that in or about April 2016 he went to purchase a trailer from KSHF, which was one of the last items on sale from KSHF, for about £7,500. When purchasing and paying for the trailer, he talked to Claire about purchasing the McHale Fusion baler. It was then that she asked him about going to work on the Farm.

49. At the time she made some very serious allegations against Mr Gratton and Rupert had no reason to disbelieve them. He did not know if any of it was true, or if she made them up to gain his sympathy, but they significantly affected his behaviour towards her and Mr Gratton later. In particular, Rupert said that he always worried about leaving Claire in situations where she might be alone with Mr Gratton and that later he himself was worried about being alone with Claire after he started doubting whether the allegations which she made about Mrs Gratton were true or whether she had made them up in order to get the upper hand over him.

50. By contrast, it was Claire's case that when Rupert first went to the Farm to discuss the purchase of the trailer (or the baler), they did not discuss her relationship with Mr Gratton and of the other allegations she answered

“Q. Were you afraid to be alone with Phil?

A. No, I can't remember saying anything like that.

Q. You parted with Phil on good terms; it was amicable?

A. Yes.

Q. You never made allegations about Phil?

A. There were past issues, but the relationship was in the past.

Q. Did you discuss being afraid of Phil?

A. No, I wasn't afraid of Phil.”

51. Over the course of the trial I heard a number of allegations about the behaviour of Mr Gratton, essentially from Rupert about what he had said that Claire had told him about Mr Gratton or actions which he alleged that Mr Gratton, with whom he had been friendly before his relationship with Claire, had done to him. I bear in mind in particular that I did not hear from Mr Gratton, who was not a witness for either side, and that there was no account from

him of the truth or otherwise of the allegations. I will therefore record as appropriate that allegations were made against him, but I shall refrain from finding whether the allegations were true or not. It was clear, however, that Rupert was extremely sensitive about the whole subject of Mr Gratton's relationship with Claire and the extent to which, if at all, he might remain part of her life.

52. Rupert's account was that KSHF did very little work, save for muckaway work, prior to his arrival. Before Mr Gratton left, KSHF did a small amount of contracting work which consisted of baling and other agricultural work. When Rupert first used the baler which he bought from Claire, it showed that it had only done 600 bales in 2015, which he believed would probably have been around 300 at the Farm and 300 outside the Farm, based on the size of the Farm and what Mr Gratton had told him. KSHF had prepared a small amount of hay and haylage and on wet days John the gardener prepared a small amount of logs. The main income for the farm was "muckaway work". Mr Gratton would collect all sorts of waste, including builders' waste, rocks, garden waste or old toilets which he would tip down a hole in a field. Normally that work required a waste carrier's licence and a tipping licence, but Rupert said that he knew from Claire that they had neither. When Rupert went up to the Farm, there were no logs or hay or haylage available, as Claire had sold everything.

53. When Rupert first arrived at the Farm he thought that it looked derelict and that there was no activity going on there. The first job which he did for Claire was levelling the sand out for a horse arena. She was hoping that she could rent out the horse arena and provide a small amount of income. He also tidied up the Farm buildings and the stable block at her request.

54. He said that, before Claire took over the farm with Mr Gratton, her father, Eric Miller, used to farm sheep. He had already stopped farming in 2014 and had sold his sheep. After he became ill, Claire sold a number of his belongings, including cars, furniture and, said Rupert, even the fish out of the Farm pond. (Claire for her part explained that she had sold her father's car because he was 89 and was no longer safe to drive it. In the circumstances that seems to me to have been entirely justified on her part.) She later told him in around 2016 or 2017 that she did this because if her father died, half of what was in the Farm would go to her brother, with whom she was in dispute over the family business, under the terms of his will. Anything she sold or used towards the Farm would benefit her and take it away from her brother, as she had already inherited about half the farm from her mother. As far as Rupert knew, Claire had always

lived at the Farm and also owned the Farm house with her father. He did not believe that she had ever had a job other than what she did at the Farm and with the horses.

55. Rupert said that it was a 1 hour 10 minute round trip from his home to the Farm. There had been difficulties with his storage of equipment from the Peak District National Park, but that had been sorted out by moving machinery to premises owned by Edward Warren (“Mr Warren”). He had not particularly wanted to build up his agricultural work. Although it was not particularly convenient for his machinery, it became the place from which he worked. There were buildings where could keep the machines dry, but they were not secure, which was why he had eventually put down boulders for security (a matter to which I shall return when considering the individual trespass claims).

56. Claire’s account was very different. She did not agree that there was little work off Farm; she said it was quite extensive, involving sawed logs, fodder sales and agricultural working. She could not, however, say anything about the number of bales since she left men’s work to the men. She denied that Mr Gratton did muckaway work; it did happen, but did not involve builder’s waste.

57. She denied that, when Mr Gratton left, the contracting work went with him; she did not have any income from contracting work. She had not suffered a sudden drop in income when he left and she kept the machinery which the Farm needed. As she put it, she kept the grassland machinery, but sold off a few bits to Mr Wardman, although she did not need to do to generate income. It was put to her that what remained were the bailer, the tedders, the rake, an old mower, the trailer, the small tractor and the Bobcat digger and that was all that was left on the Farm. She disagreed and said that she also had a Ford Transit van, a 54 plate tractor, a tri-axle, a trailer, a Bobcat, a tedder, a rake, a mower (which was not old), a roller, a bale sledge, a flat 8 grab and a bale squeegee. Her father had his pension and there was rental income from properties in Hathersage, although the rental income never went to the Farm. She lived with her father and did not really need more income.

Rupert Moves Into The Farm

58. Rupert said that Mr Gratton and Claire separated around February 2016 and that he went to purchase the trailer in around April 2016. He and Claire did not get together until perhaps the end of June 2016 and in around May 2016 she first offered him some storage space for his

machinery in her shed and asked if he could go to the Farm and complete some small tasks, including digging and tidying up work. This was in exchange for using the storage space, but she also said that she would pay him, though he never received any payment.

59. This was also around the time that she offered to sell him the McHale Fusion baler. Rupert paid a deposit of £10,000 for it and agreed to pay off the remainder over time once he sold his own baler. The Garage would have made the payments for the baler and the trailer, although at the time Claire could not make up her mind if she wanted him to pay by BACS or cheque and he ended up sending the money for the trailer twice, of which she returned one payment. He said that from KSHF's accounts that was roughly what happened: two payments of £7,800 went to KSHF by BACS: one was returned and a cheque for £10,000 was cashed.

60. Initially, said Rupert, he used to go at weekends and in the evenings to do the work as he was busy with his other work. After the work on the Farm, he would go into the Farmhouse to have a meeting with Eric Miller and let him know what he had done and what he thought needed to be done next. The work he did included repairing drainage, tidying up the muck that had been tipped by Claire and Mr Gratton at the Farm, levelling the top yard, putting the surface in for the horse manege and generally assisting, sorting and tidying up the land ready for the hay harvest in 2016. Mr Gratton had previously done some work to prepare hay, but that was very involved, time consuming work which included the preparation, including chain harrowing, weeding, spraying and eventually harvesting. He also did a lot of fencing.

61. The extent of the work which Rupert did also proved to be contentious. Claire strongly disagreed about the amount of work which Rupert had done. She was happy that he was helping with the stables, but actually he did very little to help there. She said that she had never asked for work, although she accepted that he had put down a wood-chip path and helped set up things in the store room, although she had parqueted the floor. The surface for the horse manege was already down, though he had helped to level it. She denied that he had done tipping, prepared the grassland ahead of hay harvest, or harrowed, weeded or sprayed it, although she accepted that he had harvested it and fenced off land and created a paddock, for which she was really grateful. She accepted that he did field work, including mowing and baling, but he did not lay drains, metal the driveway, do work on the buildings and stables or the top yard (which her father had done) and had not been alone in doing work on the hedges and trees. She had

not paid him, but then they were in a relationship. I find that, whatever the precise extent of the work done by Rupert at the Farm, it was a significant amount and that he was not paid for it.

62. Rupert said that at this time Claire was also trying to sell the main property of the Hall and 1 field for £1 million to a couple despite its state of disrepair in order to bring in cash. Ultimately she had to withdraw from the proposed sale, as the couple did not like the fact that she was going to run a business from next door.

63. Part of the Farm was a property called the Coach House, which was an old stable block. Claire had begun to convert it for herself for the time when she sold the Hall and still had an amount to pay on it. Rupert said that because of her taste in furniture and fittings, she still needed a lot of money for it.

64. Again this was a matter of contention. Claire said that the main property had never been for sale at that time. It had been marketed for sale when her mother was alive, but nothing had come of it. She had been converting the Coach House with Mr Gratton when her mother was alive. There was no plan to live in the stable block when the Hall was sold off, just a conversation about it. She disagreed that she had been doing a lot of work that she could not afford, that the central heating was not working or that the roof and windows were not watertight.

65. What is apparent, however, is that Claire went to Rupert for money shortly after they got together towards the end of June 2016. Rupert said that Claire had ordered some floor tiles for the Coach House from Inside Out in Buxton and she asked him if she could borrow £8,000 to pay for them since she had ordered them, but could not afford to pay for them. The owner kept them in storage while she was gathering the money to pay for them, but said that he could not hang on to them for very much longer. She told Rupert that she could either pay him back later or, if they ended up moving in together into Coach House, he was effectively putting money into his property. Rupert agreed to loan her that amount to allow her to buy the tiles.

66. Rupert was clear about that in cross-examination:

“Q. The money for tiles was a loan?”

A. Claire said it was a loan – if I moved in, I had paid something to what was in there. When I left is when I spoke to Claire and she said she would give money back. She always said money would come back to me unless we ended up in property.”

67. Claire’s account was much less convincing:

“Q. You had no money for the tiles?

A. I did have. It was about £14,000 – I am not sure. Rupert paid half of that. We were in a relationship – it was just a suggestion. We were moving forward in relationship. I didn’t need to borrow money. I can’t remember dates.”

68. It is, however, apparent from the terms of the handwritten notes, to which I shall come in due course and the earlier versions of the October Agreement, that Rupert did loan Claire £8,000 to purchase the tiles for the Coach House and I prefer Rupert’s account of the transaction. The need for a loan to buy the tiles also suggests that Rupert was correct that Claire’s financial position was not a happy one in the aftermath of Mr Gratton’s departure and that she was indeed living above her means.

69. While Claire was staying with Rupert, she also said that she needed to buy a computer to continue with her work. She took his business card (with his consent) and ordered an Apple computer for about £2,000 and his friend Mr Mycock, who was a joiner, installed a small desk in the corner of Rupert’s upstairs bedroom for her to use. Claire accepted in cross-examination that she was the one who used it most of the time, although she could not say that she was the only person who used, it. I find that, given Rupert’s basic inability to use a computer, which is consistent with the evidence of Mrs Bannister, and his lack of technological sophistication, it was Claire who was the only one who used it. The purchase of the computer again features in the handwritten notes and the earlier versions of the October Agreement and I shall return to its significance in due course.

70. As time went on, Claire took over all Rupert’s paperwork from Gill, Brenda and Jess at the Garage. She set up online banking, which he had not had before, and had control of it. She offered to do that because she said could help him that way. Rupert did not have time to do it with his workload nor the experience or knowledge, which is why Gill, Brenda and Jess did it for him before. At the time she offered to do this, he understood that she would do the invoicing

and finances for him and that the money would be saved for when he needed it. Rupert would do the work which needed to be done at the Farm for her and he would continue to do work for his customers as well. In that way Claire would get her outside work done free of charge, Rupert would get his inside work done free of charge and they could move forward together.

71. Very early on Claire was aware that there was some outstanding money owing to the Garage and she would do the work chasing payments and then eventually did the invoices. She said it was as a favour because Rupert was helping her with the physical work at the Farm. She started doing this when she moved to his house in Calver because that was when she bought the computer.

72. By Rupert's account Claire also said she would add Rupert as a director of KSHF so that he had full control, but in reality she kept the paperwork away from him. In her mind it was always better to have separate entities for tax and bookkeeping and any money that went into the Farm was Rupert's to draw out when he needed it or to upgrade machinery as it was better financially to keep it out of the Garage. She also said that, if he were ever going to sell the Garage, it was better for assets to be separate.

73. Rupert said that he trusted Claire at the time because he knew that her father had taught her how to keep books, but he did not really have much of a choice because she just took over. It also became increasingly difficult for him to keep an overview because of his workload and the fact that she kept 3 different cashbooks at the Farm and had control of the online banking access with her own security fob which she kept somewhere in her office. She kept the office locked and her computer had a password on it which Rupert did not know.

74. Rupert said that Claire set up an eBay account in his name and started selling off belongings because there was not enough money to pay the bills. In reality, said Rupert, the bills were her outgoings and not his. He was not aware of it initially, but she had somewhere in the region of £80,000 owing on credit cards prior to him knowing her. She also had in the region of £20,000 owing on her vehicle. She had also spent all of her childhood savings from her father and the money (£250 or so each time) that her father would put into her daughter Mia's account every Christmas, Easter and birthday. She also persuaded Rupert to buy her an Audi RS3 because she said that Mr Gratton had put a tracker on her previous car.

75. On Rupert's account the only income which Claire had outside what Rupert was bringing in were her father's pension and the rental income from some properties which he owned in Hathersage. Because her father was unwell and staying at the Farm, she spent that income together with Rupert's as if it were her own. He did not really know how she was spending the money, but did not have much of an option because he did not know enough about it. He just did the work for his customers and the Farm. He later saw some of her bank statements which showed that she was spending thousands of pounds on clothing and around £500 on a hair salon on a regular basis.

76. Again, all of this was contested by Claire in her evidence. She said that she never did Rupert's books for the Garage, she did not remember setting up online banking for the Garage and did not do billing for the Garage and contracting work. It was put to her that the arrangement was that he would do the outside work and she would do the inside work, but she disagreed and said that there was no such arrangement. It was put to her that Rupert was not good with paperwork, to which she replied "I don't know", an answer which I found frankly incredible, but she accepted that he always had someone to help him with books, that she had never seen him do online banking and that he dealt with accountants. She said that they both did the paperwork together, but whilst she did the books for both KSHF and KSHP, she was adamant that she never did the books for the Garage. She would write up invoices for Rupert and saw some timesheets, but did not do work accounts or risk assessments. She said that they were both involved in the change of name involving KSHP. When asked whether she advised him to keep contracting work out of Garage, she said that they needed to keep an accountant and to do what the accountant thought best.

77. She did all of the online banking for KSHF & KSHP. To start with only she had access to the security fob and password, but she said that later Rupert had them as well. She could not remember whether she was the only one who used them, although she said that both of them had access to the office in the Farm and that the computer which she used was in her office there.

78. Claire denied that she was in debt to the extent that Rupert alleged. She was asked about money owed to third parties in May/June 2016. She said that she owed money on her credit card, but she was not sure and could not remember, but thought that it could have been £4-£5,000. Mr Fryer-Spedding put to her that Rupert said that it was £80,000, but she disagreed

and said that the limit came to 2 figures. He put to her that she owed money on a vehicle in the region of £20,000. She could not remember, but she did have a Shogun, but did not owe money on it – there had been only a small amount on finance. She accepted that Rupert had bought her a car which they both used, but she did not recall that Mr Gratton had put a tracker on her previous car.

79. Claire accepted that she spent appreciable sums on hair and beauty on a regular basis, every 3 months or thereabouts, but that Rupert did not like it. She took out her hair extensions to please him. I shall return to that aspect of their relationship later.

Rupert and Eric Miller

80. According to Rupert, Claire wanted him to be part of the Farm and the Farm business. She said that he had very good potential and her father took him on. He thought that Rupert was an entrepreneur, that he had a very good work ethic and could turn his hand to anything. Because Claire did not take care of him in the way that he liked, her father asked Rupert to be his full-time carer in or around September 2016. Rupert had paid for his first care home at which he stayed briefly, but he did not want to be in a care home and asked Rupert to be his carer instead. That was why he wanted Rupert to move to the Farm.

81. Rupert said that, once they got in a relationship, everything moved very quickly. Claire initially moved to Rupert's house in Calver on the basis that she was struggling with her father. He was unhappy that she was not taking care of him properly while he was ill. Rupert used to finish in the Garage and go to the Farm and attend to Eric Miller's needs and it meant that he was getting home around 2 or 3 am and was going back to work at 6.30 am. Eric Miller was also an old-fashioned businessman and wanted to be in control of his funds. Because Claire ended up selling his car and many of his possessions he was isolated and could not go out and be independent. As a result of that her father would have a go at her because he wanted something or because he asked her to explain how she had spent his money.

82. After finishing work at the Garage, Rupert said that he would go to the Farm and assist Eric Miller with his medication, cream and ointments. After a short period of time Eric Miller was not happy with Claire staying away and Rupert taking care of his needs. He wanted them to be at the Farm together and around August 2016 Claire told Rupert that he had to move to the Farm with her. When he moved to the Farm, she undertook the task of emptying his

property and taking all of his belongings up to the Farm over 2 or 3 days with a girl who was her stable hand from years before. Rupert's property then stood empty until about May 2017 when it was rented out.

83. Rupert said that every time he tried to leave the Farm to take care of something, Eric Miller would text him that he needed assistance with something. From the outset that meant that Rupert ended up helping a lot - going to the hospital in the middle of the night and assisting with his medication through the night. The more Rupert did for Claire's father, the more he needed him and it seemed that he wanted to keep Rupert away from the Garage and at the Farm. In or around October to December 2016 he even offered to buy Rupert out of the Garage with funds from selling the Hathersage properties. Eric Miller saw that Rupert could not do the work at the Garage, the Farm and care for him at the same time.

84. Eric Miller died on 7 January 2017.

85. In the short period in which Eric Miller knew Rupert, he believed that he was honest and well meaning, so much so that, shortly his death, he appointed Rupert as an executor of his estate.

86. After he died, Rupert said that there was no longer a reason for him to stay away from the Garage, but by that time Claire had isolated him from his friends, family and the staff at the Garage. She would also use the situation with Mr Gratton to keep him close to the Farm. She would not make any of his friends or family feel welcome and with the work Rupert had he rarely spoke to his friends. His mother now visited him and his current partner about 5 or 6 times a week, but whilst he was with Claire she only visited 5 or 6 times in total. Claire presented it as a way of keeping him away from the pressure of the Garage, because the more they did together at the Farm, the better a future they would have together. She said that the more Rupert took on board the Farm work and did work there, the more there would be money out of the Farm for them to live on.

87. As Claire and Rupert's relationship developed she was appointed a director of KSHP on 24 November 2016, not long before her father died on 7 January 2017. Rupert and Emma Thompson, a partner in the firm of Jones & Co, were appointed as executors of Eric Miller's

estate and an inheritance tax return was filed by Jones & Co on 3 March 2017. Rupert remained an executor, even after he left the Farm in August 2017.

88. Again, the nature of the relationship between Rupert and Eric Miller was a bone of contention between the parties at the trial.

89. Initially there was some criticism of Rupert for a delay in the paperwork relating to the estate of Eric Miller, but Mr Fryer-Spedding put it to Claire that the delay was because of a query relating to lifetime gifts not being reflected in the inheritance tax return. She accepted that that was what the solicitors had said, but she did not know enough about the matter to say that Rupert was improperly delaying the administration of the estate and effectively resiled from what she had said in paragraph 27 of her witness statement that he was using it to gain leverage against her. Mr Fryer-Spedding put to her

“Q. Look at at para. 27 of your witness statement: leverage? Why make that allegation?”

A. I can only repeat what I’ve said. Strange that would be said.

Q. Different from cynical delay?

A. Jones & Co sorted it out – they took steps

Q. You can’t say anything wrong?

A. Don’t know enough about it.”

Eventually Rupert agreed to step down as an executor of the estate.

90. Claire did not accept that Rupert was living at the Farm from about August 2016 onwards. That only happened towards time they were married. She said that she still lived with her father and only the odd time at Calver. She did stay there overnight, but not every night. Whilst Rupert worked until late and came to help with her father, she did not accept that that he was not getting home until 2 or 3 am in the morning. A bill from Therapy Services dated 24 October 2016 was addressed to Rupert at the Farm, but Claire explained that he was not living at the Hall in October. Rupert had had pain with his teeth (his wisdom teeth were subsequently to be extracted, a matter which was relevant to Mr Foden’s recollection of what happened at the

Selden Site on 10 October 2017). He was not registered with a doctor and so she got him registered with her doctor at Buxton.

91. Contrary to what Rupert said, Claire said that she had a good relationship with her father. She said that she did not argue with her father about money: all families had arguments, but she could not remember specific arguments and never threatened to leave him alone.

92. Mr Fryer-Spedding put to her that her father was happy because in Rupert he now had a full-time carer. She disagreed and said that they both cared for him and that both paid for him to go into care home. She did not accept that her father made a number of demands on Rupert, though she accepted that her father and Rupert got on and that Rupert was attentive to his care. She did not agree that he would regularly text Rupert, but agreed that he kept in contact with him.

93. Ultimately it was Claire's case that looking after her father was a cynical ploy on the part of Rupert from the outset to strip her of her assets. That was made clear in her witness statement and she did not resile from it when cross-examined. In her witness statement she said that

“101. Unfortunately, looking back on Rupert's behaviour and the way our relationship moved so quickly I believe that it was Rupert's intention all along to take as much money from me as possible and come out of our short marriage with leverage to take KSHF's equipment.

102. When we met I had money and was swept off my feet by Rupert. I was happy to invite him into my life and share everything I had with him. I never thought that he would do what he has done and trusted him completely.”

94. Mr Fryer-Spedding put to her

“Q. You say Rupert was involved in an asset-grab – looking after your Dad was part of the plan? He was playing cynically for the chance to take assets?

A. Yes.

Q. In part by looking after your father?

A. I don't know.

Q. By tending him with creams and ointments?

A. Yes.”

and again towards the end of her cross-examination

“Q. Look at paras. 101-102 of your witness statement. Is it your case that Rupert is a cynical gold digger?

A. Yes. I trusted him, he betrayed my trust.

Q. That is why he looked after your father - as part of a cynical plan?

A. I appreciate it was kind of Rupert

Q. He did help a lot?

A. Yes.

Q. As part of cynical plan?

A. Yes, given what happened afterwards.

Q. He was very kind at the start?

A. Yes.

Q. All to get the money in your coffers – part of a cynical plan?

A. You’ve got a point.”

95. I do not accept for a moment that caring for Eric Miller was part of some cynical ploy by Rupert to worm his way into Claire’s affections and strip her of her assets or that the commencement of his relationship with her was the genesis of a cunning and long-term plan to extract the Farm machinery and money away from her. That would suggest a degree of Macchiavellian guile and sophistication on the part of Rupert which it is quite clear from the evidence of the other witnesses that he does not possess. The evidence of the other witnesses was that Rupert was a generous, hard-working man of little or no financial sophistication, with few material needs, somewhat naïve in his dealings with third parties and a man who almost needed protecting from himself and being taken advantage of by others.

96. That the relationship between Claire and Rupert went profoundly wrong very quickly after they married is clear. That the aftermath of the breakdown has resulted in bitterness culminating in litigation and a contested trial is evident, but I do not accept that it was all a concerted ploy from Rupert from the very outset of his relationship with Claire to obtain her assets and that caring for Eric Miller was an integral part of the Machiavellian deception of Claire by Rupert.

97. Her phrase at the end of the second group of questions to the effect that “You’ve got a point” was a telling one, which she used several times during cross-examination (or words in similar vein such as “Yes, I understand what you are saying”), always in the context of her evidence or belief being shown to be unreliable or untenable, almost as a tacit admission that the evidence or belief was unreliable or untenable, and yet that she had no real answer to the criticism that was being made of her without actually accepting the criticism and withdrawing the allegation. That Claire nevertheless remained adamant in her witness statement and even under cross-examination that that was Rupert’s nefarious intention from the very outset of the relationship again demonstrates that her evidence must be received with caution.

The Clamark Dispute

98. It was in September 2016 that Claire instructed Gordons LLP under a separate retainer. Claire had sought advice since she was not sure what she should do about her family business over which her brother, Mark Miller (“Mr Miller”), was exercising control. Her father, Eric Miller, had been a successful businessman who had established a number of companies, including Clamark Engineering Ltd (“Clamark”), a company which had a wholly owned subsidiary, Holmes Engineering Company (Rotherham) Ltd (“Holmes”).

99. Clamark was a holding company. It had owned 60% of the shares in a company called Fire Engineering Associates Ltd and 100% of the share capital of Holmes. Holmes’ only business was that it owned an industrial site in Rotherham. The site was previously occupied by Acorn Container Company Ltd (“Acorn”), in which Clamark used to have a majority share. Acorn produced shipping containers which were predominantly sold into the oil industry. Acorn had financial problems which resulted in a liquidator being appointed on 27 January 2016. After Acorn became insolvent, Claire, her brother and a Mr Gary Hattersley established Millhat Containers Ltd and Millhat Testing Ltd (“Millhat”) to replace Acorn and undertake the work which Acorn had hitherto undertaken. Mr Hattersley, through a business which he jointly owned with his wife called Offshore Container Consultants Ltd, owned the remaining shares

in Acorn which Clamark did not own, so he was well known to Claire, her father and her brother. When Millhat was established, it occupied the land which Holmes owned in Rotherham, but it did not pay Holmes any rent. The original plan agreed between Claire and her brother and Mr Hattersley was that Millhat would be afforded a rent-free period until it got going.

100. Claire had a 50% shareholding in Clamark and a 30% shareholding in Millhat. Mr Miller owned the remaining 50% shareholding in Clamark and the shares in Millhat were split between Claire, her brother and Mr Hattersley. Both Claire and her brother were directors of Clamark, Holmes and Millhat. Their father, Eric Miller, was also a director of both Clamark and Holmes. Claire increasingly felt excluded from Millhat, which was effectively run by Mr Miller and Mr Hattersley. They both received salaries from Millhat, but Claire received nothing. The family did not get on in the business and they were better off, said Claire, doing their own thing. In September 2016 she had asked her brother to buy her out. He did not refuse, but wanted time to think about what to do. She therefore instructed Gordons to act on her behalf and Mr Jones was the solicitor who had conduct of the matter. From what Rupert told Mr Jones, she had gone to Gordons since Rupert had spoken to a long-standing client of the firm whom he respected and he had recommended the firm.

101. Mr Jones met Claire and Rupert on 7 September 2016 to discuss the challenges which she faced. Mr Jones never met Eric Miller, who was very frail and who, as related above, was to die on 7 January 2017. At that time, however, Claire's father was still on the board of Clamark and Holmes along with his son. Despite his increasing frailty, her father appeared to be supportive of his daughter and there was some tension between him and his son. So, in order to ensure that Claire was not excluded from the management of Clamark/Holmes, Mr Jones suggested that Eric Miller and Claire appoint another director to the two boards who would not be pushed around by Claire's brother, in order to avoid a deadlock situation should Eric Miller become incapacitated.

102. Claire recommended Rupert as the other director. Mr Jones had no reason to doubt Rupert's character, but thought that it was more appropriate to appoint someone who was more independent and unlikely to be influenced by the state of any relationship with Claire. Claire trusted Rupert and decided nevertheless to proceed on the basis that Rupert was appointed as the other director. Mr Jones explained to him why another director was needed to be appointed

before Claire's father, who was then about 90, became unable to perform his duties. Rupert was duly appointed to the boards of Clamark and Holmes on 21 October 2016, but was never involved in the business.

103. Rupert was aware that Claire's dispute with her brother was long running, although he did not know much of the detail of it. What he did know from Claire was that in essence her brother was trying to squeeze her out of the family business.

104. Shortly after the meeting Rupert said that Claire had lent her brother £10,000 that Rupert had earned through his work. Her idea was that, even though she had no money, she wanted to look very well off. According to Rupert, she lived in a big hall, but the heating was shot and the windows and roof were not all rain tight. Lending her brother money was a way for her to seem as if she had money and also to show him that she had the money to fight him.

105. In order to fund the negotiation with Mr Miller, what in fact what happened was that Rupert agreed that some shares which he had inherited from his father could be sold and used to fund her solicitors to assist her in the dispute with her brother over the companies. He sold shares worth £30,000 and put £29,000 into funding Gordon's legal bills. On Claire's case that was the act of a cynical man who was setting her up to strip her of her assets, although again she was effectively compelled to resile from the allegation when tested on it. Mr Fryer-Spedding, in dealing with the gold-digging allegation put it to her:

“Q. All to get the money in your coffers – part of cynical plan?

A. You've got a point.

Q. He put in £30,000 from his inheritance?

A. Yes, £29,000 went into the joint account.

Q. Is that the act of cynical man?

A. Yes, I understand what you are saying.”

(I would add that, having to be advanced £29,000 to fund the negotiation with her brother does not sit easily with her statement in paragraph 102 of her witness statement that she had money.)

106. Rupert said that, nevertheless, and although he had effectively funded the legal advice, for the most part he was kept very much in the dark about the dispute, although Claire would tell him the odd thing which her solicitor was saying or that Gordons was saying “this and that” about the dispute with her brother. He said that he had no financial interests in the companies and did not know whether he was entitled to anything from them, although he was not expecting anything from them.

107. On 24 October 2016 an oil tank was installed at the Farm in connection with underfloor heating in the Coach House. The removal of the oil tank by Rupert in the summer of 2018 is one of the individual acts of trespass which is still the subject of complaint, which is why I mention it here in its correct chronological place.

108. Rupert’s evidence, with which Claire disagreed, was that the oil tank was not connected or fastened down and that she allowed him to take it. It was empty, but he could not, however, say when cross-examined whether it was connected up to the Coach House or not. He said that he would not have left the system uncoupled if it would have caused any harm.

109. In March 2017 Claire made her brother an offer to sell her shares in return for a cash payment and lengthy negotiations ensued in order to reach a final agreement between them. The ultimate resolution of that dispute is intimately bound up with the execution of the October Agreement, to which I shall return below.

The Marriage

110. Claire and Rupert were married on 25 April 2017.

111. Mr Foden recalled that the first time Rupert needed time off work was to get married to Claire. He told Mr Foden that morning that he needed to finish at noon that day because he was getting married at 2 pm. That was the first that Mr Foden had heard about it. He then expected Rupert to take time off for a honeymoon, but instead he was back on site the next day. They did not have a honeymoon for several weeks. Claire came with him in the tractor that day and brought his sandwiches and that was the second time Mr Foden had met her. He was shocked when Rupert told him out of the blue that he was getting married that same day, as they knew each other reasonably well as colleagues and that was the first he had heard about it.

The Sale of the Garage

112. Rupert said that the Garage could operate on its own, but he was in charge of it and had 7 members of staff. Before meeting Claire he was always careful to treat the Garage as his main source of income and the farm work was always on the side. If he worked a few hours in the evening doing the harvest, he would always make sure to go back to the Garage at night and do a few more hours. When he was not there, the Garage was missing hours and did not have his drive behind it. The money which was in the Garage and the funds for running it were depleted very quickly because he was not there to push the work forward and because it paid for things for the Farm such as filling the diesel tank. At the time it was also funding the diesel costs for running the machinery which he used for work for the Farm and repairs for wear and tear. There was no charge to KSHF or Claire for those costs or the work which he did for the Farm.

113. Rupert said that he had 3 bank cards, one for KSHP, one for the Garage and one for his personal account. He had the Garage card until the business was sold; the personal account card he kept. Both the KSHF and the KSHP cards were stored in the office at the Farm. After the sale of the Garage, the only card he kept was his personal card; otherwise Claire would give him a card and he would give it back to her when he had used it. The Farm office was locked because of an issue with Mr Gratton. Rupert said that he rarely went to the office, but that Claire would hide the key and often could not remember where she put it.

114. Claire's account was very different. She said that, although when Rupert came to the Farm she assumed that he had used Garage fuel to get there, her vehicles did not run on Garage fuel. She had no idea about the balance on the Garage account and had nothing to do with the Garage accounts. Certainly she did not take money out of the Garage account. She did not accept that she took Rupert's bank card and that he would take it and give it back once he had used it. He had his own card and the same access to everything as she did.

115. Ultimately Rupert decided to sell the Garage. As he put it in cross-examination

“Q. You say that Claire persuaded you to sell Garage when you didn't want to?

A. Yes – I couldn't be active at Garage - Eric was on my back. The Garage didn't run without me being there. He died in January 2017, but

Claire still called for my time. The Garage lost business – I lost the support of staff by running after Claire; they could see what was happening – practically that was why I had to sell the business.”

116. Rupert alleged that he found out that the Garage accounts had been drained and the buyer insisted on funds being returned to the accounts. Because it was a share sale, no particular amount of money had been agreed to remain in the accounts and because of that Claire had been taking any money out. In the end she overdrew the accounts and had to put £3,500 back. All of that Claire denied and Rupert accepted in cross-examination that he could not say that Claire had in fact done anything wrong in the sale of the Garage since he was not up with the ins and outs of the paperwork.

117. 3 of the Garage’s machines were on finance of £50,000. The Garage therefore had to sell for at least £55,000 to pay off the machinery and cover the costs of the sale, so that Rupert knew that he would be debt free. One of the machines was not sold and there was still £12,000-£15,000 going out for a New Holland T6 175 load tractor. In addition to the machinery which the Garage owned in its own name, some assets also passed over into Rupert’s ownership as they were written off by the Garage. He would repair them and keep them working.

118. Rupert said that there were some assets belonging to the Garage which were traded, including the JCB 3CX. He traded in his previous 3CX which he had bought second hand around Christmas 2015 and in following year (December 2016) it was traded in for a new one on finance. Because Claire traded the machines in, she traded them in as being KSHF’s and the machines went into KSHF’s name, but in fact these machines were actually owned by the Garage or Rupert. All other assets were moved to KSHP.

119. Claire took Rupert to her accountants in Sheffield before the Garage was sold. Because he had been doing so many hours at the Farm and on contracting jobs, he remembered that he had fallen asleep in the car on the way to the meeting and again during the meeting at the end of the table. Claire and her accountant, Joe Midgley (“Mr Midgley”) discussed how to move the assets to KSHP, although Rupert did not know how they arranged it.

120. On 3 May 2017 Rupert sold the Garage for £55,000 and Gordons, who had acted for him on the sale, paid £39,970 completion monies to KSHP’s account. Rupert said that he was not aware of any of the sale details as Claire had taken full control of the matter.

121. The clear impression I formed from this episode, and without having to decide on the truth of various of the subsidiary claims made by each party against the other, confirms that Rupert was very much out of his depth when it came to paperwork and financial matters and that Claire would take the lead in such matters, including the sale of the Garage, since Rupert would not have been able to complete such a transaction on his own account.

The Selden Site

122. Mr Foden said that it was at the Selden site that he first met Rupert in April 2017. This was in early April 2017 shortly before Claire and Rupert were married. At that time Galebest Excavations Contractors (“Galebest”) were carrying out the site preparation work to reduce dig levels. Rupert had previously worked with Galebest on another project at Calver and had then been employed to help with reduce dig levels and muck away. As from May 2017 Mr Foden employed Rupert for Jarvale as the company liked to use local labour where possible because it involved less travelling and had a lesser impact on the environment.

123. Rupert was employed as the local groundworks contractor for the duration of the job, which lasted until approximately April 2019. He worked on all of the groundworks and concreting, supplying plant (machines), aggregates and labour when required. He would usually be one of the first to arrive on site at 6 am (Mr Foden himself would arrive at 7 am) and would be one of the last to leave at 6pm, due to the work that he was completing and his work ethic. He worked on site every day, up to 12 hours a day if necessary, which he would do 50% of the time.

124. Rupert would turn up on a daily basis, full of enthusiasm for the day ahead. Mr Foden found him to be hardworking, trustworthy, kind and very considerate. He had a very good local knowledge of services available in the area. Nothing was too much trouble and he would work hard to find a solution to every problem faced. As he put it

“Rupert is someone who does two weeks’ work in one week. As a result of this, Tony [Lee, one of the Jarvale directors] had at an early stage asked me to look into why we were paying Rupert so much, because he hadn’t realised how hard Rupert worked. Once I explained, however, Tony was satisfied that there wasn’t an issue. Rupert could be on the site for 70 hours or more each week, so on paper he was doing more than double everyone else. I was also aware that he would still be

going up to the farm to continue working after being at site, so he was an incredibly hard worker.”

125. The only problem that Mr Foden noted was that Rupert struggled with paperwork. He would keep a diary in his machine and record daily work schedules of what he had done. Claire would then, from his diary notes, produce the invoices for Mr Foden to check and sign off each month. Mr Foden would then send them to Jarvale’s accounts department for payment. He explained to Rupert that that was not ideal and assisted Rupert and Claire by explaining as to how he expected work to be logged and recorded and the paperwork to be submitted for future payments. Rupert struggled with completing risk assessments, day worksheets and timesheets for his men. That was all necessary paperwork for working on site, so Mr Foden helped him with it, but it was not something which Rupert found easy to learn. He relied heavily on other people whom he could trust for help, but it seemed to Mr Foden that people would take advantage of him, as he said later became apparent with his finances. As he put it

“Rupert just does the manual work and from my personal experiences of Rupert, especially early on, he wouldn’t really have a clue about the rest”

and as he said in cross-examination

“Rupert struggled with paperwork: he was more hands on”.

126. It was for that reason that he told Rupert that he should start keeping a closer eye on things as he was worried that he might be being taken advantage of, both by Claire (due to what Rupert had told him about his matrimonial situation), but also by anyone whom Rupert had helping him with things because he had such an honest and trusting personality. Mr Foden expanded on what he meant by that in cross-examination. He found that Rupert had a nice, kind nature and that people would have him running around to deliver vehicles. Rupert was vulnerable and had a streak of naivety; he was a nice person, not interested in money, but someone who wanted to help out

127. Mr Foden said that Claire did all of the invoices for Rupert. The timesheets and day worksheets would be done on site and Rupert would give her copies of delivery tickets and muck away tickets. If there was anything which Mr Foden needed in terms of paperwork, he would ask Claire. She would also come to the site on occasion, for example to bring sandwiches

to Rupert. Sometimes she would go to the layby at the rear entrance of the site, sometimes to the car park at the front and sometimes to the office, but she had no need to sign in or to go on the work site. Mr Foden considered that Claire was well aware of what was going on at site and was involved with all of the finances which resulted from the work that Rupert did there.

128. In mid-June 2017 Mr Foden agreed for Rupert to remove topsoil from the Selden site to be stored at the Farm and to be returned at a later date for landscaping, although the agreement was never put in writing. It was agreed that some of the soil would be used to top off the field previously levelled off to the front of the Farm. The reason for that was because one of the first jobs was to remove the topsoil. Most of it was taken off to various places, but Mr Foden told Rupert that he would need some back for landscaping in around 18 months' time. Rupert agreed that he would store some at the Farm for this purpose. There was no payment involved; it was just as a goodwill gesture and the benefit of free topsoil for the field. The problem was that by the time that Jarvale needed the soil back, Claire and Rupert's relationship had broken down and they were unable to move it back as Claire would not allow it and the soil was never returned to the site. Mr Foden believed that Claire would have known about the soil and why it was there because of her involvement in all the paperwork for the work at Jarvale.

After The Marriage: April-August 2017

129. Although Claire and Rupert had only been married in late April 2017, the relationship soon fell into difficulties and Rupert moved out of the Farm over the August Bank Holiday weekend after only 4 months of married life.

130. On Rupert's account, although he and Claire had married in April 2017, he was harbouring doubts even at that point. He said that he was in a position where he did not know whether to get married or not, but it had been such a mess between Claire and Mr Gratton and he hoped that things would settle down for both of their benefit if they married. He thought that it might bring calm to both of their lives if they got married and help Claire to move on from her relationship with Mr Gratton. Rupert still struggled about getting married because even his brother did not want to come to the wedding as Claire had created distance between him and Rupert.

131. There were two extraordinarily different accounts of the state of Claire and Rupert's marriage and who was to blame for its demise. On Claire's account it was Rupert who was

emotionally abusive of her. On Rupert's account it was Claire who was emotionally abusive of him. One exchange in Rupert's cross-examination encapsulated the starkly different accounts

“Q. You were emotionally controlling of Claire?”

A. No, it was Claire was emotionally controlling and abusive.”

132. Whatever the truth of certain of the individual allegations which each made against the other, it is apparent that the marriage was utterly disastrous for both of them. I shall set out in some detail the various incidents which figured in the breakdown of the marriage under the headings of (i) shortage of food and money/financial control, (ii) isolation, (iii) sleeping on the floor, (iv) the motorbike incident, (v) clothes and hair, (vi) insecurity because of Mr Gratton, (vii) the birthday card/hanging incident, (viii) the condom/shotgun incident and (ix) speaking in snippets.

(i) shortage of food and money/financial control

133. Claire accepted that she had not paid Rupert for the work he had done at the Farm during their relationship, but that was because they had been in a relationship. Only she did the online banking and paid the invoices, but that was from information which Rupert gave her. If he said he needed £x, she would have given it to him; he could have taken whatever he wanted. As to the proposition that she held the purse strings, she repeated that Rupert could have got whatever he wanted. She did not keep him short of food or money. She knew that he was coeliac and she always brought him proper food and things that he could eat.

134. Rupert's account was entirely different. After he moved to the Farm he would work on contracts with his existing customers or at the Farm. Very little, if any, of the work which he did outside the Farm was for customers for whom Claire had previously worked or that she had brought in. He would generally do mowing and baling for the livery, improve the drainage of the yards and fields in order to build up the livery business, dig tracks and maintain the driveway, trim hedges and trees and generally maintain the buildings and the stables. He did large quantities of fencing and some roof repairs to the buildings. He also created the top yard area which had been left a mess by Mr Gratton. In all he spent a lot of hours working at the Farm and was not paid for his work.

135. However, Claire never left him more than a few hundred pounds in his personal account and once the funds in the Garage ran out, he had no resources to pay for fuel and upkeep on the machinery. He would refuel the machines from the KSHF credit card, which Claire always insisted he bring back to her as soon as he was done paying for fuel. After he moved to the Farm she took everything out of his control. Throughout that time Claire had control of all of Rupert's finances. She did all the paperwork and he had no overview of the income and outgoings. He knew what his time was worth and kept a diary of how much work he did, but he never had the time or energy to work out how much it was and was never really clear in his mind as to how much he earned.

(ii) isolation

136. Claire accepted that she and Rupert spent most of their time together and did not do much socialising, but denied that she had kept Rupert isolated from his friends and family. She did not agree that his mother had only come to the Farm 5 or 6 times; it was more than that, up to 4 times a week when she was here, but she also lived in Florida for 5 or 6 months of the year. There had been a falling out between Rupert and his brother over the sale (or buying out of one by the other) of a car numberplate, but they did not get on and that had not been due to her.

137. By contrast on Rupert's account keeping him short of food and money was not the only instance of Claire's coercive and controlling behaviour. She also kept Rupert so busy and separate from his friends and family that he had no choice but to rely on her. He was not happy with the situation, but whenever he had an opinion or asked a question which was outside what she wanted or expected of him she always told him: "there's the door".

(iii) sleeping on the floor

138. Rupert also alleged that on frequent occasions Claire would not allow him to sleep in the bed and that he had to sleep elsewhere in the house, even on the floor. In cross-examination he said

"Q. Let me ask you about sleeping arrangements? You say you had to sleep on the floor in hallway?"

A. Yes; also in the kitchen.

Q. At foot of bed?

A. That happened.

Q. Claire made you sleep on the floor?

A. She didn't like being woken up after I came home from work.
I also slept in a room at other end of the house.

Q. Do you say that if you tried to sleep on the sofa, she would complain and make you move to floor? Is that true?

A. Yes.

Q. That is not true, is it? Claire adored you?

A. Not correct.

Q. Why not sleep at your mother's?

A. I couldn't leave the Farm; she used to call say that [Mr Gratton] raped and abused her; she was concerned he was coming back to the Farm.

Q. That is simply untrue.

A. Incorrect; she would not come and be with me on those occasions.

Q. Look at the text message in the supplemental bundle p.119: "the floor was nice next to you"; Claire was following you round because she was trying to be with you?

A. Not the case.

Q. If she left; you shouted; if she left you alone, you shouted?

A. Not correct. On one occasion she did try to get into the tractor, but I didn't send her away from the tractor."

139. By contrast, Claire's account was entirely different, that she never made him sleep on the floor or elsewhere and that his emotional insecurity was not down to her or anything that she did:

"Q. Rupert was sleeping on the kitchen floor?

A. He would literally sleep all over the house.
I would say "What's problem?"
If we were in bed, he would say "You just don't care".

Q. You forced him to sleep on floor?

A. No.

Q. He slept by the Aga in the kitchen?

A. In the middle of corridor 1 night, the kitchen the next.
I would put a duvet on him; he would shout at me.

Rupert always had a key to the house.
He never slept in the tractor.
I never bolted any door.
Yes, he was coeliac; I always bought something he could eat – I would buy proper things.

Q. He said he felt like the last thing in world – the lowest of the low?

A. Not true.
I did not strongly criticise him.

Q. He said he felt worthless?

A. No, he would say “You just don’t care, you are making me feel terrible”.

I would go to Timbuktu and back to make him feel not terrible.

He had income from start.

He was not at a low ebb because of his relationship with me.”

(iv) the motorbike incident

140. Rupert said that he tried leaving on numerous occasions. When he did, Claire would always ring him and make out that Mr Gratton was there or that she would get in the car and go out herself and say she had left her daughter alone. She knew that Rupert was too worried about her after her very serious allegations about Mr Gratton and was worried about her leaving her daughter (who was only 9 at the time) alone at the Farm.

141. One night he set off on my motorbike to go to his mother’s. He set off, but the battery failed on the A515 near Dowlow quarry at midnight. Claire then told him or his mother that she had left her daughter alone at home and when he tried to ring her back she would not answer the phone. Because of the way in which she had isolated him from his friends, he was ashamed to ring them for help as he had not spoken to many of them in a year. He then pushed his bike back all the way to Farm; having set off at midnight he only got back to the Farm at 5 am.

Claire was back at the Farm by that time, but still would not answer the phone and had bolted the door from other side. Rupert slept for an hour or two on the bench outside and at 7 am she let him in. He had a shower and went back to the Selden site. This was not long before he left the Farm. His account was that

“Q. Turning to the motorbike incident: you went for an evening ride on bike?

A. I was left outside after the bike seized up (the battery failed).
No, not until after I left the Farm.

Q. Claire says that if you went for a ride on the bike and she would wait up, that would lead trouble; if you went for a ride on the bike and she would go to bed, that led to trouble as well?

A. Not correct.
I was upset that night, but can't remember why.
I had a rucksack on my back.

I tried to call her if I broke down – many times I called.

Q. She says that she no idea if you had broken down or where you were?

A. I got back at 5am; I broke down and pushed my bike home; I had a heavy rucksack on my back; I have asthma, so couldn't push too far and had to rest.

Q. Was there no one you could call that night?

A. No.

Q. Was it designed to make Claire feel bad?

A. Not the case.”

142. Again Claire's account was entirely different:

“Q. Shortly after your marriage, there were serious disagreements?

A. No, Rupert was insecure: he always thought I would leave him.

Q. He tried to leave you on numerous occasions?

A. Not until he left.

Q. You told him that Phil was going to turn up?

A. Not true.

Q. You told him “There’s the door”?

A. Not true.

Q. You left Mia alone at the Farm?

A. I would leave Mia, but only to talk to him.

Q. You were playing on his concern about being alone?

A. Not true.

Q. There was an occasion when he set off on his bike?

A. I remember that night – he said he had broken down.

Q. You left Mia at the Farm to get him to go back?

A. He said he was going to his Mum.

I locked up before went to bed – Rupert could have got into the house.

It is not true I bolted the door.

It is not true that he slept outside.

There were 3 doors: the same key fitted each door.”

143. She said that there were many occasions when she was searching for the keys to the New Holland tractor, Rupert’s Audi and the JCB 3CX and could not find them. He told her that she should keep looking, that she was losing her mind and clearly needed help if she could not find a set of keys. He took pleasure in having her searching around the house for keys which she subsequently realised that he had taken.

(v) clothes and hair

144. On Claire’s account, throughout their relationship Rupert was emotionally abusive, although it took her time to realise this. He would criticise what she wore and allege that she was being unfaithful, which was not true. He would criticise the clothes she wore and query why she wore make-up. She felt as if she had to ask permission to go to the hairdressers or wear make-up. Even after he moved out of the house, he made derogatory comments about what she was wearing. He told her that she was “a 40-odd year old married woman and I should

dress as such”. She constantly had to reassure him that she was not trying to impress anyone else and only wanted to be with him, but it was never enough.

145. She was asked in cross-examination whether Rupert had expressed concerns over the amount she was spending on clothes. She said that, when she wore shorts, there would be lots of complaints or that Rupert would observe that her button was not done right up. She just wanted to look like everyone else and ended up wearing an anorak all the time. He would often comment that her dress was “very inappropriate”; it was “everything”, not a very nice experience. In re-examination she was asked by Mr Bennion-Pedley how Rupert wanted her to dress and she replied

“In overalls – if not, he said that I never listened to what he wanted: “You don’t care; if you cared, you would do as I asked,” so a lot of the time I changed into overalls.”

146. Rupert for his part downplayed this aspect of their relationship and said in cross-examination:

“Q. You didn’t like her wearing shorts at the Farm?

A. I had no issue; she should wear more appropriate clothing if working.

Q. You told her not to wear shorts when the lads were around?

A. No.

Q. You didn’t like her doing her hair?

A. No, I said she should look at how much she was spending.

Q. What about her nails?

A. No, I don’t remember any comments about her nails.”

147. However, in a throwaway remark from Mr Murray in his cross-examination, in the context of whether she visited the Selden site on 10 October 2017, he said that Rupert did not like Claire dressing up. That had the ring of truth to it coming from a third party in the context in which it did and I find that Rupert did indeed not like Claire dressing up, certainly not in front of the other men.

(vi) insecurity because of Mr Gratton

148. While Rupert was at the Farm, he said that Mr Gratton would periodically come to collect his daughter. Every time he visited Rupert alleged that he was presented with some sort of hassle from him, including one occasion on New Year's Day 2017 when he had a hold of Rupert and tried to strangle him in the house. The police were called to the Farm, but Rupert said that the reason that happened was that Claire used him as an excuse to say "no" to anything Mr Gratton wanted and vice versa, so that Mr Gratton was always annoyed with him. Because he knew that Mr Gratton could be violent and because of Claire's stories Rupert said that he was always worried about leaving her alone at the farm if Mr Gratton came.

149. Even aside from that incident, Rupert alleged that there were constant threats from Mr Gratton and alleged instances where his machines were tampered with or wheel nuts loosened. Rupert said that that was part of the reason why Eric Miller had been pushing for him and Claire to get married and Claire used that to get her father to do what she wanted. Claire would threaten him that, if he did not sign something over to her or agreed to let her use his income, Rupert would load everything up and go away with her and leave him alone with no one to look after him. Eric Miller would then want them to get married to avoid that and Claire played on that to keep them on a tight string. Claire denied that she had behaved in this way at all.

(vii) the birthday card/hanging incident

150. Although I have not seen Mr Gratton nor heard any evidence from him and cannot properly make any findings about the serious allegations made against him, the presence or otherwise of Mr Gratton in Claire's life was obviously something which seriously poisoned the relationship between Claire and Rupert. The incident was again contested, but I heard evidence from Claire in re-examination that Rupert had behaved in a completely irrational way as a result of Mr Gratton dropping off a birthday card for his daughter:

"Q. What was the incident with Mia's birthday card?

A. Phil dropped off the card.

Rupert raged about it; she said he would get the police involved if he ever came again.

He threatened to hang himself.

He would say that when I went to hairdressers; there was an occasion when he was trying to hang himself in the top barn.

Q. The birthday card incident, he was being silly?

A. Yes, he was on edge, not thinking straight.

Q. And the incident about going to the hairdresser?

A. He was in the barn, with a rope around the girder; he had put his head through the loop; he said if I went to hairdresser, I was not caring about how he felt.”

151. Rupert denied that any such incidents had ever occurred:

“Q. What about the incident with Mia’s birthday card?

A. I don’t know; it was after I left the Farm; I don’t think that was correct; I don’t think it was the case that I threatened to hang myself.

Q. What about the hanging incident?

A. Incorrect; if I was going to hang myself, I wouldn’t be here now.

Q. Are you saying it has been made up?

A. I don’t believe that ever happened.

Q. Do you have the skills and abilities to kill yourself with a rope?

A. Yes, but that was not the case.”

(viii) the condom/shotgun incident

152. What was not in dispute was that there had been another incident (or incidents) involving the discovery of a condom and a shotgun, although whether they were one incident or two, or when the incident or incidents took place, what had triggered it or them and what Rupert had done as a result of it or them were all highly contentious. Claire had stated in her witness statement, in the context of the signing of the October Agreement

“93. At the time, Rupert was very unstable and our relationship was at breaking point. Shortly before 10 October 2017 he had held my father’s shotgun to his throat and threatened to kill himself in front of me whilst my daughter was upstairs. I also thought at the time that Rupert was paranoid that I was going to leave him and I felt the document was something he wanted to feel more secure”.

153. However, in cross-examination she said that

“Q. Turning to the shotgun evidence: shortly before Rupert left, there was a serious argument?”

A. I can’t remember.

Q. Do you remember him placing the shotgun under his chin, telling you to leave the room and saying that “You don’t care”?

A. He was crying, in hysterics; I can’t remember what the conversation was.

Q. You had to move a bed to clean behind it?

A. I don’t remember.

Q. Moving the bed exposed a used contraceptive?

A. No.

Q. He questioned you about it?

A. Not on that day.

We moved the bed on another day.

I am completely faithful.

I swear that’s what he said – it was a different day from the one he said about it.

Q. He says the discovery led him to be upset?

A. It is true I came in.

Q. When were you challenged about it?

A. I can’t remember.

Q. Was it before or after your marriage?

A. I can’t remember.

I’d been completely faithful.

I said “Show it to me”.

He said “I’ve got rid of it now”.

Q. Had you had an intimate relationship with someone else?

A. Never. He just refused to speak or locked himself in the office.

Q. The shotgun was under the bed?

A. Rupert put it there, disassembled.

Q. It was not loaded?

A. He loaded it.

Q. With what?

A. Cartridges.

Q. I suggest to you that the gun was not loaded, that he was upset and that he thought that you had been unfaithful?

A. He loaded it – he asked me to leave the room – he said I never cared about him.

Yes, it was around August 2017 – not long before he left.

A few weeks/a month before he left, I am not sure.

Q. Look para. 93 of your witness statement about 10 October 2017. There you said October, now you say July/August?

A. I am not sure of the date.

Q. So, it was not shortly before October 2017?

A. I don't know because I don't have the exact date.

Yes, he left long before.

Q. You said you were asked to leave the room?

A. He asked me to leave the room and said "You just don't care anyway".

Q. This is quite different from the incident you describe in your witness statement, isn't it?

A. No, I am not sure of the exact dates."

154. Rupert was asked about the incident (or incidents) in chief by Mr Fryer-Spedding

"Q. I want to ask you about the shotgun incident: did you threaten to kill yourself?

A. No, there was no occasion when I held a gun to myself.

No, I never held gun near my head.

Claire asked me to move her father's gun; I moved it and that was it.

I have never assembled a shotgun or had a shotgun licence.

It was the lowest point of my life: I am not proud to admit it.

I never threatened to kill myself with the shotgun.

Possibly I was in jest when using it.

At no point would I have been able to assemble the shotgun; ammunition should not be around; I didn't know where it should be left."

155. When cross-examined by Mr Bennion-Pedley he said

"Q. I want to ask you about the shotgun incident. You say you were asked to move the bed; a condom was found; you were very upset, but the gun was not loaded?

A. Yes, that is what I told Mr Fryer-Spedding.

Q. You said yesterday that it was not linked to any incident?

A. The shotgun and the condom happened at different times.

Q. Your accounts are entirely different?

A. No, just 2 separate occasions.
I was very upset; it was a low point in my life.

Q. You were upset and you were holding the gun, so it was not said in jest, was it?

A. If I had ammunition and it was loaded maybe, but it was not loaded. There was no ammunition.

Q. Were there cartridges in the room?

A. There were some blanks and they weren't in the room – they were in the toolbox; there was no ammunition with the gun.
There were tripwires around my previous address - Ron Dalton did it when there was a spate of robberies in the area – I have never used it. I did not have the gun by my throat; I didn't tell Claire to leave the room.

Q. In fact you never showed the condom to Claire.

A. Yes I did; there were condoms in the drawers. I thought she left her phone in the drawer, never questioned her; the packet had the same serial number as the packet in the drawer.

Q. There was never a used condom there at all, was there?

A. Not correct.

Q. You say that there was a used condom in Mia's bedroom?

A. Yes, that is what worried me.

The serial number was the same as in Claire's drawer.
We needed to clean room/move bed because Mia took biscuits in and dropped them by the side of the bed."

156. I am bound to say that I found Claire's evidence about this matter to be both unconvincing and positively misleading. It was unconvincing, particularly given the sensational nature of the incident which is said to have occurred, given the frequency with which she could not or did not remember what had happened and the date or dates on which it had happened. One would have thought that, if one's spouse were threatening to kill himself violently, with a child upstairs in the house, exactly when it happened would stick indelibly in the mind.

157. It was also positively misleading in that the clear implication from the position in which the paragraph 93 occurs in her witness statement that the incident was all part and parcel of the reason why Claire had signed the October Agreement and that it had taken place "shortly before" 10 October 2017. In fact under cross-examination it emerged that "it was around August 2017 – not long before he left. A few weeks/a month before he left" and that, far from Rupert being paranoid that Claire was going to leave him, it was he who had left the matrimonial home at the end of August. Far from the October Agreement being wanted by Rupert to make him feel more secure, given his alleged paranoia that Claire was going to leave him, he had left her and, as I will explain later, was not going back.

158. I make no finding as to whether or not Claire had been unfaithful to Rupert, but I am satisfied that in Rupert's mind he was convinced that she had been unfaithful to him and that that was the trigger which precipitated his departure from the Farm not long thereafter.

(ix) speaking in snippets

159. Claire said that Rupert would speak in snippets and then hang up. The only way to get him to speak was to text him. He would say something and then put the phone down. She would text him and he would reply back.

160. Rupert disagreed:

"Q. You spoke in snippets and hung up?

A. No.

Q. She had to send you text messages?

A. No, incorrect.

Q. She had to text after phone calls, referring to the conversation you had just had?

A. No. She would often send a text around 4.30; I may have been into the yard to change machines and then gone again.

Q. You make Claire guess why you were upset?

A. Not the case.

Q. Look at the supplemental bundle, p.146: you were cross about the telephone?

A. Not correct.

Q. She sends you the call log and chat history?

A. I never asked for them; I had to stay away; I did not want to be involved.

Q. You were upset when Phil came to the Farm?

A. Not upset, but worried. There was no need for Claire to keep Phil away; it was her relationship with whom she wanted, but she put me to constant worry about allegations about Phil.”

Ian Foden: The Breakfast Incident

161. Around the summer of 2017 Rupert was earning a lot of money through his work with Jarvale and Galebest at the Selden site. With the amounts of work involved, Mr Foden believed that he would be earning as much as £60,000 per month as a result of work with both Jarvale and Galebest, although he could not be sure what the latter were paying him. When asked how he knew what Rupert was earning, he said that he had checked the site diary, any pictures on his computer, Jarvale’s accounts and any phone messages which would confirm the work done in that week.

162. Rupert did not appear to spend anything other than on fuel for the machines in a work capacity and Mr Foden had never known of him spending any significant amounts personally, particularly because he worked so many hours. He did not drink or smoke and the only regular expense that he knew of was that Rupert would buy breakfast for everyone on Fridays. He was

therefore very concerned when Rupert came to him one day to say that he needed to go to the bank because he had been unable to withdraw any cash in order to pay for the Friday breakfasts, which usually cost around £50. Mr Foden therefore had to pay for the breakfasts that day. Given the amounts which Rupert was earning and how little it appeared from the outside that he spent, Mr Foden thought that that should not have been happening, although he did not know the precise reason why Rupert should not have been able to withdraw the money from his account.

163. Rupert, however, said that there were financial irregularities with his accounts, that he had become suspicious and that he was looking into the cause of it.

164. Mr Foden thought that this incident had occurred at the beginning of August. When asked by Mr Fryer-Spedding in re-examination whether this incident occurred before or after Claire had come to the site in October, he said that it was before she came and before Rupert left the Farm over the August Bank Holiday. It was put to him by Mr Bennion-Pedley that the reason that Rupert had very little money was because of his obligation to pay child maintenance to his daughter by a previous relationship, but Mr Foden said that Rupert was a very proud person and had not disclosed that to him. That allegation, that he did not want money going through his accounts because he did not want to pay maintenance for his own daughter was repeated by Claire in her evidence, but vehemently denied by Rupert.

165. Although he did not know the precise reason for the problem, Mr Foden did not think this was caused by an error on the bank's part or a faulty debit card because of discussions which he had already had with Rupert about his finances, such as payments for which he could not account and the fact that he did not have day-to-day control over his personal accounts. He was also aware from Rupert that he was going through a difficult personal time, so he suggested that Rupert should seek legal advice to ensure that his affairs were handled properly as he separated from Claire.

166. Once it became clear that Rupert was having difficulty due to not being in direct control of his finances, Mr Foden spoke to his director, Tony Lee, about taking on payments for materials directly rather than through Rupert. Jarvale therefore set up accounts directly in November 2017 with the local quarry and other suppliers of aggregates so that materials could be bought without impacting on Rupert's cashflow. From the project point of view there were large sums of money involved and, if Rupert was having financial problems, they decided for

the sake of the project that they would buy the materials direct. They had had no problems with supplies, but addressed the situation before it became a problem.

167. Claire did not accept that Rupert had no money to pay for the breakfasts; at the very least he had the rent from his own house at Calver coming in.

168. Rupert's evidence was that after he had left the Farm (or perhaps around that time: "Around August – I couldn't say before or after I left") he tried to withdraw £30 from his personal account from the hole in the wall cash machine at Buxton, by side of the McColls shop. In re-examination he said that the incident occurred after he had left the Farm. At one point he suggested that he was trying to withdraw money from his personal account, but later he said that he could not be sure which account was involved ("I can't give answer – it was a long time ago – it was a low point in my life"), although he accepted that he had the KSHP card after he left the Farm. He believed that there was no money in the account. Crucially, however, he accepted that, although he did go to the cash machine and could not withdraw any money, he could not confirm whether that had been because there had been a glitch with the machine.

169. The exact date of this incident and the actual reason for it I found wholly opaque. At the material times Rupert's personal account was in credit, save for the period from 14 July 2017 when the balance was £4.38 to 17 July when it was overdrawn by £156.45, before going back into a credit balance. The account then remained in credit (and almost always in three figures) until it was overdrawn by £11.37 on 27 September and £27.35 two days later, before going back into credit again. That would place the incident either on 14 July or between 27 and 29 September. The former date was nearer Mr Foden's recollection and the account was then overdrawn by the greater sum, but it is noteworthy that there seems to have been no problem with the account when it was overdrawn by £234.73 on 19 May 2017. It was put to Rupert by Mr Bennion-Pedley that the breakfast incident happened in July (and in fact on the 14th) because the account was in credit throughout August and he had obviously been able to withdraw money from the McColls cash machine on three occasions in August and he had been able to make two payments on 29 September (which was a Friday, the day when breakfast would be bought) without any difficulty. Rupert accepted that the bank statements would not suggest that it was later than July, but he said that he could not answer honestly when it had happened.

170. I find that there was one occasion on a Friday, when he would ordinarily have bought breakfast for the men on the Selden site, when Rupert went to the cash machine at McColls in Buxton and could not obtain any cash from the machine and that it is more likely to have been on Friday 14 July than any other date. However, the reason why he could not obtain cash is not at all clear and it may well have been due to a mechanical glitch with the cash machine rather than for any other reason. Moreover, it is apparent that the KSHP account, for which Rupert had the bank card after he left the Farm, had healthy credit balances, not least because KSHF was paying significant sums into the account. It is therefore not clear why Rupert could not have withdrawn money from that account instead. On Rupert's case this incident was evidence that Claire kept him short of money, but I do not find that the evidence surrounding the incident bears the weight that Rupert sought to put in it. The real significance of the incident lies in the fact that it demonstrates Rupert's financial naivety and disorganisation and the fact that Mr Foden arranged for Jarvale to contract directly with the local quarry and other suppliers of aggregates so that materials could be bought without impacting on Rupert's cashflow.

Rupert's Departure From The Farm

171. By August 2017, Rupert said that he felt that he had to leave the marriage. If he had not, he thought that he would have ended up dead from stress or overwork. He had no quality of life. He was sleeping on the kitchen floor. If he tried sleeping on the sofa, Claire would come down in the middle of the night and have a go at him. There were other rooms in the house, but the far room had no heating and at least the kitchen had a gas fired Aga and he could leave in the morning without running into Claire. Some nights Claire would just lock him out of the house and he would have to sleep in the tractor. Rupert had coeliac disease and sometimes Claire would lock herself in the bedroom, having made sure there was no food in the house which he could eat. Because he never had access to his own money and was only given limited "pocket money" by Claire, he could not buy himself anything. That was how she was; she could flip from telling him he was the best thing in the world to making him feel that he was the lowest of the low. Rupert had never liked confrontation and she had worn him down to such an extent that he would feel worthless and just sleep on the kitchen floor.

172. In the end Rupert said that he could not take it any more and got up the courage to leave. He finally broke one afternoon and shared his problems with Mrs Bannister, who encouraged him to leave and told him that he had to get out. Rupert had not talked about it previously to

others because he was ashamed. When he left the Farm he initially went to live with his mother. The house in Calver in which he lived in before meeting Claire was then rented out and someone was living there.

173. He had tried leaving Claire before then and she would always try to get him back and did so again this time. Claire visited his mother at various time of day or night, leaving her daughter unattended in the way she said she did previously when Rupert tried to leave. She would ring his mother and his phone continuously begging him to go back to the Farm. When Rupert's mother told her that she should go back and take care of her daughter, she went back and took her daughter out of bed and came back at 2 or 3 am.

174. After Rupert left Claire, he said that he carried on doing contracting work as before, but lived at his mother's and travelled to and from there, which was half an hour away from the Farm. She fed and watered him, made him take a break a few hours each day and gradually he got into a slightly better frame of mind.

175. Rupert still did the work at the Farm because the machinery there and he could not get away from the Farm paperwork-wise, so he had no choice to do anything but go there on a daily basis to work. When he went to the Farm, Claire would meet him in the morning with a drink. She would help him with washing the tractors or whatever it was he was doing. She continued begging him to come back to her. It was clear to her that she wanted to have him back and it appeared to him that it destroyed her that she had lost control of him.

176. While the machinery was at the Farm, Rupert was happy to do work for the Farm for nothing because it provided him with a place to store the machines. For around 3 months after he left the Farm the work continued on the same basis as before and KSHF would invoice for the work which he did. He even continued borrowing the KSHF credit card to fuel up the machinery and had no income at all for the first month.

177. When Rupert asked Claire for any paperwork with his name on back, she never gave him anything. He even had to ask her on numerous occasions for his medication for his coeliac disease. Because of the allegations which she had made against Mr Gratton (which never seemed to fit with the way in which she treated him), Rupert said that he made sure that he never entered the property unless someone was with him so that he could ensure that she could

never make any such allegations against him. If he had to go to the Farm and could not have anyone with him, he would ring Mrs Bannister and let the call go to voicemail so that there was a recording. However, he had no interest in staying, despite Claire's requests, and he never needed the voicemails.

178. By October 2017, and with the help of Mrs Bannister, Rupert realised that Claire was still a director of KSHP and he therefore terminated her appointment as a director on 3 October 2017. He did that because he wanted to draw a line under their relationship and did not think that she should still be a director because he was trying to get his paperwork back under his control. It still took him some time before he had all of his invoicing and papers back under his control. Between the separation and all the work which he was still doing, he said that he did not know whether he was coming or going, but by around November 2017 he had recovered control of his bank accounts again following a visit to the bank and was starting to invoice for his work.

179. As is apparent from what I have said above, Claire vigorously contested Rupert's description of her treatment of him, particularly in relation to him being made to sleep on the floor, locking him out of the house at night and depriving him of food and money. I do not need to repeat that evidence here. Whatever the truth of the allegations one way or the other, it is clear that the relationship (at least the romantic side of it) had broken down, that Rupert had become profoundly unhappy (that is apparent from the evidence of Mrs Bannister, to which I shall refer shortly, which I accept) and that Rupert left the Farm at end of August 2017 after only 4 months of married life.

180. Claire's evidence of the situation after Rupert's departure was (with emphasis added) that

“A. He went to live with his mother. I would go down from time to time.

No, I didn't turn up at all times of day and night.

I would try to speak to him on the phone: it was the only way to contact him.

Q. You would turn up at night and ask him to come back?

A. Only ever following a conversation.

He would say “You don’t care; you never cared”.

Q. Mia and you would turn up at 2 am or 3 am?

A. Yes.

He would speak in snippets and then hang up.

It was the only way to get him to speak.

Q. His equipment was still at Farm?

A. Yes, both there.

Q. You had no problem with him coming to Farm?

A. Only as a home, never as a workplace.

I had no problem with him keeping his equipment at the Farm.

As long as his situation was what he said, I was fine with that.

Q. You had civil exchanges and still helped out?

A. Yes. Both of our hopes.

I regularly asked him to come back to me, but he would reply “Don’t show me you care, don’t tell me you care”.

Q. He was not trespassing?

A. I always said it couldn’t be just work.

I didn’t want him there if it was for work only.

Q. But it was OK for him to come and go?

A. That’s how I explained it to him.

Q. It was not unlawful for him to be there after August 2017?

A. It was always a home, not a place of work

Q. You never said "You can't come"?

A. No, I never said that.

Q. There was no distress and inconvenience on your part?

A. It was very upsetting in seeing him leave every night – the whole thing was stressful.”

181. Although Mr Bennion-Pedley had already abandoned the general trespass claim at the outset of the trial, it seems to me that these answers (particularly the italicised ones) were in any event fatal to the contention that Rupert was trespassing at the Farm after August 2017. Claire clearly wanted Rupert to go back to the Farm, but her distress was not at his coming to the Farm, but at his leaving it in the evening.

182. Rupert’s evidence was that the marriage was now over – and over permanently. He was asked in cross-examination:

“Q. I want to ask you about August 2017 - 3 things: what you thought about the relationship; what you told others about it; and what you told Claire about it? You decided to leave the marriage?

A. Correct; I didn’t know what to think; looking back, it was over and time to move along with my life.

Q. Mrs Bannister said that the marriage had failed?

A. Yes, I believed the marriage was finished.

Q. “Looking back” is an equivocal phrase?

A. I went to my Mum’s; that was it, permanent.

Q. Was Nathan Murray aware of that?

A. Yes, he knew I living with my Mum.
Nathan Murray was also aware it was over; I didn't discuss it too heavily.
I can't say more after many years ago.

Q. You never told Claire it was over?

A. I had gone to my Mum's; I couldn't take it any more; the marriage was over, I did tell Claire on 10 October when the agreement was signed.

Q. She was in no doubt after October?

A. I couldn't take any longer; she definitely knew that was it in October."

I am satisfied that Claire was extremely upset when Rupert left the Farm and that, whatever the truth of the various allegations set out above, she wanted him back. That is not surprising in the light of the fact that the relationship with Mr Gratton had failed in the previous year and she was now faced with the prospect of a marriage which had lasted only 4 months. I am equally satisfied that in Rupert's mind the marriage was over – and definitively over - and that he did not intend to go back to the Farm and live there with Claire as a married couple.

Mrs Bannister's Account

183. According to Mrs Bannister, there was a time, although she could not recall when, when she took a car (a black Isuzu pick-up) to the Farm for Rupert to buy from her and she left it there to await payment. He had already borrowed it for day to day work on the Farm. Rupert then informed her that Claire would not release the funds for the purchase and she returned at a later date to pick it up. She did not discuss the matter with Claire herself since they were not that close. It was from that point that she realised that Claire and Rupert's relationship was "a bit odd" and shortly afterwards Rupert told her that he was having difficulties in the relationship, although they had not split up by that time. Mrs Bannister realised that he was unhappy at the Farm and told him that he should leave; she thought that he was depressed and that he thought that the way he had been treated was unfair. He was not the happy bubbling personality he had been at the Garage. Mrs Bannister considered that the marriage was not what she would call a "normal marriage". What Rupert told her was that he often slept elsewhere, that he was not allowed in the bedroom or made to sleep at the bottom of the bed or on the floor at the bottom of the bed, that he was frequently called on his mobile and asked where he was and that he was increasingly unhappy.

184. She said that Rupert was always polite, but towards the end he would try to be at the Farm as little as often, particularly if he was on his own.

185. Mrs Bannister said that it was in August that Rupert left the Farm. Not long after he left the Farm, although in her recollection only after 10 October, Mrs Bannister started to help him with invoicing which she would collate and print off; prior to that Claire had done all his paperwork. She did this for him for a while, although she no longer did so. When she was helping him, Rupert would meet her with his work diary and paperwork and Mrs Bannister would do the typing for him since he could not type. Sometimes he would call and the work could be done over the phone, but on other occasions he came to the house and they worked on the dining room table.

186. After he left the Farm, if Rupert needed to go into the house, then on 2 or 3 occasions he would call Mrs Bannister so that it rang to voicemail and there would be a recording of what, if anything, would be said. He did this because he was concerned if he were alone with Claire and wanted evidence to back up his position. He was cautious because of what had gone wrong in his previous relationship. Mrs Bannister no longer had the recordings. She had asked Rupert if he still wanted them; he said that he did not and she had deleted them. They were in any event not clear and there was not much to hear on them.

After Rupert Left The Farm

187. Since the relationship ended, Claire alleged that Rupert had made complaints to Peak District National Park Authority (“Peak Park”) about how the land at the Farm was being used, relating to the work which Rupert/KSHP did at the Farm, such as depositing rubble. She said that he used this behaviour as a tactic to interrupt her business, to get at her, cost her money and persuade her to drop the claim. She said that he had also reported her to Peak Park regarding the use of the Farm, the use of outbuildings and most recently an investigation into her council tax rates.

188. After Rupert stopped living with Claire, she alleged that he was secretly recording their conversations and conversations with her and her father, using a recording device contained in a bracelet which he wore on his wrist.

189. Rupert's evidence was that he did own such a recording device which Claire had bought for him. He had not bought it from the internet. He had been advised to buy it by PC Roger Gold because of the situation with Mr Gratton. He had not, however, worn it for very long since he was working in the Garage in a tight working area where he would work without wearing a watch or rings. As it was difficult to wear at work, he wore it for the first couple of days, but then put it in a desk drawer at the Garage or back at the Farm. He told Mr Bennion-Pedley that he never needed to use when he carried it with him. He did not use it to record conversations between Claire and her father. If it did record anything, he was not aware of it. Claire's evidence was again different. She denied that the recording bracelet had been obtained because of police advice about Mr Gratton. The recording bracelet was an item that she found and it had not been bought by her off the internet; she had not kept it in her handbag and Rupert had not thrown it away after 2 days.

190. I have already rejected the contention by Claire that Rupert was a cynical gold-digger from the outset who looked after Eric Miller as a part of a concerted plan to strip her of her assets. I can see no reason why Rupert should have been recording conversations between Claire and her father, who had died at the beginning of January 2017 before the marriage and before the relationship had foundered. I accept that Rupert did have a recording device or bracelet of some sort, perhaps as a result of the situation between him and Mr Gratton, but that he did not in fact use it and put it in a drawer after a few days of wearing it.

191. What I do accept is that, in the aftermath of his departure from the Farm, and as Mrs Bannister confirmed, if Rupert needed to go into the Farmhouse, there were 2 or 3 occasions when he called Mrs Bannister and left voicemail message so that there would be a recording of what, if anything, was said because he was uneasy about allegations which Claire might make. I accept Mrs Bannister's evidence that they were in any event not clear and that there was not much to hear on them. Rupert subsequently told her that he did not want them, suggesting that there was no great meat or substance to them and Mrs Bannister had subsequently deleted them. What does emerge from that evidence, however, is that after he left the Farm at the end of August, Rupert was very wary about going back into the Farmhouse, as opposed to going back to the Farm to do work there or store his machinery and that reluctance to go back into the Farmhouse impacts on the provenance of the handwritten notes, to which I now turn.

The Handwritten Notes

192. In late disclosure there emerged several pages of manuscript notes in Claire’s handwriting (save for a few disputed words on one page). The originals were in the possession of Rupert’s former solicitors, Irwin Mitchell, and it was not possible to see other than colour photocopies of them. It was Claire’s case that what they embodied were her thoughts and feelings which she wrote down, but that she never gave to them to Rupert. It was Rupert’s case that she had given them to him in the yard at the Farm and that he had taken them home and read them. Before I analyse their respective contentions as to the provenance of the documents I shall set out the text of the notes.

193. The first page reads as follows

“1 Rupert to buy own place, either pay for machinery or continues DD. Machinery totally Rupert.

Claire to sell hall, sort temp Accommodation, live in small side coach house + rent other bigger side.

Claire to pay Rupert 36,400 when Hall sells if this OK with Rupert

2. Hall sold so not outgoings

Claire get out of Hall into temp Accommodation. I would like this to be with Rupert.

The Coach house & Farm get split deeds so could look like this once Hall sold

Holdings	^{Trepur}	50/50
KSH	KSH Plant	KSH Farm
Contractors		Coach House RJ/CJ
		Buildings

collectively Claire & Rupert to pay of machinery & [end of line, next line and beginning of third line tippexed out]

Claire to have undertaking on machinery that this would always be under Rupert's ownership & never claim etc on the assets worth - via solicitor drawn up".

194. The second page reads

"Please tell me your thoughts on how you would like a way forward to be".

195. The third page reads

"Thought 3

Keep all together
Title to all split 50/50 via means of
& will show on land maps etc as such that it yours [too?]
Half the estate few years ago before coach house
done valued at 2.8M

I would also untake again with solicitor never
to touch machinery

Whatever you decide I will respect & do as you wish – X - ”.

196. The fourth and final page reads

"Left owing Machinery

22 K Audi
23,730 3CX

95,100 Fastrac
46,200 14 ton machines

187,030 =

At moment 6k each month going out in DD

Claire owes Rupert

29,400 which paid Inheritance Tax

7K Tiles Coach House

10,000 + anything else *Rupert can*

46,400 think of *I owe*".

197. Claire accepted that these notes were written by her, all save the four words italicised in the last paragraph. As to those, they are clearly written with a different pen, although to my eye they look not dissimilar to Claire's handwriting. I do not, however, need to decide who wrote them since they do not add to the sense of what is already on the fourth page in Claire's hand in any event.

198. Claire's evidence about these notes was as follows (with emphasis added):

"Q. Look at the core bundle p.258 – the handwritten notes?

A. Yes, it is my writing.

I never gave it to Rupert

Q. When did you write this?

A. I can't remember – the top is ripped off. I think I wrote my thoughts and feelings.

I never handed that document to Rupert.

No, I never noticed it gone.

Just thoughts, he was so insecure - I was going to leave him.

I would do whatever he wanted.

I'm sure I wrote "thoughts and feelings" at the top.

They were not as cut and dried as options.

He would say to me: "it's OK for you" – it was just to make him happy.

Q. Was it in August 2017 shortly after he left the Farm?

A. I never gave it to him.

Q. You were considering different options?

A. Just my thoughts and feelings.

Q. How would he know unless he saw it?

A. I don't know: you've got a point

I just left it on a pad

Yes, you have a point

I never gave him that – it was on a pad on the desk.

Q. They were alternatives you were considering?

A. I wasn't thinking straight at this time.

Q. They were alternatives?

A. Whatever to make him happy.

Q. One option was that Rupert was to have all of the machinery long before the October agreement?

A. I don't know when I did that.

Q. Long before October, you of your own free will were contemplating giving him all the machinery?

A. What it seems like.

It was of my own free will, yes.

Q. You were volunteering to pay him money?

A. Yes.

Q. You were contemplating Rupert's ownership of the machinery?

A. I just don't know; I was upset; I wrote down my feelings – all sorts of things.

Q. The ownership of all of the machinery?

A. The last 4 words [are not my writing]

Q. You are offering him all of the machinery?

A. When you put it like that, yes

We were in marriage: it doesn't matter.

Q. You would have no contrary claim on machinery?

A. Just to appease him.

Q. You would assert no contrary claim of your own? Do you agree?

A. ...

Q. Do you agree that your thought was that Rupert should have all of the assets free of any claim?

A. No.

Q. Isn't that what is written here?

A. We were working on the marriage; it was never intended.

Q. Which machinery? All of it?

A. I don't know.

Q. All for Rupert?

A. It could have meant anything.

Q. You were to have no claim on the assets?

A. That's what it reads.

Q. Look at the supplemental bundle pp.95-97: he says you gave it to him?

A. No, it was never given to him: it was a scrap on the desk.

Q. P.95: the last page?

A. Yes.

Q. Thought 3 [reads] to Rupert?

A. Yes.

Q. You gave it to him?

A. No, never.

They were my thoughts: written down.

I never gave it to Rupert.

Q. P.96 [reads] a 3rd option presented to Rupert?

As above written, you proposed to part with all of the machinery. When did you write that?

A. After 10 October.

There is no date.

Q. You still say you never gave him this document? Isn't it the case that Rupert was not asking for assets and money on 10 October; it was you who were offering them?

A. Just to please him.

I never believed they were his to take.

It was just my thought: we were working on the marriage.

We were never splitting up.

Q. Of your own free will you made a proposal to offer Rupert machinery and assets?

A. No, just thoughts when I was upset.

He would say "You don't care; all right for you"

Yes, I did write that of my own free will."

199. In re-examination she said that

"Q. The handwritten documents were your thoughts and feelings? When might you have written them? Before or after Rupert stopped living at the Farm?

A. I think after, but not sure. After I think, I am unsure; I can't remember.

Q. He says you gave him the documents?

A. I never gave them to him.

They were in the office.

Rupert had a key to the house, but I don't know when they left the office."

200. Rupert's evidence by contrast was that

"Q. Look at the supplemental bundle p.96 and the core bundle p. 258, the handwritten notes: you found them in the office at the Farm?

A. Not correct.

Q. They were Claire's thoughts to herself?

A. I couldn't comment.

Q. Where were the originals?

A. With Irwin Mitchell: they won't release them to me.

The Tippex was on when Claire gave them to me.

I didn't hold up it to the light.

Q. She was open to any suggestions to keep you, even splitting the Farm?

A. We never spoke about it; she gave them to me; in the yard, I took them home and read them, but didn't go into it.

I was not interested in the Farm; I was looking at another building, between August and October.

I was looking at another farm: Tor Top Farm, an old dog kennels, but the sale of my property fell through.

Q. Look at the core bundle p.258: Claire says the 4 last words are not her writing?

A. It is not my writing. It is not mother's writing, nor Kirstie Bannister's writing; I don't know whose it is; I was looking at another property in October."

201. I find that these pages were written by Claire (with the possible, but immaterial, exception of the last italicised words on the fourth page) at some time between the end of August, after Rupert had left the Farm and early October. There would have been no point in committing such thoughts to paper before Rupert had left the matrimonial home and after 10 October they would have been subsumed in the terms of the October Agreement. I also find that they were produced with a view to being shown to Rupert. Claire had no answer to the question

"Q. How would he know unless he saw it?"

A. I don't know: you've got a point

I just left it on a pad

Yes, you have a point."

202. Moreover, the direct terms of page 2 to the effect of

"Please tell me your thoughts on how you

would like a way forward to be"

and on page 3 to the effect of

"Whatever you decide I will respect & do as you wish – X - "

only make sense on the basis that the pages would be given to Rupert with a view to eliciting his thoughts in response to the suggested proposals by Claire.

203. The handwritten notes are important in the chronology of the case because they demonstrate what Claire was prepared to contemplate offering to Rupert well before there was any pressure to complete the Clamark deal with her brother on 9 and 10 October. She was prepared of her own free will to contemplate giving him up to £46,400 to cover the £29,000 he had provided to fund the Clamark negotiations (although in the notes the sum is described as being for inheritance tax), the sum which he had loaned her for the tiles which she could not afford (there described as £7,000 rather than £8,000) and an additional £10,000. The figure of £46,400 is of course very close to the £50,000 which was recorded in the final version of the October Agreement. In addition she was prepared to contemplate Rupert having all of the remaining assets – they were always to be his and she was prepared to give him an undertaking that he would not make an adverse claim on them. Again, that is very similar to the terms set out in the October Agreement as executed by the parties on 10 October 2017. Those proposals did not emanate from thin air on the day of the execution of the October Agreement under some constraint of time, but had been in contemplation on Claire's side as potential options for some time.

204. I also find that the handwritten notes were given by Claire to Rupert in the yard of the Farm as Rupert says, and that they were not taken by him from her office as she alleges. That is consistent with the fact that they were produced by Claire with a view to being given to Rupert for his comments, as is apparent from the personal terms on pages 2 and 3. It is also consistent with Rupert's obvious reluctance to enter the Farmhouse after he had left it, as demonstrated by his voicemail messages left for Mrs Bannister so that he had some independent record if ever he had to go there.

205. Rupert's evidence, which I accept, is that after he left the Farmhouse at the end of August, he only went back into it twice (apart from 10 October 2017 to sign the October Agreement), once when Mr Dalton (see paragraph 155) came to the house and once when the Coach House had a water leak.

206. Given their potential importance, I find it inherently unlikely that Claire would not have missed them if they had been locked in the office and then disappeared and, if she thought that

Rupert had abstracted them from the locked office, she would surely have said something to that effect in October when the proposals resurfaced since she would have realised that Rupert had been into the Farmhouse at some point, rummaged around in the office, found them and was now seeking to use them against her.

The Payments/Alleged Loans

Claire's Account

207. It was Claire's case that, right from the beginning of the relationship, KSHF would loan money to KSHP when required and vice versa. The sums were duly repaid or they would use money from one account to pay for petrol or other items as required by the other. An example of that, she said, was a sum of £4,000 loaned by KSHP to KSHF on 19 June 2017, which was repaid on 30 June 2017.

208. Occasionally, customers would pay money into KSHF's account which should have been paid into KSHP's account. Claire immediately arranged a transfer of any such sums into KSHP's account to keep Rupert happy.

209. In 2017 Derbyshire County Council agreed a contract with KSHF for snow clearing. A payment of £4,665 was made to KSHF on 15 August 2018, but Rupert wanted payment made to KSHP and she transferred the money to KSHP. She said that it could be seen from the relevant bank statements that payments between KSHF and KSHP were referred to and recorded as loans.

210. Claire said that in late 2017, after Rupert had moved out, he asked to borrow money so that KSHP could purchase a new JCB. She agreed and payments were made as follows:

(i) on 27 September 2017, KSHF sent £10,000 to KSHP

(ii) on 1 October 2017, Claire sent £10,000 to KSHP

(iii) on 4 October 2017, Claire sent £15,000 to KSHP

(iv) on 17 October 2017, Claire sent £5,000 to Rupert and

(v) on 1 November 2017, KSHF sent £9,000 to KSHP.

211. The total of these payment was £49,000. I shall refer to these payments again in the course of the narrative of events.

212. Claire said that it was clear from the bank statements disclosed by Rupert that, once these payments cleared in his/KSHP's account, they were immediately paid out to TC Harrison, the company through which he purchased the JCB. Following the payment of £15,000 on 4 October 2017, £10,000 was paid out to TC Harrison on 5 October 2017 and £10,000 was paid out to HMRC on 6 October 2017. The final £9,000 payment covered a cheque which was cashed on 30 October 2017.

213. She had no reason to believe that Rupert would not pay back the loans and at the time she was happy to help him. He was her husband and she believed that they would overcome the relationship challenges which they had.

214. She said that Rupert also asked to borrow smaller amounts of money in 2017 and 2018. Rupert would call her and say words to the effect of "he needed money, that we were married and if I loved him and trusted him I would help him". At the time she felt that she had to trust him. They were married and she still wanted the marriage to work and so she agreed. She had no reason to believe that he would not pay her back. She believed that they would stay together and the money would be paid back in time.

215. Accordingly she agreed to lend him the money and the following payments were made:

- (i) on 14 September 2017, Claire sent £500 to KSHP
- (ii) on 1 October 2017, Claire sent £1,000 to KSHP
- (iii) on 25 November 2017, KSHF sent £10,000 to KSHP
- (iv) on 26 November 2017, KSHF sent £10,000 to KSHP
- (v) on 29 November 2017, KSHF sent £8,500 to KSHP
- (vi) on 1 December 2017, KSHF sent £1,500 to KSHP
- (vii) on 4 December 2017, KSHF sent £10,000 to KSHP
- (viii) on 12 July 2018, Claire sent £10,000 to KSHP

216. The total of these payment was £51,500. Again I shall refer to these payments later in the course of the narrative of events as they arise.

217. It is convenient at this point in the narrative to record that on 14 September 2017 Claire paid £500 to KSHP. This was the first of 8 payments in total, made between that date and July 2018, which were made by either Claire or KSHF to KSHP, which Claire said were loans, and which were to total £51,500. Claire's oral evidence on that payment was that

“Q. The payment on 14 September was not a loan?

A. I didn't say so, but we always had that agreement.

Q. You may claim so but it wasn't.

A. We had this agreement.

Q. When did you agree this?

A. It was a general verbal agreement.

Q. When did you reach this agreement?

A. It was not as official as that, but we just recognised that if Rupert needed something for such and such or if he asked if we could buy something and if he did that would not have been a problem.”

218. On 27 September KSHF paid £10,000 to KSHP. It was Claire's case that the payment was a loan for the JCB, this being the first such instalment.

219. In addition, and it convenient to flag it up here, KSHF paid £2,214 for KSHP's corporation tax bill on 27 February 2018, to which I shall return later in the narrative.

Rupert's Account

220. Rupert's version of event was that, when it came time to invoicing for work which he had done, he would typically tell Claire what it was that he had done and for whom and then she would prepare the invoices. He typically did that with her over the phone or in the yard. When they went over the work for July, August and September 2017, there was a lot of money due in on invoices as a result of work which Rupert had completed. Each of those months would

probably bring in around £30,000-£40,000 net because the only cost was the finance on the machinery and fuel, which was not very much. Everything else was Rupert's time and work.

221. When they discussed separating their businesses after he left the farm, Rupert said that he explained to Claire that he needed an 8.5T digger which he had as a demonstration unit from TC Harrison for another small job. He collected it for the job on about 5 September 2017 and probably had the machine for a week or ten days when they had a conversation about it. If he could not buy the digger, he might have lost the Selden site job. At that point Claire said that, if Rupert thought that he needed to buy the digger, there was money due to him from KSHP for the work that he had done. He did not know at the time how much money that was or how much he had earned over the months at the farm because Claire always made out to him as if there was not enough money coming in.

222. Rupert felt as if Claire seemed to think it would be like a sweetener to entice him back to her. He told her that he would not come back and that it was he who had earned all of the money which she said was available for him to buy the digger. She still had the income from the stables and the Hathersage properties to take her forward.

223. Throughout the time that Rupert worked at the Farm and KSHP invoiced for his work, Claire had control of the finances. She would arrange to make the payments under any finance agreements, pay taxes and arrange for that to be done, but Rupert was never really clear as to how much money that was.

224. Because Rupert was still in the process of getting back on his feet, Claire continued to handle the paperwork and paid corporation tax on behalf of KSHP. She also negotiated the purchase price for the digger with Richard Blackburn at TC Harrison at the Farm, handed him a cheque for the initial payment and agreed staged payments for the remainder. Those payments now showed in the KSHP accounts. Rupert said that he did not know at the time that she was transferring the monies for the purchase to KSHP as supposed loans because he did not have access to the banking facilities and because she told him that he was due the money for his work.

225. He believed that the payments of £500 on 14 September 2017, £10,000 on 27 September 2017, £1,000 on 1 October 2017, £15,000 on 4 October 2017, £5,000 on 17 October 2017,

£9,000 on 1 November 2017 and £2,214 on 7 February 2018 related to that work because it continued the pattern which Claire had put in place before that, where she would pay money into KSHP to pay out. Rupert maintained that he was entitled to all of the money which he was paid. Either it was money he had earned and that KSHF had billed on his behalf or else it was money which Claire had agreed to pay him under the October Agreement. He was satisfied that he had earned a large amount of money between July and September 2017 and fully expected to be paid it by KSHF when it came in. There was no reason for him to suppose otherwise.

226. He believed that the remaining payments of £10,000 on 25 November 2017, £10,000 on 26 November 2017, £8,500 on 29 November 2017, £1,500 on 1 December 2017, £10,000 on 4 December 2017 and £10,000 on 12 July 2018 were made under the October Agreement, to which I shall come in due course. The October Agreement stipulated that payment of the sum of £50,000 must be made “within 14 days of the completed share sale of Mark Miller”, to which again I shall come in due course, but there was in fact only a payment of £5,000 made within the 14 days following the October Agreement. The share sale agreement required an initial payment within 1 hour of the agreement and the balance 7 days after the agreement. As Claire’s position was that the agreement had to be signed on 10 October 2017, full payment should have been made to Rupert by November 2017. Claire accounts revealed, however, that she received £180,000 on 19 October 2017 and the balance of £91,150 only on 30 November 2017, which Rupert thought might explain some of the late payments.

227. That apart, he did not know why Claire took so long to make the payments under the October Agreement or why she did it in stages. Mrs Bannister was doing his paperwork and helping him and all of sudden Claire made the final payment in July 2018. By that time Rupert said that he was financially independent and was just happy to be able to move forward.

228. He said that Claire must have made the payment of corporation tax of £2,214 on 27 February 2018 because the paperwork still went to her and because she used to pay tax for KSHP. Rupert did not ask her to do it or need her to do it as he had sufficient income at the time. She was not a director of KSHP at that time and had no obligation to pay tax on behalf of KSHP, but did so anyway under the agreement that she had made with him that she would pay him for his work.

The Oral Evidence

229. In her oral evidence Claire denied that Rupert was due money from the Farm or KSHF.
She said

“Q. There was money due to him from the Farm?

A. Not true.

Q. There was money available to him?

A. Not true - I did negotiate the purchase of the digger – he didn’t.
He wanted to borrow money to buy machines.
I was just doing as he asked.

Q. Was there a formal loan?

A. No, it was not like that.
We were both trying to rebuild the relationship.
It is not true he was only one bringing money in – money was coming
in from the livery and we had the Hathersage rent.
He was not earning £10,000s each week.
It is not true that he was earning £60,000 each month.
All invoices went through the Farm, yes.

Q. Work was done by Rupert, was it not?

A. Yes, but not £60,000 per month.

Q. Money was due to him from Farm, was it not?

A. Not true.”

230. In re-examination she was asked why there was no written record of the loans and how
there was an understanding of repayment, to which she said

“Anything passing between us, we would sort out between us.
That’s how we got to between us.
Rupert asked to borrow money and we agreed between us.
He said “what sort of man did I think he was?
What sort of trust: what did I think of him?””

231. In his oral evidence Rupert agreed that there had been an agreement to purchase the 8.5T
digger and that Claire had arranged the payments for the purchase. He accepted that in the
KSHP bank statements £10,000 was shown as having been loaned to KSHP by KSHF on 27
September, with a payment out to TCB Harrison JCB on 28 September. According to the bank

statement there was a further loan of £10,000 from Claire to KSHP on 1 October and a further loan of £1,000 by Claire to KSHP on the same day (the latter on her case not being part of the JCB agreement). On 4 October the sum of £10,000 was paid to TC Harrison JCB. On the same day, 4 October, the KSHP account recorded a further loan from Claire of £15,000, of which 10,000 was sent to TC Harrison JCB on 5 October. In the aftermath of the October Agreement Claire paid £5,000 to Rupert on 17 October, which was not described as a loan, although it was followed on the same day by a payment out of £4,900 to TC Harrison JCB. Finally on 1 November the KSHP bank statement recorded a payment from KSHF of £9,000 (which was not described as a loan). The final £9,000 payment covered a cheque which was cashed on 30 October 2017. Thus the first three payments were described as loans, the latter two not so.

232. It was put to Rupert that there was no doubt in Claire's mind that these sums had been borrowed and that they were described as "loans" because they were considered to be loans. All that Rupert could say was that

"I wouldn't have had the statements to see what she had said.
I couldn't say if I paid tax on it, can't say, sorry."

233. Of the small corporation tax payment of £2,214 paid by KSHF on behalf of KSHP in February 2018, he said that the paperwork for that must have gone to the Farm (in fact Claire's accountant Mr Midgley sent her a email to that effect on 21 February 2018) and that if he had known he would have paid it or arranged to have it done through Mrs Bannister. His mother had been ill at the time and it was put to him that Claire did not want to bother him, so she just paid it. Rupert said that it would not have been a problem; he could have paid it. Asked whether he had ever offered to pay it, he said that he could not answer that.

234. It is here convenient to record that, of the series of 8 ad hoc payments made by either Claire or KSHF to KSHP between 14 September 2017 and 12 July 2018, only that of the £1,000 sent by Claire to KSHP on 1 October 2017 was recorded in the KSHP bank statements as being a loan. None of the other payment was so described.

235. I shall make relevant factual findings about the various payments in the light of the evidence as they fall to be considered in the course of the narrative. I shall draw all the threads

together and reach my conclusions about the nature of the various payments when I turn to consider the list of issues at the end of the factual narrative.

The Clamark Negotiations Continue

236. After some negotiations, Mr Miller agreed to buy his sister's shares in Clamark and Millhat and it was agreed that Rupert would resign as a director of both Clamark and Holmes. According to Mr Jones it was a long and difficult negotiation, which lasted around 6 months, from about February or March onwards. The initial discussions went on without any input from him; he was only involved when there was any intransigence. Mr Jones negotiated, with support from Gordons' corporate team, terms which inter alia transferred Claire's shareholding in Clamark to her brother for £283,750.

237. As Rupert was a director of Clamark and Holmes, he needed to be a party to the settlement deed and was, under its terms, required to resign as a director of both companies. It is Claire's case that she told him that a condition of the purchase of her shares in Clamark and Millhat by her brother was that he should immediately resign as a director of both Clamark and Holmes.

238. Mr Jones, however, accepted that Rupert, although a necessary party to the transaction, had not been represented by him (or indeed anyone) in the negotiations and he believed that he was unrepresented throughout. He also accepted that, if Rupert had not been represented, he should have been told that he should have the opportunity to take his own advice, although he also accepted that he had not himself proffered any suggestion as to who might advise Rupert. Apart from meeting Rupert once in September 2016 and talking to him subsequently on the telephone shortly thereafter on another occasion, he had never been in contact with Rupert in the course of the transaction, even though it appeared that the firm had submitted the signed forms for the termination of Rupert's appointments to the boards of both companies in form TM01 on his behalf. He had never been told that the funds to enable Gordons to negotiate on Claire's behalf in the first place had in fact emanated from Rupert.

239. Although Mr Jones had said in his witness statement that terms had been agreed in about July 2017, he accepted in cross-examination that he could not recall the precise date when terms had in fact been agreed and he could not say for certain when the firm had been instructed to draw up the shareholder agreement. I find that the most likely date for the agreement of the terms was September, when it appears that the firm was instructed to draw up the shareholder

agreement: there would have been no point in agreeing terms in July and then allowing the matter to lie fallow until September.

1 October 2017

240. On 1 October 2017 Claire paid the sum of £1,000 to KSHP. This was the second payment of the series of 8 payments.

241. On the same day Claire paid £10,000 to KSHP. Again, it was Claire's case that the payment was a loan for the JCB, this being the second instalment.

4 October 2017

242. On 4 October 2017 Claire paid £15,000 to KSHP (again on her case as a loan for the JCB, this being the third instalment). Rupert had in fact removed Claire on the previous day as a director of KSHP.

243. At 4.33 pm on Wednesday 4 October 2017 Mr Jones emailed Claire the various documents which were to effect the settlement between her and Mr Miller (the settlement deed, the share purchase agreement, the stock transfer forms, TM01s and written confirmation that she and Rupert had resigned as directors of Clamark and Holmes and that she had resigned as a director of Milhat). He told her that she and Rupert needed to sign the relevant documents and asked her to arrange for them to be signed by her and Rupert. Mr Jones accepted that there was no huge urgency for the deal to be completed. As he wrote to Claire

“If you would like if it makes it easier, you can come into the office on Friday and sign everything and I will witness the documents. If you would like to sign them at home, please sign them, in front of a witness where appropriate, email me copies and post the originals to me.

Before we complete the deal, you should consider taking further tax advice on the sale of the Milhat shares, which you are selling for nothing. I do not think this an issue, but I have not shown Russ, at the Tax Partnership, the sale and purchase agreement on the basis that his fees seemed high. I can go back to him on this point, or you could ask Jo for his view. If I go back to Russ, I do not think we will be able to persuade him to reduce his fee if, at the same time, we are asking for further advice.”

244. When he next spoke to her, Claire said that she had already spoken to Mr Midgely about the tax question. Russ, the specialist tax adviser, had charged a lot for previous tax advice and she had no appetite to instruct him again. It is clear that, as at 4 October 2017, there was no deadline to complete the deal and no significant pressure from Mr Miller's solicitors to do so.

245. What Mr Jones said in his witness statement was that, after he sent the documents to Claire, Mr Miller's solicitors, Lupton Fawcett LLP ("LFL"), started pressing for completion. Mr Jones spoke to LFL and was told that, if they did not complete soon, Mr Miller's funding was going to be pulled and the deal would not complete. By 9 October Mr Jones said that he was being told by LFL that, if completion did not take place on the day, the deal would be off and LFL emailed him to that effect. However, when the emails between Gordons and LFL were put to him in cross-examination by Mr Fryer-Spedding, he accepted that the position was in fact somewhat different from what he had initially suggested.

246. He said that there was some pressure to complete, but that it was not the case on the 4th. Everyone wanted to get over the line as soon as possible, but that there was no deadline at that stage. As he put it,

"There was pressure to complete, but not critical pressure. 'Nothing more than that' was a fair description."

247. Although the letter of claim sent by the firm on Claire's behalf on 8 November 2018 stated at paragraph 3.6 that "Over the coming days, Gordons chased Mrs Jowitt to arrange for the Share Agreement to be signed by her and Mr Jowitt", Mr Jones accepted that there was no record of such chasing and that he had not sent Claire an email to that effect, although he said that he remembered speaking to Claire on the phone a couple of days after his email of the 4th and between the time he received the documents from LFL and sending them on to her and the date of completion. He asked her what the hold-up was as she as usually very good at responding to requests for documents or information. He remembered her telling him that she could not get hold of Rupert or that Rupert was not agreeing to sign the documents, but that she was chasing him. He believed that that was before the 9th, although he had no telephone attendance notes or emails to back up his recollection. When pressed he thought it was more likely to have been on Monday the 9th rather than Friday the 6th, but he could not say for certain.

248. Mr Fryer-Spedding put it to him

“Q. [The suggestion that] Rupert was holding out against an ultimatum from Mark Miller is not correct, is it?

A. I don't think that is suggested.

Q. Rupert did not hold out on signing against an ultimatum, did he?

A. No, that is not what happened, no.”

249. Although paragraph 7.3 of the Reply states that

“On or around 4th October 2017 Mrs Jowitt advised Mr Jowitt that her brother had told her that his offer would be withdrawn if completion did not take place imminently because his funding would be withdrawn. In the premise Mr Jowitt's refusal to execute the Shareholder Agreement between 4th and 10th October was unreasonable”,

it is clear that paragraph cannot be sustained, that no such conversation took place on or about the 4th (since at that point there was no deadline) and that any delay on the part of Rupert before the 9th at the earliest cannot have been unreasonable (since prior to the 9th there was no deadline).

250. Mr Jones was asked by Mr Fryer-Spedding when Claire had first told Rupert about the deadline. He said that he could not say, but that he suspected that it was on the 9th. Mr Jones said that he could not have told her of any funding deadline before the 9th, although he thought that there had been a discussion of funding before the deadline was set.

251. By contrast Claire's account in her witness statement of what had happened on 4 October was as follows. On 4 October 2017 Mr Jones sent the finalised settlement deed to her and requested that she and Rupert sign it. Soon after receiving the settlement deed she called Rupert, told him that she had the finalised documents and asked him to sign the settlement deed. Rupert knew that this time was coming since she had told him how negotiations were going. When she mentioned the settlement deed to Rupert on 4 October he went quiet. At no point did he mention or suggest that he would need to obtain legal advice before he was prepared to sign it.

252. However, her evidence when pressed in cross-examination proved to be very different and needs to be set out in full (again with emphasis added):

“Q. You are sent the documents on 4 October – there is no urgency?

A. My brother put a deadline on deal.

Q. When?

A. I am not sure, but he did put a deadline on deal; I can’t remember when.

Q. There was no deadline by this time?

A. I am not sure if there was a deadline by 4 October.

Q. You are not saying there is a deadline?

A. There was a deadline.

Q. Not at this stage?

A. I just wish I could say something concrete.

Q. Did you take tax advice?

A. No, I’m not sure, I don’t know; I didn’t ask him to have discussions with Russ.

Yes, I agree: there was no urgency in signing off the deal.

I left Rupert in the loop with everything that was happening.

All the time I let him know where we were up to.

Q. Look at the Reply para. 7.3 p.40: did you tell him that?

A. Yes, he was kept in the loop.

Q. There was a threat of withdrawal on 4 October?

A. If that’s what I put in the witness statement.

It’s hard to remember exact dates now.

Yes, that is what I said on 4 October.

Q. Your evidence is that your brother had said that he would withdraw from the transaction?

A. Yes.

Q. You told Rupert that on 4 October?

A. I am not sure, I don't know, it is so hard to remember when now.

Q. Is that what you said to Rupert?

A. Yes. Yes, on or around 4 October

Q. Look at vol, 6, p377, para. 3.6?

A. It was after that – I was ringing Rupert to sign it and couldn't get hold of him.

It was around the 4th.

Q. On the Thursday and Friday?

A. Yes it would have been.

Q. Because your brother was imposing a deadline?

A. He wouldn't answer the phone.

Q. Because your brother was imposing deadline?

A. Yes, to organise signing.

Q. You were pressing Rupert because your brother was pressing you?

A. I couldn't get hold of Rupert. He didn't want to sign.

Q. Why should he sign the share agreement? He would never have to sign share agreement, would he?

A. No.

Q. You were asking him to sign the wrong document?

A. No, it is what Mr Jones wrote.

Q. "Refusing to sign the share agreement?"

A. No.

Asking him to sign what was necessary to sign [necessary to carry off directorship]

Look at your witness statement paras. 78-79: there was no chasing between 4th and 10th was there?

A. No."

253. Thus, although Claire’s evidence was initially that she had told Rupert on (or about) 4 October that her brother had imposed a deadline and that he would withdraw from the transaction unless the settlement deed was signed, as was her pleaded case in paragraph 7.3 of the Amended Reply, she finally accepted that there had been no chasing of Rupert between the 4th and the 10th because there had been no deadline. The complaint that, in the face of such a deadline and a threat to withdraw, Rupert’s failure to sign the settlement deed between 4 and 10 October was unreasonable must therefore fall since there was no such deadline.

254. Rupert’s account was that he had never seen the settlement deed until Claire turned up at the Selden site with it on 10 October and asked him to sign it.

255. I prefer Rupert’s account and find it unlikely that there was any conversation between Claire and Rupert in the week of 2 October about the settlement deed, but that if there was any such conversation between Claire and Rupert in the week of 2 October it did not go beyond the fact that she told him that she had the finalised documents and asked him to sign the settlement deed. There was no mention of any deadline (or urgency to sign) for the simple reason that none had been imposed.

9 October 2017

256. As between the solicitors at least, the events of 9 October 2017 can be recorded with some accuracy through the email string passing between Mr Jones and LFL. At 11.08 Madeleine Hodgson (“Ms Hodgson”) of LFL emailed him

“We need to complete today as my client is at risk of his funding being removed if we do not complete as soon as possible.”

257. It was not said that funding would be withdrawn nor was it said that the offer of settlement from Mr Miller would be withdrawn unless the settlement completed. Ms Hodgson emailed again at 13.55 that

“Having spoken to my client I understand that completion must occur today due to the funders”,

to which Mr Jones replied at 14.27

“I do not think that will be possible. Today is also the first time your client has made us aware of any deadline for funding.”

258. That, he accepted, was the first mention of any deadline

“A. Accurate: this is the first mention of a deadline.

Q. Then how is paragraph 7.3 of the Reply accurate?

A. I don't know when Claire told Rupert.

Q. Only after you had received this email?

A. Correct: the first mention of a deadline was after that email.

Q. So paragraph 7.3 of the Reply is not right unless the date is the 9th?

A. I can't say when Claire told Rupert.

Q. You were not told of a deadline before the 9th?

A. No.

...

Q. Rupert is accused of coercion. Your case is that he exploited commercial pressure for 6 days. That is not the case, is it?

A. I can't say.

Q. The deadline was on the 9th not the 4th?

A. Yes”

259. Before that, said Mr Jones, Mr Neil Large of LFL (“Mr Large”), the principal on the other side, said that there was a finite period when funding was available, although Mr Jones did not think that that was much more than an opportunity to get over the line rather than that there was a genuine risk over funding. Mr Jones explained to Mr Bennion-Pedley in re-examination

that Mr Large was parting company with LFL and wanted to bring the matter to a conclusion before he left.

260. To return to the narrative, at 14.54 Ms Hodgson emailed

“Our client is still committed, but is at serious risk of the funders asking for their money to be returned due to the length of time it has taken from the documents being agreed to being signed.”

261. It was put to Mr Jones that what was said was that there was a serious risk, not that the position was more catastrophic, which he accepted was a fair point – they had only had the documents a week, hence his reply to Ms Hodgson at 16.19 that

“I have spoken to my client and I will not have signed documents today.

We agreed documents on 3 October, less than one week ago. I do not think that is a long time ago.

As to your suggestion, I do not know where that takes us. We cannot complete until we have a signed settlement agreement. That means I need a document signed by all parties.

Gordons’ client is aware of what you say about funding. As soon as I have signed documents I will let you know. I hope this will be tomorrow.”

262. He had spoken to Claire, who said that she could not get hold of Rupert. He did not, however, have a file note recording that conversation.

263. Ms Hodgson emailed back at 17.11 that

“We have managed to satisfy the funder for today, however it is vital that first thing tomorrow morning we have the signed scans of the documents. As every hour that passes significantly increases the risk of the funders requesting their funds back.”

264. Mr Jones accepted that the language was of still of risk of withdrawal, not that funding would be withdrawn. He said that he conveyed the content of the correspondence with LFL to Claire to the effect that the deal would fall apart if not completed. Mr Fryer-Spedding put it to

him that that was exaggerated – there was only some risk that it might not complete, to which he replied

“A. No, I am saying that if there were no completed deal, it might not go ahead.

Q. There was no witness to the conversation between Rupert and Claire on 9th October, was there?

A. No, only what Claire told me. I can only say what I know.

Q. Look at paragraph 20 of your witness statement. in the light of what you have just said. Which email said that the deal would be off?

A. The 11.08 email or the 12.57.

Q. But that is not what it says, is it? Where is it said that the deal is off?

A. It is not said in this, no. The collection of emails refers to the risk of breakdown.”

265. Mr Jones accepted that he was unaware of any text messages passing between Rupert and Claire on 9th October, which he did not see until disclosure, as likewise with the handwritten notes which Claire had produced and he accepted that she had not told him in October of any other documents which she had produced in October. He was not sure of being aware that Rupert had left the matrimonial home nor was he aware of difficulties in the marriage to any significant extent, at least until there were problems with getting the settlement agreement signed. He was asking Claire what had caused the holdup and why he was not signing and he got the impression that there was “some issue”.

266. As between Claire and Rupert there were again a number of text messages from her to him, but no mention of signing the settlement deed. Thus at 13.22 she texted

“When I said the walls would be like steel round our relationship weather that be friendship or otherwise that is what I completely meant and never any hurt to cross your path

and then, significantly in the light of the earlier handwritten notes

“I am totally fine with splitting whatever u like, selling Audi etc I am only interested in a future with u!”

267. At 15.30 she texted

“God ... I love u so much ... I should of picked up the phone and ask how we deal with it ... feel sick thinking caused any pain ...”

268. What is significant is that there is no mention by Claire in these exchanges of the need to sign the settlement deed or any other documentation or of there being any deadline about it. Indeed on Claire’s account it was actually not until early on the 10th that she contacted Rupert about the settlement deed.

269. Again, Mr Fryer-Spedding’s cross-examination of Claire was very revealing about the absence of any mention of a deadline and again it needs to be set out in some detail

“Q. Look at vol. 6 pp. 1256-7 the email of 9th October at 11.08 – that is the first mention of a deadline?”

A. I am not sure; I am not sure if this was the first time.

Q. How and when was a deadline imposed?

A. I am not sure; there was a deadline, that’s all I remember.

Q. p.1256 “first time made aware of deadline” – can you contradict that?

A. I just don’t know.

Q. Isn’t this it?

A. I just don’t know, I’m sorry.

Q. Do you say there was another deadline before 9 October?

A. There was a deadline: I was chasing Rupert to get him to sign it.

Q. Look at the Reply para. 7.3 p. 40: when was it?

A. I was chasing for a few days before the 10th - I can’t remember if it was on the 4th – I knew there was a deadline.

Q. When: 4th, 5th, 6th, 7th, 8th?

A. I can’t remember exact dates.

Q. When was Rupert first chased?

A. I believe early October 5th or 6th.

Q. Why chase if there was no deadline?

A. I can't remember when I got to hear about the deadline.

Q. p.1255: was Mr Jones wrong?

A. No. All I can say is what I remember.

Q. Was there any deadline before 9 October?

A. I don't know.

I'm questioning what I'm thinking.

Q. Are you wrong?

A. I must be if he says differently.

Q. P.1255: 14.54 this was the first mention? Do you agree?

A. Yes

Q. There was pressure by end of 9 October, but not before?

A. I thought I was trying to ring before - I don't know."

270. Asked about the text messages which she sent on 9 October at 13.22, she said the reference to the assets was about what she would do for future relationship with Rupert. It was put to her

"Q. Everything was on the table?

A. I was just trying to prove I just wanted a future with him.

Q. Before the intimation of a deadline? By the time you send the message, Mr Jones has not told you of any deadline?

A. I am not sure of dates.

Q. When you wrote this, there was no intimation of a deadline from your brother, was there?

*A. I just don't know; I thought I had.
I'm just not sure.*

Q. There was no reference to needing a signature on the basis of your brother pressing you?

A. I am not sure.

Q. Was there any deadline referred to in these 9 October text messages?

A. I can't remember."

271. Again in these text messages there is in fact no reference to a deadline and no reference to needing Rupert's signature on the basis that her brother was pressing Claire for completion of the deal. I am satisfied that that only arose on 10 October 2017. On the preceding day Claire's position was that

"I am totally fine with splitting whatever u like, selling Audi etc I am only interested in a future with u!"

10 October 2017: Text Messages

272. Claire's account of the morning and early to mid-afternoon of 10 October 2017 appears in paragraph 79 to 89 of her witness statement. It was her evidence that she did not go to the Selden site that day to see Rupert. She said

"79. Early on 10 October 2017 I contacted Rupert about the Settlement Deed and asked him to call me. I asked him to call on a number of occasions to explain the urgency of signing the Settlement Deed by the end of the day.

80. Initially, Rupert would not call me and when I called him he hung up on me.

81. Rupert was refusing to confirm if he would sign the Settlement Deed. I told him by text that My Brother had funds in place and it had to be done and the deadline was on 10 October. I remember Mark, the solicitor at Gordons, telling me that My Brother's solicitor had told him that. I told Rupert Mark could call him to explain the position if he wanted.

82. Eventually, Rupert called me and told me he would sign the Settlement Deed if I signed a document promising to give him some of KSHF's machinery and transfer money to him.

83. I told Rupert that I didn't understand why he needed such a document. Rupert told me that I had done nothing but distrust him.

84. I did not know what to do, I called Mark at Gordons and told him that Rupert was refusing to sign the Settlement Deed unless I sign a

document transferring money and assets to him. Mark told me to refuse but I told him I felt like I had no choice.

85. I agreed with Rupert to draft a document as per Rupert's instruction to ensure that the Settlement Deed was signed on time.

86. I prepared the document Rupert demanded and I sent it to him by text to check. He immediately asked me to call him.

87. I called Rupert and he asked me to make changes. When I had done this I sent another picture of the document to him by text.

88. Rupert was still unhappy and asked me to call him again. We had a second telephone conversation about the document and he told me to make more changes. I did and I sent him another picture of the document by text.

89. I believe we may have had a further telephone conversation after this third draft was sent to him."

273. The account in paragraphs 86 to 89 is incorrect in one respect in any event, as Claire accepted in cross-examination. As is apparent from the evidence of the text messages and the screen shots, the third and final version of the October Agreement (which was the one signed and witnessed later that day) was never sent to Rupert in advance. What happened was that the second version was sent to him by Claire on two separate occasions.

274. However, the text messages which she was sending Rupert put the matter rather differently and are not suggestive of urgency. Thus at 06.19 she texted

"... Please can you ring me when a min over gordons paperwork
Either way is fine on it just need to know please x"

275. In cross-examination she said that this was to get Rupert to talk and that the reference to either way being fine was not really referring to anything. She accepted that she had not referred to a deadline or a time limit.

276. Then she texted

"Would u prefer me to set up share holder meeting with brother so I don't disturb u with signing paperwork or any meeting? Happy with whatever u think best, just have to set ball rolling this morning if need to change route x".

277. The reference to the meeting was on the spur of the moment to get Rupert to talk. She was not thinking; it was just to get a reply from him. To that Rupert replied

“no you said if payment has gone else were its no problem the only cash that has bin in is small amount from little bales and hay witch paid lads over time!!!!!!!!!!!!!!”

278. Claire replied, again not suggesting urgency

“I only want peace in camp .. and was only trying to sort paperwork, I have no interest in why what how or where on funds as long as don't get disorganised on paperwork side, I wasn't implying anything bad if I thought u hadn't got good intentions would of run a mile by now Please can u let me know either way on the gordons thing please x”

and

“You always said it doesn't do me any good doing the board meeting with mark, I am more than happy to do whatever route ... but I do feel a little upset
Only explaining how I feel”

“I also wanted to say if it was something I could leave for a bit I would, the funds are in place so need to follow through in whichever way, I was only hoping I could speak to u instead of I [sic] hanging up on me”

“And when I spoke to mark yesterday the deadline was yesterday afternoon but managed to get it onto first thing this morning just wanted to explain x”

“I also wanted to ask the hair that I had left over from before do u mind if I get that put in .. I really do it for no one else but me .. it's not a new set as I had left overs from the times I have had them done ... they kept to one side for me and would love it if u was ok with that please? If ok with u will ask mark to give you a bell who can explain the current situation to you hope that's ok x thank u for speaking to Mia [it was her birthday] x”

279. What Claire said in cross-examination in relation to these texts was as follows:

“Q. Look at the text messages on p.903?

A. I was trying to get him to ring me.

Q. Why did you refer to a meeting with your brother?

A. Just to get some response

Q. There is no deadline mentioned, is there?

A. No, it [isn't]; one is not mentioned.

Q. What does "Whichever way" mean?

A. It was to get something from him, I don't know what I meant.

Q. You are not trying to get him to sign anything?

A. No.

Q. Why not mention it if there is a rush?

A. I don't know.

Q. You are not saying that your brother must pull out?

A. No.

Q. This is the first time that there is consideration of a deadline?

A. Rupert knew there was a deadline

That was not my intention: I was just trying to get a reaction.

Q. You get a reaction by warning of a threat to pull out?

A. Yes, that's fair."

280. I find that Claire was trying to speak to Rupert on the phone, but that (apart from speaking to Mia on her birthday) he was hanging up and not engaging in conversation with her, hence the need for her to resort to text messaging him. That she could not speak to him on the phone also suggests that there was a greater need to see him in person, which is relevant to the question of whether or not she went to the Selden site that day.

281. However, I also find that, although there was for the first time a mention of a deadline, Claire did not in these texts impress upon Rupert any suggestion of urgency, that she was not suggesting that she was desperate to have the deal signed and that she did not suggest that her brother would pull out of the deal if it was not signed that day.

282. It is at this point that, on Rupert's account, Claire went to see him at the Selden site, to which I refer below. Finally Rupert replied at 10.45

"I am deeply saddened and heart broken it's come to this"

"As I have said before I hate this and never wanted it to come to this and worse still it should never have got to this if there had bin honesty and true love"

to which Claire replied

"I have been honest and true love throughout, you do as you will with me .. I have no problem with it x"

"Please could you call me when a min x"

"Just wanted to speak to you to see if you could stay at home from time to time because feel like I could do with a cuddle tonight please in return for these docs .. that would help me x it would mean a lot to me tonight .. x"

283. With that message she enclosed a screen shot of the first version of the October Agreement, to which again I shall return below.

Claire's Alleged Site Visit

Claire's Account

284. Claire was adamant that she had not visited the Selden site on that day. As she put it in her witness statement:

"96. I know Rupert claims that this process started by me attending a building site in Selden which he was working at with a copy of the Settlement Deed for him to sign but that is a lie. That did not happen. I did not go to see him on that day. The only contact I had with Rupert throughout that day was by text or on the telephone until he returned to the Farm at the end of the day. Rupert never asked to seek legal advice on the Settlement Deed and he did not refuse to sign it on the basis that he had not had time to consider it. Looking back I think he thought he could use the Settlement Deed as leverage and he did this on my daughter Mia's ninth birthday."

285. She maintained that position in her oral evidence:

“Q. 10.45 am: after you drove Mia to school?

A. Yes.

Q. You used the Audi most days?

A. Yes, I used to at that point.

Q. You drove to the site in the Audi?

A. No.

I would take him his lunch if he asked.

I never went to the site that day.

Q. You parked the Audi on site; you were strikingly dressed; wearing less than usual?

A. I was wearing normal jeans and yard things.

Q. Mr Foden said you caused quite a stir on site?

A. I couldn't have done; I would have had to wear a hard hat and comply with the regulations.

Q. You needed him to sign papers?

A. No.

I was trying to ring him.

Q. When was Rupert first asked to sign papers on 10 October?

A. On the phone.

Q. When exactly?

A. I can't remember.

Q. When did you arrange to sign that day?

A. I got hold of Rupert that day: he would only sign if the other document was signed.

Q. He objected to signing without legal advice?

A. Not true, I never went to the site.

Q. The car park onsite meeting was the first mention of a time limit?

A. Not true.

Q. There was a 20 minute conversation between you?

A. I never went to the site.”

Rupert’s Account

286. By contrast, Rupert’s account was that he was working on the Selden site from 7.30am. Claire must have done the school run with Mia because she turned up in Selden in the Audi, he thought around 9.30am or mid-morning. He thought that this was the right time because he sent her a text around 10.30am, which was shortly after she came to see him, as he felt sad that it had all come to this. He said that it was not unusual for her to come to the site, but she would usually come around lunchtime and not during the morning. Whenever Rupert stepped out of line or made as though he would leave, she would “play wife” and bring him lunch or sandwiches. He was embarrassed to talk about what went on at home and so everyone thought that everything was perfect. (That is not in fact borne out by the evidence of Mr Foden and Mr Murray, who were well aware that Rupert had matrimonial problems.) On this occasion, however, she turned up wearing less than she normally would and made a big entrance with the Audi RS3 and parked in the car park. The other men immediately remarked on it and Rupert went over to the car park to speak to her. He thought that she did this so that he would just sign the agreement which she then presented to him. It was put to him by Mr Bennion-Pedley that Claire had not gone to the site that day and was not trying to make a glamorous impression on him to make him sign the settlement documentation, but he disagreed and was not shaken in his answers. He was adamant that she had gone there and was wearing less than usual.

287. He asked her what she was doing there as he was not expecting to see her on site. She said that Rupert needed to sign paperwork relating to the dispute with her brother which Gordons had prepared. She told him that it was the agreement for her brother to buy her out. Rupert said that he had never seen it before and needed to look at it properly before signing it. Claire then started getting anxious and making “a bit of a fuss about it”. Rupert did not like confrontation so, when she repeated that it needed to be signed, he said that he would look at it later as he was at work. She responded that it needed to be done now because, if it was not done before the end of the business day, her brother would pull out of the deal. She told him that if her brother pulled out, it would cost a lot more money with Gordons and everything that they had put into the firm since the start of the dispute with her brother would have been wasted. Rupert said that he needed to take his own legal advice given the document which she had

presented to him and Claire stormed off, got back in her car and drove away. He did not think that she left him a copy of the agreement.

288. Rupert said that he did not want to sign the agreement because he had not taken legal advice. As he put it, “If you sign to come off a company and someone gets a large amount of money, you wonder what it is you are getting from it.” He knew that she was due to get about £280,000 from her brother and he knew that, if she did not get the shares sold, she would not have money to continue litigation. Rupert said that he was not bothered about that. All he wanted was to come away with the machines and he was happy to pay for any finance which was still due on the machines. He also thought it was strange that she needed him to sign the agreement if he was only a director and she or her brother could just terminate his appointment in the way he had done with Claire a week before.

289. After Claire left, Rupert said that he got called in by Mr Foden and asked if he needed time to sort himself out. He said no: he was fine and carried on. He had told him about his situation before and the foreman knew that he was no longer with Claire.

290. Claire texted him later on during the day about it and he asked her to call him. This was around lunch time. At that point, she said to him that she would agree to separate and he asked her what exactly it was that she was proposing, especially given that he had already left the marriage. She said that he would have all his machinery back and that she would pay him back for the money which he had put in and had lent her. That was the £10,000 which he initially lent her, with which she bought a computer (£2,000) and the floor tiles (£8,000), the £30,000 from the shares (with which he had funded Gordons to negotiate the share sale agreement) and £10,000, which was the least amount that he knew that she had taken out of the Garage accounts before the sale. When she put that offer on the table Rupert thought that this was a way for him to get on with his life and draw a line between them.

291. He also tried to get legal advice from his solicitors, Irwin Mitchell, but no one was available on short notice. He called and spoke to Julie Gale, who was the secretary of Martin Loxley (“Mr Loxley”), who had acted for Rupert previously, and she told him not to sign anything without taking legal advice on it. Owing to the pressure under which Claire had put him and because he just wanted to be able to draw a line under their related business activities, he agreed to what Claire had offered, even though he had not been able to get any legal advice

for himself. However, he said that he wanted the agreement witnessed and that he would come in the evening after work with Mr Sheldon and Mr Murray so that everything could be sorted and signed.

Mr Foden's Account

292. Mr Foden's evidence was that, contrary to her evidence, Claire did go to the Selden site that day and that supports Rupert's account of her visiting him at the site in the morning. Mr Foden said that on 10 October Rupert was on site and working as normal, clearing up around the back of the Selden site where a ramp and retaining wall had been created to form a new means of escape from the existing warehouse in the event of a fire. The men were also clearing up around some trees at the back which had tree preservation orders on them. Mr Foden could be certain of the work, the date and how it fitted in with Claire's visit on that day because he double checked the day work sheet for that day from Jarvale.

293. Claire parked in the car park and Rupert went over to speak to her at the car, so she did not go on to the site itself. Indeed she could not have done so without signing in and wearing personal protective equipment. Mr Foden was in the site office at the time, approximately 100 metres away from where Claire and Rupert ended up talking. From where he was sitting it did not appear to be anything other than a normal conversation and it did not appear from their body language that there was any argument. Mr Foden did not know what was discussed, only that he had known from his discussions with Rupert at the time that they were separating and so he assumed that it was something to do with that. Approximately 20 minutes later, Claire left. Rupert carried on working as normal afterwards and Mr Foden did not ask him about what had happened because he did not need to and he knew that Rupert would always make up his hours so that working interruptions did not concern him. I prefer Mr Foden's account that he did not ask Rupert what had happened to Rupert's account that Mr Foden asked him if he needed time to sort himself out once Claire had left. That Mr Foden did not see the need to ask him what had happened also suggests that, although Claire left the site at the end of the conversation, she did not quite "storm off" in the way that Rupert suggested in his account.

294. Mr Foden confirmed that there was no sight line between the back of the site and the car park and that anyone at the back of the site would not have been able to see the car park. I shall refer to this again when dealing with Mr Sheldon's evidence, but it confirms that the latter could not have seen whether or not Claire had come to the site from where he was.

295. Mr Foden emphasised when questioned that he had not discussed the case with Rupert in the intervening period (“No, not at all”) nor had he discussed what was in his witness statement and that he had not spoken to Mr Sheldon or Mr Murray about it since leaving Selden at the end of April 2019. He had checked the details by referring to his own records - he had not had access to the works complex since he retired – and did his own researches after being asked to give evidence by Rupert’s solicitors.

296. When pressed by Mr Bennion-Pedley about the day, Mr Foden confirmed that he was usually in the site office and had indeed been in the office when Claire arrived. It was by the bottom end of the car park, near the canteen, with sight of the car park and he could see her arrive. The assistant manager and a trainee assistant manager had been in the office with him. When asked how he could know what was going on on the site if he was in the office, he replied that he had had cause to come into the office and that there were comments to the effect of “Who’s that?” She had arrived in a white Audi and was dressed attractively. He had seen her and Rupert talking in the car park about 100 metres away. He did not know what they discussed, but he knew that they had separated and that Rupert had left the Farm prior to that date. He had no concerns about what he saw and had no need to intervene. He knew that Rupert would make up the time afterwards.

297. Mr Bennion-Pedley quite properly put Claire’s case to Mr Foden, that Claire said that she did not go to the site that day, and asked him whether he had talked to Rupert and that was why he now had the recollection of the day which he said he had. Mr Foden was emphatic

“No, definitely 100% she turned up, in a white Audi, dressed attractively, she spoke to Rupert, it was the day after Rupert had had his wisdom teeth removed (he sent me a text message and a photo of the teeth). My records matched the site diary. Claire *did* turn up on site.”

298. Mr Foden said that he was also very understanding as he knew from what Rupert had told him that he had a lot of personal things going on which needed sorting out. He said that everyone on site knew that he was upset and that there were problems at home. It was clear that Rupert was struggling at the time; he would turn up in the mornings and they could see that he had something on his mind because he was not his usual self. Mr Foden was surprised

when Rupert and Claire were going to separate after such a short time; there were no signs of it from the outside as Claire would visit the site at Selden and bring Rupert his sandwiches.

299. Mr Foden said that on an average day Rupert would usually finish work at around 6 pm if there was no concreting to do. Mr Foden thought that that was around the time he finished on 10 October, but he could not specifically remember. He did remember that Rupert was going back to the Farm with Mr Murray and Mr Sheldon, but that was not unusual in itself and happened almost every day anyway. They had mentioned to Mr Foden that they needed to go back together due to something as a result of Claire attending the site that day, although he did not know what specifically. They would often go back to the Farm together and continue working on something else, such as getting machinery ready for the next job or doing some baling for the horses. It was also rare for Rupert to go back to the Farm alone and he would usually want someone to go with him, in case there were any problems.

Mr Sheldon's Account

300. Mr Sheldon said that on 10 October 2017 the tractor had been in for a service on that day and he had not been using it on the Selden site. Rupert had told him what needed doing on the site that day, although he could not now remember if he had been asked to put up fencing around the trees at the back of the site; if he had been asked to do so, he would have done. He could remember the day, but not exactly what he had been doing on the site that day. Rupert had been making sure that no one would pick on him, so it was quite possible that he was working at the back of the site. He did not see Claire at the site that day, although that was not to say that she did not come there; from where he was working he had no line of sight to the car park, and so could not have seen her if she had arrived. He explained to Mr Bennion-Pedley in re-examination that the reason why he had no line of sight to the car park was that there was a bank on the site with a retaining wall and thus he had no sight line to the car park.

Mr Murray's Account

301. Mr Murray said that Rupert was employed as a groundworks contractor for the duration of the job at Selden, which lasted until some time in late 2018 or early 2019, after he and Claire had split up. He would complete the groundwork alongside Rupert, as well as any work which needed doing on site. He was employed alongside Rupert through KSHP and later through Jowitt Contracting Ltd. He lived about an hour away from Selden and the Farm, so he only stayed on working with Rupert until a little bit after they had finished at Selden. He and Rupert

worked together on everything required by the site management company, Jarvale, and so spent most of the working day together or working on the same thing, although Rupert would sometimes stay working longer than him. On a typical day, he would leave home at about 6 am and go to the Farm to pick up the machinery, arriving at about 7 o'clock. They would finish work around 3 or 4 o'clock in the afternoon and then take the machines back to the Farm where they would wash and grease them for the next day, a job which could sometimes take an hour. He would leave the Farm at about 5 o'clock and be home by 6, so that he would be working a 12 hour day.

302. Mr Murray recalled that, on 10 October 2017, Claire had turned up on site at Selden in a white Audi at about or just after dinner time, approximately 1pm. He, Rupert and Mr Sheldon were working together in the same area on the far bank away from the car park on site, doing the trees near the fence by the A515 and tidying up. It was put to him by Mr Bennion-Pedley that he could not see the car park from there, but he explained that he had not been in the same area all day. When she arrived, they were working round the side of the site, on the boundary with the A515, but not at the back by the layby. The site office was parallel to or opposite them.

303. Claire pulled up on the corner of the Selden building site in the car park. She was at the top end of the site by the car park, next to the site office and was only 100 metres away from them. A lot of people on site were wondering who this was as she had flowing blonde hair. She normally worked on the Farm and so wore wellingtons and jeans, but on this occasion she wore a skirt or something similar. Her appearance elicited comment from the men on site who could see her. At first Mr Murray declined to tell Mr Bennion-Pedley exactly what had been said by the men on the grounds that it was embarrassing, but I pressed him to answer and he told me that the comment was to the effect of "Look at the arse on that!" and that she had a short skirt on.

304. It was obvious, said Mr Murray, that she had dressed up and was driving an Audi, which stuck out on the building site compared to the other vehicles. Whilst that was not the first time that Claire had visited the site, Mr Murray believed that Claire had intentionally tried to attract attention to herself on this occasion, although he did not know why. He was asked by Mr Bennion-Pedley why he thought that she had done it "intentionally" and he said that she was "really done up". Rupert could see who it was from where they were working and so went over to see her in the car park. He did not really like her to be dressed up like that.

305. Mr Murray was aware at the time that Claire had turned up with a document for Rupert to sign, but did not know what it was. He did not recall her ever turning up on the site with Peak Park papers for Rupert. He knew from his discussions with Rupert that Claire and Rupert had been discussing something to do with him resigning from the company and who got to keep what from the company after they split up, but he did not know specifically what Claire and Rupert discussed in the car park that day.

306. When Rupert came back from speaking with Claire, Mr Murray could tell that he was relieved as he had thought that he was finally getting things sorted, although he did not say much about what they had discussed. Rupert then asked if he and Mr Sheldon would go and witness him and Claire signing the agreement.

307. Mr Bennion-Pedley quite properly put to him that it was Claire's case that she did not go to the site that day, but that she had come on another occasion, with Peak Park papers, but Mr Murray was adamant:

"No, it was the same day as we went back to the house".

308. I am satisfied, particularly in the light of the evidence of Mr Foden and Mr Murray, that, contrary to her evidence, Claire did go to see Rupert at the Selden site that day and that she was well-dressed for the occasion. Mr Foden was quite definite in his evidence about that and had good reasons to have remembered the precise date on which the visit had happened. Mr Murray's evidence had the ring of truth about it, particularly his embarrassed reluctance to say exactly what had been said by the men on the site when Claire appeared dressed as she was. Mr Sheldon could not have seen her from his vantage point in any event. It is also relevant that Claire was trying to speak to Rupert on the phone, but that (apart from speaking to Mia on her birthday) he was hanging up and not engaging in conversation with her, hence the need for her to resort to text messaging him. That she could not speak to him on the phone also suggests that there was a greater need to see him in person at the site. Mr Bennion-Pedley sought in closing to argue that it was not in fact significant whether she had turned up on the site or not, but I do not agree. It was not that she said that she could not remember whether she had gone there or not, or that she had gone but could not really remember what had been said, but that she was adamant, even when pressed on the matter by Mr Fryer-Spedding, that she had not

gone in the first place when I find that she had. Given the seminal importance of what happened on that day between Claire and Rupert, I must regard her subsequent evidence about the events of the day with considerable caution.

309. I find that Rupert had not expected Claire to go to the site that day and that he was surprised to see her there. I also accept that he asked her what she was doing there as he was not expecting to see her on site. Claire said that Rupert needed to sign paperwork relating to the dispute with her brother which Gordons had prepared. She told him that it was the agreement for her brother to buy her out. She then showed the documentation to Rupert. Rupert had never seen the documentation before and said that he needed to look at it properly and to take his own legal advice before signing it. I find that that was an entirely reasonable stance for Rupert to take, given that he had not been privy to the detail of the negotiations (although it was his money which had fuelled the ability of Gordons to negotiate on Claire's behalf) and additionally given that he was a man who was not at home with paperwork and who was not a man who came easily to documentation. Claire became anxious and made something of a fuss, but not sufficiently for Mr Foden, who was observing the conversation from not far away, to have had any concerns about it. Rupert did not like confrontation so, when Claire repeated that the documentation needed to be signed, he said that he would look at it later as he was at work. I find that Claire said that it needed to be done now because, if it was not done before the end of the business day, her brother would pull out of the deal. I accept that she told Rupert that, if her brother pulled out, it would cost a lot more money with Gordons and everything that they had put into the firm since the start of the dispute with her brother would have been wasted. Rupert said that he needed to take his own legal advice given the documentation which she had presented to him and Claire got back in her car and drove away without leaving him a copy of the shareholder agreement., although I find that she did not dramatically storm off in the way that Rupert suggested.

310. I find that it was during that conversation that one or other of them mentioned the proposals or thoughts mooted in the handwritten notes, although if any such mention were made, I do not find that that there was any detailed discussion of them on the site that morning. However, the existence of the proposals would not have come as a surprise to either of them since Claire herself had written the proposals and, as I have found, she had already given them to Rupert in the yard of the Farm. That there was no clear or detailed discussion of them is consistent with the uncertainty which Mr Jones divined from his conversation which he was

shortly to have with Claire, who appeared uncertain in her own mind what it was at that stage in the day that Rupert wanted.

311. I find that it was in response to the site visit that Rupert finally replied by text message at 10.45

“I am deeply saddened and heart broken it’s come to this”

“As I have said before I hate this and never wanted it to come to this and worse still it should never have got to this if there had bin honesty and true love”

and that it was in that context that Claire replied

“I have been honest and true love throughout, you do as you will with me .. I have no problem with it x”

“Please could you call me when a min x”

“Just wanted to speak to you to see if you could stay at home from time to time because feel like I could do with a cuddle tonight please in return for these docs .. that would help me x it would mean a lot to me tonight .. x”

with which message she enclosed a screen shot of the first version of the October Agreement. That I find is consistent with the relationship between the parties the parties at that point. Rupert had left the Farm in a state of profound unhappiness at the end of August and had decided that the romantic relationship between them was over, although the business and practical side of the arrangement between them might continue. Claire by contrast wanted Rupert back, wanted the romantic side of the relationship between them to be restored and saw what became the October Agreement, foreshadowed in the handwritten documents, which she had given to Rupert, as a way of recovering his affections. Nevertheless, I am satisfied that she was not being forced by Rupert to sign a document against her will and that it was she who was the impetus for the creation of the first version of the October Agreement. As Mr Fryer-Spedding put to her about these text messages

“Q. There is nothing about being forced into this, is there?”

A. I was in it for the long haul.

Q. You were asking to spend the night with him?

A. I was asking him if he could stay a bit.

Q. Did you ever spend night together after he left?

A. Never.”

10 October 2017: Mr Jones’s Evidence

312. Mr Jones’s evidence was that on the morning on 10 October 2017 he received a telephone call from Claire, nearer to 11 am than 10 am. She was very upset and told him that Rupert was demanding that she sign a document transferring assets to him, although in cross-examination he said that his recollection was that both money and assets were mentioned in the discussion. Again, he made no attendance note of the conversation nor did he follow up the conversation with an email. He did not accept that it was usual for a solicitor to record significant instructions, although when it was put to him that this was a case of someone saying that she was being forced to do something against her will, he accepted that it would have been good practice to record what was said. Mr Fryer-Spedding put it to him that it was particularly important to do so with someone who was upset and who might not be taking in what was said; it was then more important to record what was said in writing. Mr Jones conceded that he recognised the point. He also accepted that this conversation between him and Claire had not been referred to in the letter of claim sent by Gordons on Claire’s behalf. Nor was it referred to in the pleaded case.

“Q. There is no reference to this conversation with Claire on 10th October, is there?

A. No.

Q. Why not play your ace card? Why not say it in the letter of claim?

A. It was a judgment when drafting the letter of claim. It is not in the letter.

Q. Or on the pleadings?

A. No.”

313. Mr Jones asked her about the details, but she did not explain to him what Rupert was asking for. Mr Jones had the feeling at the time that she was not clear what it was that he was demanding. They spoke briefly about the relationship and he asked what sort of husband would

do such a thing and suggested that Claire should consider if she wanted to be with Rupert. Claire told him that she still loved Rupert and wanted the relationship to work. Mr Jones had no reason, however, to believe that the document was intended to be a divorce settlement. He did not know that they were splitting up. He told Claire that she should not sign anything that Rupert was asking her to sign. He distinctly remembered Claire telling him that she did not think that she had a choice. The conversation concluded shortly thereafter and he did not hear from Claire again that day until he received the signed documents from her by email late in the afternoon. That Claire herself did not raise the matter again with him until 1 November I shall consider further below.

314. There was no mention by Claire of Rupert wanting to take legal advice and Mr Jones did not know whether he took any such advice. Mr Fryer-Spedding pointed out to Mr Jones that clauses 7.4 to 7.5 of the settlement deed imposed obligations on Rupert

“7.4 Mrs C Jowitt and Mr R Jowitt undertake and warrant that they will not pursue a claim, of any nature, against Clamark, MCL, MT, FEA and Holmes or any Related Parties of the same.

7.5 Mrs C Jowitt and Mr R Jowitt shall indemnify Mr Miller for any loss, damages or other costs, including but not limited to, any legal costs and expenses on a full indemnity basis in the event she or he takes any steps in contravention of clause 7.4”.

315. He also pointed out that under the combination of clauses 7.2 and 7.3 Rupert did not receive the same warranty and indemnity as Claire:

“7.2 Mr Miller further undertakes and warrants that he will not pursue, or permit any company he has a controlling interest in or the ability to control, to pursue, a claim, of any nature, against (i) the Companies; (ii) any Related Parties of the Companies; or (iii) the Estate

7.3 Mr Miller shall indemnify Mrs C Jowitt for any loss, damage, or other costs, including but not limited to, any legal costs and expenses on a full indemnity basis, in the event that he takes any steps in contravention to clause 7.2”

316. Mr Jones accepted that Rupert had not had any advice on those clauses and accepted that it was reasonable for him to want to understand the effect of the document. He also accepted that Claire and Mr Miller together could have removed Rupert from his position as a director

of both companies had they wanted to, although he said to Mr Bennion-Pedley in re-examination that it would not have been in Claire's best interests to remove Rupert prior to completion of the settlement: her leverage was board control; lose board control and she lost her leverage; without board control she could not do very much.

317. I am bound to say that I find it surprising that no attendance note was made by Mr Jones of this conversation or that it was not followed up by an email later that day or early the next morning. This was not some run of the mill conversation. What was being alleged was behaviour by one spouse against another, amounting potentially to duress or undue influence, where the wife was being advised not to sign anything in return for the settlement deed, yet with her apparently saying that she had no choice but to sign. The relevant documents to resolve the Clamark dispute were signed later that afternoon, but one would have expected Mr Jones to find out exactly what had happened prior to the signing and to ascertain whether his client had been compelled to sign something against her will. Mr Jones did not, however, ask any further pertinent questions about the matter until he was telephoned by Claire on 1 November, some 3 weeks later.

Claire's Evidence

318. In cross-examination Claire said (again with emphasis added):

“Q. If Mr Jones told you not to sign, you had a choice?”

A. I had no choice.

Q. Did you tell Mr Jones about dividing the assets?

A. No, because we hadn't.

Q. Did you mention the text messages about splitting the assets?

A. That was not my idea at all.

Q. Had you told Mr Jones about the handwritten notes?

A. No, not at all.

Q. Did you tell him that you had split up in August?

A. No, because we hadn't.

Q. Had you told him that you were living apart?

A. I can't remember.

Q. Did you tell him that your marriage was in trouble?

A. I probably didn't.

Q. You were splitting up?

A. We were splitting up.

No, we spent no nights together.

Q. There were serious difficulties, but you didn't tell Mr Jones?

A. No, probably not; we were both working on the marriage.

Q. Mr Jones says you were not clear what you were being asked for?

A. I can't remember.

Q. You didn't know the details?

A. I can't remember much of the conversation.

Q. Look at the letter of claim, vol. 2 p.377: is that what he said?

A. Yes.

Q. Look at the witness statement para. 84: that's different - so is it assets, or money and assets, or Mr Jones who says it was not clear?

A. I can't remember the conversation.

I explained to Mr Jones what Rupert had asked for.

Q. Did you tell him it involved money and assets?

A. Assets.

Q. Look at the core bundle p.98; para. 22: he says assets, you say money and assets? Which is it?

A. I don't know.

Q. Assets or money?

A. Both.

I am not sure why the letter of claim only refers to assets.

Q. The letter of claim vol. 2 p. 377 para. 3.7 makes it sound like money was only mentioned at the Farm?

A. No, he had said it on the phone.”

319. I accept that there was a conversation between Claire and Mr Jones on the morning of 10 October 2017, but it was not documented and was not regarded as significantly dramatic to be referred to in the letter of claim or the pleaded case nor sufficiently dramatic to require a follow up call or follow up advice by Mr Jones the next day or in the days to come, although he was in contact with Claire thereafter. Exactly what was said was sought to be recalled by Claire and by Mr Jones almost three and a half years after the event without the benefit of an attendance note and on Claire’s own admission she could not remember much of the conversation. What is apparent is that Claire had certainly not told Mr Jones much of the relevant background which led up to the conversation between her and Rupert that morning or even that Rupert had left the matrimonial home in August. There was, in other words, a considerable lack of candour on Claire’s part.

320. That Claire was upset and found herself in a position in which she would rather not have been I accept. Rupert had left the matrimonial home after only 4 months of marriage and now wanted time to consider the documentation to settle the dispute with her brother which had taken months to negotiate. There had been some sort of discussion that morning at the Selden site about the proposals contained in the handwritten documents, but Mr Jones (who was unaware of those documents or much of the relevant background) had the feeling at the time that Claire was not clear what it was that Rupert was seeking (perhaps not surprisingly because no version of the October Agreement had as yet been produced by her).

321. That Claire was being forced to enter into an agreement against her will I do not accept, although I do accept that Claire told Mr Jones that she still loved Rupert and wanted the relationship to work. The proposals which had been mooted in the handwritten notes, which foreshadowed the October Agreement, had in fact been put into writing by her sometime before as something she was prepared to contemplate and had been given to Rupert by her for his consideration. Although he had not been told much of the relevant background to the matter, I accept that Mr Jones told Claire that she should not sign anything that Rupert was asking her to sign, but that was not advice which she followed later that day. As evidence, however, of

what was actually happening between Claire and Rupert on 10 October 2017, I can give this conversation relatively little weight.

322. In the following few days Mr Jones said that he and Claire spoke, but only in relation to queries and post-completion obligations. Claire did not mention Rupert's demands and Mr Jones believed that Rupert had not followed through with the demand that Claire had mentioned as she herself did not mention it. He did not, however, ask her about it or write to her about what she had said.

The First Versions of the October Agreement

323. The computer property information sheet shows that the first version of the October Agreement was created at 11.29 am on the morning of 10 October. That suggests that the time of Claire's visit to the Selden site, which I find that she did make, was nearer to Rupert's estimate (mid-morning) than Mr Murray's (around dinner time). It would also suggest that the document was produced after she had spoken to Mr Jones. Again according to the computer property information sheet, the document was last printed at 16.42 and the document was last modified at 19.40 that evening.

324. The first version, created by Claire at 11.29 that morning, and sent to Rupert by screen shot, read

“The Hall
King Sterndale
Buxton
Derbyshire
SK17 9SF

10th October 2017

I Claire Jowitt in front of witness wish to transfer the below assets into the sole ownership name of Rupert John Jowitt:-

KSH FARM ASSETTS

1. JCB PURCHASED DEC 2016 YT66 PRZ 65K
2. FAST TRAC JUNE 2017 £117 INCLUDING SPRAY JOB

3. 20 TON TRAILER JUNE 17 £16250
4. PORTA EQUIP TRAILER PURCHASED DEC 2016
5. FORD VAN PURCHASED MARCH 2015 MF15 HHB
6. MUCK SPREADER 14K NET PURCHASED DEC 16
7. FUSION PURCHASED 2014 50K
8. KRONE RAKE TWIN 2017 14K
9. KRONE TEDDERS 2014 4K
10. BOB CAT PURCHASED 2014
11. NEW TRI AXLE TRAILER WARDMANS JAN 2017 £3,200 PLUS VAT
12. FLAT 8 GRAB AND SLEDGE 2017 3,250
13. 2 MC HALE MOWERS 1 FRONT MOUNTED AND REAR 2017 25.5K
14. LOG BOOKS IN FARMS NAME BUT NO INVOICE FOR 2 TRACTORS SO NOT ON BOOKS

Cash from Rupert

£10,000 – Monies from garage went towards buying the above machinery
£7,000 tiles coach house
£29,325.03 joint account that went on dads care and inheritance tax

Total £46,325.03

Cash from Claire

£36,000 to plant
Difference £10,325.03”.

325. Thus the first version of what was to become the October Agreement proposed that the numbered items of farm equipment be transferred into the sole ownership of Rupert and that Rupert received a balancing payment of £10,325.03. That figure was reached by adding three sums provided by Rupert (totalling £46,325.03) and offsetting one sum provided by Claire (£36,000).

326. The three sums provided by Rupert were (i) £10,000, described as monies from the Garage which went towards buying some of the listed machinery, (ii) £7,000 for tiles for the Coach House (which was in fact £8,000) and (iii) £29,325.03 from their joint account which went on Eric Miller’s care and inheritance tax (though more accurately it was the sum which Rupert

had paid Gordons to fund the Clamark negotiations), a total of £46,325.03. As against that there was £36,000 by way of cash from Claire to KSHP. That must be a reference to the sums of £10,000 sent to KSHP on 27 September 2017, £10,000 and £1,000 sent to KSHP on 1 October 2017 and £15,000 sent to it on 4 October 2017.

327. Claire was asked about the creation of this first version of the October Agreement by Mr Fryer-Spedding:

“Q. You were trying to persuade him to sign, not the other way round?”

A. No.

Q. “Docs” include what you sent?

A. No, he asked I [send] these documents.
I was asking to spend a bit of time with him.
May be I worded it wrong: sorry.

Q. In the context of splitting, it was totally fair?

A. No, I was in it for the long haul because he feared I’d leave him.

Q. You were doing this to rekindle the relationship, not because you were forced to do it? You were willing to do it?

A. No, he required them or would not otherwise sign the documents.

Q. You were trying to rebuild the relationship?

A. It was what we both wanted.
I was not volunteering: he asked me to do it.
I had no choice or he wouldn’t have signed the agreement with my brother.

Q. If as you say you had no choice, why were you trying to persuade him?

A. I was trying to do as he wished.

Q. You were conceding that you owed him £46,000?

A. I always intended to pay him back.
He was owed £29,000.
I always intended to pay him back for the tiles.

Q. You totted the figures up?

A. He mentioned them, but I totted them up.
He asked for these.

Q. You produced the list of assets 1-14?

A. I typed; he mentioned them.

Q. In context of the division of assets?

A. Yes.”

328. Although that was the tenor of her oral evidence, I find it inconsistent with the cotemporaneous text messages, which I have cited above, which suggest that what Claire was trying to do was to rekindle the matrimonial relationship, not that she was being forced to sign an agreement against her will.

329. On receipt of that document Rupert texted

“Bell me please”

and it is apparent that a further conversation took place. The second version of the document was then sent to Rupert by Claire, again by screen shot. This second version read

“The Hall
King Sterndale
Buxton
Derbyshire
SK17 9SF

10th October 2017

I Claire Jowitt in front of witness wish to transfer the below assets into the sole ownership name of Rupert John Jowitt:-

KSH FARM ASSETTS

1. JCB PURCHASED DEC 2016 YT66 PRZ 65K
2. FAST TRAC JUNE 2017 £117 INCLUDING SPRAY JOB
3. 20 TON TRAILER JUNE 17 £16250

4. PORTA EQUIP TRAILER PURCHASED DEC 2016
5. FORD VAN PURCHASED MARCH 2015 MF15 HHB
6. MUCK SPREADER 14K NET PURCHASED DEC 16
7. FUSION PURCHASED 2014 50K
8. KRONE RAKE TWIN 2017 14K
9. KRONE TEDDERS 2014 4K
10. BOB CAT PURCHASED 2014
11. NEW TRI AXLE TRAILER WARDMANS JAN 2017 £3,200 PLUS VAT
12. FLAT 8 GRAB AND SLEDGE 2017 3,250
13. 2 MC HALE MOWERS 1 FRONT MOUNTED AND REAR 2017 25.5K
14. LOG BOOKS IN FARMS NAME BUT NO INVOICE FOR 2 TRACTORS SO NOT ON BOOKS

Cash from Rupert

£50,000 Monies from Rupert to be paid from Claire within 14 days of the completed share sale of mark

Both surrender directorships on companies on ksh farm ltd and ksh plant ltd”.

330. The proposal that the numbered items of farm equipment be transferred into the sole ownership of Rupert remained the same. What was different in this version was that the sum due to Rupert was rounded up to £50,000 and that, without any offsetting of any counter-sum to Claire, the sum of £50,000 was to be paid to him within 14 days of the conclusion of the Clamark share sale agreement. Each was to resign their directorships of the other’s company (although in fact Rupert had already removed Claire as a director of KSHP several days previously, on 3 October 2017, with the help of Mrs Bannister).

331. That second version was followed by further text messages from Claire

“A cuddle tonight would still be nice please! Xx”

“My patience level not so good .. can this go top of your list once this put to bed!”

“After picked Mia up was going to nip to her small cake to cut and a small present of her choice from [you] and I x”.

332. The first of those messages does not suggest any duress or unlawful pressure on Rupert’s part; rather that Claire was still hoping for a matrimonial reconciliation. It was put to Claire by Mr Fryer-Spedding that they had agreed that they would split up. She disagreed and said that they would work on the marriage, but that is flatly inconsistent with the drafts which she had just sent Rupert. Far more likely is Rupert’s account that “that was it, the marriage was over, but the working relationship still continued”. He could not remember the detail of the conversation which had led from the first draft to the provision of the second draft, although he said that the original figure of £10,000 was incorrect.

333. To the second version of the agreement, Rupert replied

“Ring please”.

334. Claire’s evidence about this version (again with emphasis added) was that

“Q. P.906 is the revised version; there are still the same 14 items?

A. Yes.

Q. You are now offering £50k within 14 days and both agreeing to resign directorships?

A. Rupert was not happy and asked for it to be changed.

Q. He didn’t force you, did he?

A. Yes he did.

Q. “Cuddle tonight?” He is not backing you into a corner?

A. Being affectionate yes, we were trying to work on the marriage.

Q. There was no ill will?

A. No.

Rupert was insecure and thought I would leave.

If I cared, I would be showing trust; I was doing as he wanted.

Q. You did this voluntarily?

A. He said he wouldn’t sign the documents until I produced this.

Q. He was taking up your previous offers?

A. They were just my thoughts and feelings.

Q. You could simply have removed him as a director?

A. I was in a marriage.

Q. Could you not have removed him?

A. I was upset, I didn't think, I am not sure.

Yes, I could have removed Rupert.

No, I didn't have to sell the shares to my brother.

Q. You did not want to, but you could have done; is that fair?

A. Fair.

Q. There are messages to Rupert about meeting with your brother; was that another option?

A. I was trying to get him to speak.

I didn't think of meeting with my brother at the time.

Rupert never asked to take legal advice

Q. P.267: "patience not too good?" *What do you mean?*

A. Be friendly.

When done and dusted we would spend time together; what I am implying.

Q. "This"?

A. Cuddle; sorry, what he asked for."

335. Again, what emerges from these exchanges is that there was no ill will lying behind what was being done. When it was all done and dusted, Claire wanted them to spend time together. That is not consistent with being forced to do something against her will. As for her evidence that at this point Rupert was insecure and thought that she would leave him, what had happened is that he had left her.

336. She sent a second screen shot of the second version of the document and added

"Please don't feel bad, I don't want you to feel poorly, no Need, love u loads"

“Please can u give me a bell when a min just had a thought which may be a problem x”.

337. Again, the first of those messages does not suggest any duress or unlawful pressure on Rupert’s part; quite the reverse – it is Claire who is asking Rupert not to feel bad and not to feel poorly. He replied

“Call me”

“Call me please”.

338. Claire’s oral evidence was again inconsistent with her case of duress or undue influence: it was she who was apologising to Rupert for making him feel bad:

“Q. This further version is the same as the 2nd version?

A. Yes, the same version.

Look at the core bundle p.268; why are *you* comforting *him*?

A. I don’t know – Rupert must have said he felt poorly/bad.
Bad having to ask me for that.

Q. He was shy/reticent?

A. No, lots of time he would say something.
I don’t know – it was a long time ago – he must have said he felt bad.
We both wanted the marriage to work.

Q. He was feeling bad?

A. He must have said he was feeling bad.
I don’t know, not sure, he must have said something along those lines.”

339. It was put to Rupert that Claire was trying to build a future with him, but he disagreed and in response to her comment “love you loads” he vigorously riposted to Mr Bennion-Pedley with very obvious bitterness and emotion

“None of that was consistent with the fact of our separation.
I was ending the marriage, the reason why I gave up my home, my friends, my business.
I had given up life – but it only lasted a short period of time.
Now I was having to move away from it all.”

340. Whatever Claire may have thought about the prospect of rekindling the marriage, I am satisfied that Rupert had cut the Gordian knot in his mind and that he was adamant that the marriage was over, although the working relationship between him and Claire might continue. Although Claire repeated the mantra they were working on the marriage, that is not how Rupert saw matters and there is nothing to suggest that he led her to believe otherwise, however much she herself might have believed or wanted to believe otherwise.

341. The trail of text messages and screen shots of the draft agreement then stops until it resumed at 17.17pm, after the signing of the October Agreement, to which I shall refer below.

The Signing of the Agreement

Claire's Witness Statement Account

342. Claire's account of the execution of the October Agreement was set out in paragraphs 90 to 95 of her witness statement as follows:

“90. Later that day Rupert came back to the Farm like he would each day to return the machines he had been using that day.

91. Rupert came into my home and demanded that further changes were made to the October Document and that I sign it. He came upstairs to the office and stood over me at the computer and instructed me to make changes.

92. I told him that what he was doing was not legal and had no effect. I told him that the assets couldn't be transferred to him just because of the document, that VAT would have to be paid, invoices raised and our accountants involved. Rupert did not care. He said he wanted me to sign the document.

93. At the time, Rupert was very unstable and our relationship was at breaking point. Shortly before 10 October 2017 he had held my father's shotgun to his throat and threatened to kill himself in front of me whilst my daughter was upstairs. I also thought at the time that Rupert was paranoid that I was going to leave him and I felt the document was something he wanted to feel more secure.

94. I really felt I had no choice but to comply with Rupert's demands. He was refusing to sign the Settlement Deed which I desperately needed Rupert to sign before the end of the day. My Brother's solicitors had made it very clear that his funding for the Shares would no longer

be available if we did not complete on the Settlement Deed that day. I was at risk of losing the deal.

95. Once Rupert was happy with the draft document he asked his two colleagues, Matthew Sheldon and Nathan Murray who were still up at the farm, to sign the document. They witnessed Rupert and I sign the October Document and then signed it themselves.”

(I have dealt with shotgun incident above in the context of the events leading to the effective dissolution of the marriage before Rupert left the Farm. As set out above, I have found that the incident did not take place shortly before 10 October 2017, but before Rupert left the Farm and that as at 10 October 2017 Claire cannot have thought at the time that Rupert believed that she was going to leave him; he had already left her.)

The Final Version Of The October Agreement

343. With Claire’s version of events in her witness statement thus set out, and before turning to Rupert’s, Mr Sheldon’s and Mr Murray’s account of what happened at the Farmhouse later that afternoon, it is convenient at this juncture to set out the final version of the October Agreement, which from the computer property information was last printed 16.42 pm 10 October 2017

“The Hall
King Sterndale
Buxton
Derbyshire
SK17 9SF

10th October 2017

I Claire Jowitt in front of witness wish to transfer the below assets into the sole ownership name of Rupert John Jowitt:-

KSH Farm sells machinery at nil value but declares vat
KSH Plant receives machinery at nil but also declares vat

KSH FARM ASSETTS

1. JCB PURCHASED Dec 2016 YT66 PRZ
2. FAST TRAC JUNE 2017 INCLUDING SPRAY JOB
3. 20 TON TRAILER JUNE 17

4. PORTA EQUIP TRAILER PURCHASED DEC 2016
5. FORD VAN PURCHASED MARCH 2015 MF15 HHB
6. MUCK SPREADER NET PURCHASED DEC 16
7. FUSION PURCHASED 2014
8. KRONE RAKE TWIN 2017
9. KRONE TEDDERS 2014
10. BOB CAT PURCHASED 2014
11. NEW TRI AXLE TRAILER WARDMANS JAN 2017
12. FLAT 8 GRAB AND SLEDGE 2017
13. 2 MC HALE MOWERS 1 FRONT MOUNTED AND REAR 2017
14. LOG BOOKS IN FARMS NAME BUT NO INVOICE FOR 2 TRACTORS SO NOT ON BOOKS

Cash from Rupert

£50,000 Monies to be repaid to Rupert from Claire Jowitt within 14 days of the completed share sale of mark miller

Both surrender directorships on companies house on ksh farm ltd and ksh plant ltd
Claire Jowitt to come off KSH Plant Ltd
Rupert Jowitt to come off KSH Farm Ltd

Mandates to be amended to Rupert Jowitt Sole signatory on ksh plant
Claire Jowitt to be sole signatory on KSH Farm
Any debts incurred after this date will be sorted out by sole director

Signed Claire Jowitt

Nathan Murray

Matthew Sheldon

Rupert Jowitt".

344. The differences between this version and the previous second version (which had twice been sent to Rupert by screen shot) were that there was an addition at the top to the effect that

“KSH Farm sells machinery at nil value but declares vat
KSH Plant receives machinery at nil but also declares vat”,

that the figures given for the numbered items of farm machinery were removed, but the list of the machines was otherwise left intact, that the word “house” was inserted after “companies”, there was an addition to the effect that

“Claire Jowitt to come off KSH Plant Ltd
Rupert Jowitt to come off KSH Farm Ltd”

and finally that the respective bank mandates for the two companies were to be amended, so that Rupert would be the sole signatory on the KHSP account and Claire the sole signatory on the KSHF account and that any debts incurred after that date would be the responsibility of the remaining sole director.

Claire’s Oral Account

345. In cross-examination Claire’s account (again with emphasis added) was as follows:

“Q. The computer property information is at core bundle p.256: it was last printed at 16.42?”

A. Yes.

Q. You signed after that time?

A. Yes; they came to the Farmhouse. I provided pen and so on; I had a pen with me.

I don’t remember sending the documents to Mr Jones.

Q. Look at vol. 6 p. 1259: 16.58 the signed documents are sent, just before 5pm, so the window is between 4.42 and 4.58?”

A. Yes.

Q. You had a mechanical scanner?

A. Yes, they went through page by page.

Q. The scanning took some time? There were several documents?

A. Yes.

Q. Not the full [period] for the window?

A. It must have taken time, I don't know, not sure.

Q. Rupert, Mr Sheldon and Mr Murray came to Farm just before 4.45?

A. I don't know – Rupert came first.

I don't know – I was in the office.

Rupert came up to the office; he called Nathan and Matthew to come into the house.

Q. He says they all came into the kitchen and never left the kitchen?

A. Untrue; Rupert came upstairs first; Nathan and Matthew came into the kitchen.

Q. All the documents were printed off for signature?

A. No.

Rupert asked for more changes.

They were printed off by time Nathan and Matthew arrived.

No I didn't offer them all a drink.

Q. You say that material changes were made to the Agreement?

A. Yes.

Q. What happened was that he suggested changes and you agreed?

A. I had no choice or he would not sign.

Q. Mr Murray and Mr Sheldon had no sense of any dispute?

A. Nathan and Matthew never sat down and stood at the side.

Q. Compare the two versions at core bundle p. 255 and p.906; the 1st difference is at the top?

A. It was not added before Rupert arrived.

Q. How putting [] at back?

A. He was just asking to make changes – he was never happy with what I typed.

Q. What is wrong with asking for clarification?

A. I should not have been asked to sign.

May be you are right.

Q. The addition of the word "House" is not important?

A. No.

Q. Resignation of directors: that is not surprising, is it?

A. No.

Q. Sorting out the bank mandate was sensible?

A. Yes, it seemed sensible.

I did as he wished; never [] up officers.

It was what Rupert wanted; what he wanted.

I was happy for him to do whatever he wanted to do.

I was trying to do what he wanted; whatever he asked.

Q. The last line was sensible?

A. I suppose so, yes.

Q. You typed in the date – Rupert was not there?

A. Not true.

He was there and he could see the change.

He dictated, asked, not sure.

He suggested, demanded, asked: he would not have signed otherwise.

Q. Everything else was already agreed earlier in the day?

A. No, nothing was agreed.

It was not voluntary: Rupert asked for this.

Q. You say R said not good enough?

A. ...

I was not being strident.

He wanted changes or he wouldn't have signed the document

Q. At that evening meeting, you never said that the document was not legal?

A. Not true, I told him it didn't mean anything.

Q. On hand you were reassuring him, but on the other hand, you were telling him that it meant nothing?

A. I was trying to be honest.

Sorry, I didn't word it like that.

I did what he wanted, but it didn't mean anything.

Q. He didn't say that he didn't care, did he?

A. He did say that.

Q. Did you sign under protest?

A. Yes.

Q. Did you say that you were signing under protest?

A. Yes, the document didn't mean anything.

Q. Look at you witness statement para. 93: how could Rupert be reassured if meant nothing?

A. No, I can't explain that.

Q. There is a contradiction, isn't there?

A. Yes, now you mention it, yes.

Q. You scanned in the documents?

A. Yes.

Q. Did you give him a copy of signed documents and the log books?

A. No, never the log books.

The log books and data tags were still in the office.

I don't know where Rupert went after that."

Rupert's Account

346. After work Rupert said that the three of them - himself, Mr Sheldon and Mr Murray - went to the Farm. That would have been between 5 pm and 6 pm because they finished work around 4.30 pm. They went into the kitchen and Rupert ended up staying by the door and the worktops. Claire had already prepared and printed everything ready for signing and asked them if they wanted a drink. All 4 of them were in the kitchen and Claire had placed the paperwork on the worktop.

347. Rupert read the October Agreement and remembered that there was a mistake with something in it. He could not quite remember what it was, but from looking at the text messages which Claire sent him throughout that day the change from version to version seemed to relate to the value of machinery and VAT being shown next to each item. It also looked like there might not have been reference to him and Claire coming off the KSHF and KSHP bank mandates. Claire then went up the stairs to her computer, changed the terms and came back

with more copies. Rupert did not stand next to or over her dictating the changes while she typed. She went upstairs and the 3 of them stayed down in the kitchen the whole time.

348. He and Claire then signed the October Agreement and the settlement agreement which Gordons had prepared and Mr Murray and Mr Sheldon witnessed it. Both he and Claire had a copy of the October Agreement and Claire handed him a stack of paperwork, including the logbooks for the machinery and the data tags.

349. In his mind, the idea behind the October Agreement was that Claire would have the Farm, with the improvements which Rupert had made, and could earn an income from the livery yard, as well as the rental income from the Hathersage properties, and he would have his machinery to continue earning an income.

350. Rupert said that he felt that he did not have an option when Claire offered him the October Agreement other than to sign the Gordons' agreement, even though his own solicitors had told him not to do so without taking legal advice from them on it. With the £50,000 and the machinery which Claire offered to him, he worked out that he could reduce the finance on the machinery, which at that point cost around £2,300 a month just for the JCB 3CX and the Fastrac. He used the money to pay down the finance as well as to pay wages and diesel until he had his own steady income which he then saved to pay off the machines one by one. He first paid off a 14T machine which he had and then the JCB 3CX. That would mean that he would be able to build himself back up and work forward from there, given how far he had dropped back since being in a relationship with Claire and selling the Garage. The machinery was what he used to earn his income since the Garage was sold.

Mr Sheldon's Account

351. At the end of the day Mr Sheldon said that they went back to the Farm. They had driven to the Farm in separate vehicles, but had all arrived at the same time. Once he, Rupert and Mr Murray had got back to the Farm they started by washing off the machines at the back of the yard. After that they were asked to witness Claire's and Rupert's signatures on a document.

352. Since it had become material, after the close of the evidence and before the closing submissions, I asked for a plan and photographs of the layout of the kitchen of the Farmhouse. I also received a plan of the layout of the upstairs, which shows that the upstairs office was in

the bottom right-hand corner of the layout (which I take to be the south-eastern corner) marked with dimensions of 4.2 metres by 2.9 metres. The plan of the upstairs is not otherwise material.

353. On the ground floor the back door leads into a very small lobby area which leads into (on the left) a room with a partial wall or partition between the larger (approximately) two-thirds and the smaller (approximately) one-third. The larger area is marked "Kitchen" and is 7.5 metres by 4.2 metres and the smaller area is also marked "Kitchen" and is 4.2 metres by 2.8 metres. The third plan is cross-referenced to photographs of the two areas marked "Kitchen".

354. The larger area is carpeted; the smaller area has a hard floor. The smaller area has an Aga and a hob on the left hand wall, a worktop on the right hand wall next to the door into it and the sink in the middle of another worktop on the bottom wall. It has no chairs and no seating area. That area leads into the larger area.

355. The larger area has a dining table and four chairs in the middle of it and worktops on the bottom wall and the right hand wall. There is a sink in the middle of the worktop on the bottom wall. There is a small oven just inside the doorway from the smaller area into the larger area and a sideboard against the top wall of the larger area. In the top left hand corner of the room, diagonally across from and just beyond the table and chairs, is an L-shaped sofa which can seat 3 (or perhaps 4) people.

356. Anyone needing to look over and review documents with another person would more naturally sit at the table with the other person rather than stand or lounge against the worktops in the smaller room. I am satisfied that anyone sitting on the sofa could see anyone sitting at the table and that also that anyone sitting on the sofa could hear what was being said by the people sitting at the table, even if not every single word could be heard. There is certainly not a sufficient distance from the sofa to the table for it to be possible to have a coherent, but covert, extended conversation at the table unheard from the sofa. The distance from the nearer edge of the table to the further seats on the sofas is about the distance between the witness table and the dais in the courtroom.

357. Mr Sheldon said that Rupert had come out to get him first and then Mr Murray, although he could not specifically remember Rupert going into the Farmhouse. Rupert had called them in, but he could not say whether Rupert was still outside or had come out to fetch them in. This

had all happened close to the normal leaving time at 5 pm. They had only gone into the kitchen where the documents had all been printed out for signature and laid on the worktop. They were not offered refreshments and indeed did not sit down when they went into the house. They were in fact unable to sit in that part of the kitchen which had only a standing area.

358. He did not remember Rupert suggesting a change to any of the documents. There were no arguments between Claire and Rupert and no raised voices. He and Mr Murray, who were about as far from Claire and Rupert as the witness table was from the judge in the courtroom, were then asked to witness their signatures, although he did not really know what they were signing. There was nothing odd about the conversation. The documents were printed out, they were signed and that was that. He did not remember Rupert being given anything. No logbooks were handed over to Rupert in front of them.

Mr Murray's Account

359. After finishing work on that day at about 4 o'clock or slightly later, Mr Murray, Rupert and Mr Sheldon went to the Farm to sign and witness the agreement between Rupert and Claire. The Farm was 5 minutes' drive from the site. Mr Sheldon went first with the JCB as Mr Murray and Rupert locked up. He and Rupert went back in another vehicle, whichever one that was. He could not remember who had driven the other vehicle. He specifically remembered the JCB being driven back as that stood out more than a car and there was only 1 JCB on the site. The agreement, he thought, was regarding Rupert resigning from the company and who got to keep what after they split up.

360. Mr Murray said that when they got back to the Farm, Mr Sheldon was washing off the JCB 3CX. They all went into the kitchen to sign the agreement and the three of them remained there at all times. He explained that the dining room where the sofa was was all one room. Mr Murray and Mr Sheldon initially sat on the sofa, which was right against the wall, away from the kitchen table, where Claire and Rupert were discussing the document, to give them privacy as they were just there to witness the signing. He was clear that Claire and Rupert sat at the table and that he and Mr Sheldon sat on the sofa and that they could see Claire and Rupert all the time. They did not sit on the sofa for very long, perhaps for about 10 to 15 minutes. They were not far away from them – the distance was about as far as the witness table was from the judge in the courtroom. Mr Murray said that he could have heard what they were talking about if he had tried to, but he was trying to speak to Mr Sheldon instead.

361. The kitchen at the Farm was quite long, so they could not hear everything they were saying and he did not remember anything in particular which they were discussing. The atmosphere between Claire and Rupert did not appear to be nasty between them or difficult, as he had expected that it might have been, because they were splitting up. Mr Murray's evidence was that from their body language they were simply having a normal discussion. There were no raised voices or anything like that which would have led him to think that there was a problem or some dispute.

362. Once they had reviewed the agreement, he said that Claire said words to the effect of "I'll change it" and went to change something on her computer and huffed and puffed as she did so. She was huffing as she was getting up. In his witness statement he said that he could not remember Rupert leaving with her and he was not sure where Claire went as it was quite a big house. In cross-examination he said that he did not think that Rupert went with her and that he had remained seated in the kitchen.

363. He did not know what the amendments were about, as they were just there to witness the signing, but there were certainly no arguments or raised voices as he would have remembered the atmosphere being awkward if there had been. They then signed and witnessed the agreement and left to continue working. Mr Murray did not think that the whole thing took more than half an hour, but it certainly was not very long.

364. It was put to him that Mr Sheldon's recollection was that they called into the Farmhouse later, when the document was ready for signature, but he did not agree that that was what had happened.

Findings

365. Mr Sheldon and Mr Murray differed as to whether they had been called in to the Farmhouse by Rupert prior to the signing of the October Agreement, whether they had or had not sat down in the kitchen prior to the witnessing of the document and whether there had been any amendment to the document prior to it being signed and witnessed. I found Mr Murray's recollection of the day to be firmer than Mr Sheldon's and he came across as having a better recall of the details of the day. I found him to be the better witness of fact in relation to the events of 10 October. To the extent that they differed, I prefer the evidence of Mr Murray to

that of Mr Sheldon. I also preferred Mr Murray's account of the precise location in which the activity or reviewing the October Agreement took place to that of Rupert. I am therefore satisfied that the three men went into the Farmhouse together, rather than that Rupert went into the Farmhouse first and then called the others in. I am also satisfied that Claire and Rupert went through the October Agreement and talked about it in the larger room where there were chairs and the sofa rather than in the smaller room, where there was no seating. I find that Mr Murray and Mr Sheldon initially sat on the sofa, which was right against the wall, away from the kitchen table, where Claire and Rupert were discussing the agreement and that, once they had reviewed the agreement, Claire said words to the effect of "I'll change it" and went to change the text of the document on her computer and huffed and puffed as she did so.

366. They reached the Farmhouse somewhat earlier than Rupert had estimated, more likely between 4 o'clock and 4.30, rather than between 5 and 6. After Claire and Rupert had reviewed the agreement, I find that it needed to be amended and that Claire huffed and puffed, but went upstairs by herself to amend the document into the final form in which it was executed. She went alone and was not accompanied by Rupert. I therefore reject Claire's account that Rupert came into the Farmhouse and, prior to Mr Murray and Mr Sheldon coming in, demanded that further changes were made to the October Agreement and that she sign it. He did not go upstairs to the office nor did he stand over her at the computer and instruct her to make changes. The review of the draft agreement and the changes needed to perfect it were discussed in the presence of Mr Murray and Mr Sheldon; they were not discussed by Claire and Rupert alone before the others came in.

367. The amendments made after they had discussed the second version at the kitchen table in front of Mr Sheldon and Mr Murray were, as is apparent from what I have said above, largely administrative and clerical and not substantive. The list of farming machinery to be transferred to Rupert remained substantively untouched, as did the provision that £50,000 be paid to Rupert by Claire within 14 days of the completion of the share sale agreement with Mr Miller. Claire may have been annoyed that the document required yet further amendment, but her annoyance went no further than that. The substance of the agreement had already been set out in the second version of the agreement some hours previously. There would in any event have been no need for Rupert to stand over Claire at the computer and instruct her to make what were largely administrative and clerical changes.

368. I am satisfied that Claire did not sign the October Agreement under protest nor did she make any such protest. Mr Murray and Mr Sheldon saw nothing untoward and nothing that would indicate that such a protest was made. If such a protest had been made, it could only have been made in front of them and it was not. She did not tell Rupert that what he was doing was not legal and had no effect. Nor did Claire tell Rupert that the assets could not be transferred to him just because of the document or that VAT would have to be paid, invoices raised and the accountants involved. Nor do I find that Rupert said that he did not care and that he just wanted her to sign the document.

369. There was in that respect a fatal contradiction at the heart of Claire's case which she was ultimately unable to explain: if she was trying to reassure Rupert by signing the October Agreement given his alleged insecurity and paranoia, she can hardly have been saying to him at the same time that it meant nothing and had no legal effect. If Rupert were indeed quite as unstable and paranoid as she suggested, that is the last thing that she would have said.

370. Moreover, and this I found decisively fatal to her contention that she was forced to sign the October Agreement against her will, it was her own evidence that

“It was what Rupert wanted; what he wanted.
I was happy for him to do whatever he wanted to do.
I was trying to do what he wanted; whatever he asked.”

If Claire was happy for Rupert to do whatever he wanted to do, that is the end of the case based on duress or undue influence.

After The Signing: Further Text Messages

371. Almost as soon as Rupert and Mr Sheldon and Mr Murray had left the Farmhouse after signing and witnessing the October Agreement, Claire sent Rupert a series of text messages at 17.17 which read

“I only want to love and be with you, I hate wrong way of looking at things and people before .. never again xx”

“Would really like a cuddle tonight if at all possible .. only ever want to love and help where I can sorry if it ever came across wrong .. I love you so very much x”.

372. This was apparently within minutes of being the victim of unlawful coercion and being forced into a corner where she had no option but to submit to the unlawful demands made of her, when she had just signed the offending document under protest and when she had just made it clear that it was a document of no legal effect and one by which she was not bound.

373. Just under two hours later, at 19.09, she texted

“I hope in time you’ll see I only want you .. x”

and at 21.43

“And hope your ok as can be after today .. it’s not so nice .. I too am sorry we had to experience such horridness through other people trying to stick there nose in ... how I feel towards you ... try as they may they are tackling the unbreakable, xx”.

374. It is frankly impossible to reconcile those text messages with the notion that only a few hours before Claire had been the victim of unlawful duress on the part of her husband and been forced to sign the October Agreement against her will. The contemporaneous evidence of her own text messages simply does not bear that out.

Mrs Bannister’s Account

375. On 10 October Mrs Bannister said that Rupert phoned her to say that he was on his way over to her. To her recollection they only spoke the once on that day. They did not speak earlier in the day nor did she see the earlier drafts of the October Agreement before the signed version. Before that day Rupert had evinced no desire to get the farming machinery back. She did not know that Rupert was going to sign a document. When he arrived, Rupert gave her a hard copy of the October Agreement for safe keeping, which she gave back to him at a later date when he needed it. She believed that Claire had drafted the document because Rupert could not use a computer. She commented that he had only recently got an iPad and had asked her how to send a new email from it, rather than simply pressing the reply button as he was used to doing.

376. Although Rupert said that before he left the Farmhouse Claire had handed him a stack of paperwork, including the logbooks for the machinery and the data tag logbooks for the machinery, Mr Sheldon said that he not been given any other documentation by Claire and it

is apparent from Mrs Bannister's account that, when Rupert arrived at her house after signing the October Agreement, all he had with him was the Agreement itself, which he left with her for safekeeping. That Claire still retained the log books is consistent with her text message to Rupert of 10.56 on 8 January 2018 to the effect that

“Once invoice raised after Friday so can get vat sorted ... will post off the log books for them all and get changed into ksh plant ltd then put the insurance to match .. just think if it's all machinery in plant you can exchange extra easier xx”.

10 October 2017: Solicitors' Emails

377. To complete the events of the day from the solicitors' perspective, following the conversation with Claire, Mr Jones received an email from Ms Hodgson at 11.46 that

“It really is important that we complete today, as we were not able to yesterday”,

to which he replied at 13.30

“I do not have documents but I still expect to receive them today. I will call as soon as I have them.”

378. Ms Hodgson emailed him again at 16.49

“Have you heard anything further from your clients regarding when then will be able to sign and scan documents to you? Are you still expecting to receive the documents this afternoon/evening?

We do need to complete as soon as possible.”

379. Once Mr Jones had received the signed documents from Claire at around 5pm, he emailed LFL again at 17.40

“I have the documents. Signed copies are attached which are to be held to my order subject to completion.

As I mentioned to Neil, we can complete tonight if Neil (i) confirms you hold the £200k; and (ii) provides me with an undertaking to send the money to Gordons' client account tomorrow.”

380. He exchanged contracts on the phone and completed the deal at around 7 pm by sending the documents, including the settlement deed, to LFL after exchanging contracts on the phone.

After completion, Mr Jones emailed Claire to let her know that contracts had been exchanged and the deal completed.

11 October 2017

381. The very next morning Claire's text messaging began at 06.47

“Missed cuddles last night ... is there a good time to call? Xx”

382. Again, it is difficult to square this with the case that she had just been the victim throughout the preceding day of unlawful duress by her husband and forced to sign a document against her will.

383. She continued at 08.24

“I too feel shakeup after yesterday please don't think it doesn't hurt so very very much and agree it shouldn't of come to this ... but do I love you so very much and never intentionally meant to hurt you x I am so sorry xx”.

“Just looked sorry my mistake .. with monies we transferred from joint, had already included the October payment dd for the new digger so plant account is still in credit roughly 1.5k, I will come off mandate today too xx”

384. In cross-examination Claire was asked why it was she who was texting Rupert “never intentionally meant to hurt you”. She replied

“A. I didn't realise how sensitive he was; I was apologising for that.

Q. You were accepting that you had upset him the previous day?

A. No. [...] relationship is long term.

Sorry I did not take account of his feelings.

Q. Why not ask him to apologise?

A. He was sensitive.

I was trying to make the marriage work.”

385. Apologising to Rupert for hurting him is hardly consistent with having been the victim of unlawful action on the part of Rupert. It is, however, consistent with him being a remarkably sensitive and easily hurt man. Nor is agreeing to come off the KHSP mandate in accordance

with the agreement of the preceding day consistent with an assertion that she did not regard herself as bound by the October Agreement.

386. At 11.01 she continued

“Other people need to try harder, like u feel exhausted, hurt in heart but they won’t make me run, I love you too much, I have nothing to hide and lots to prove ...
So u have info to hand shall I ask Jcb to email settlement for 3cx and fastrac? Xx”

to which Rupert laconically replied “Please”.

387. At 14.17 she added

“.. love u ..

And will pop a copy of my removal signatory mandate form in the green file incase you ever need it hope that’s ok x”

388. It was put to Claire that she was carrying the October Agreement into effect. She said

“Q. You were carry into effect the October Agreement?

A. He would ask for information which I would text him.
I was trying to do as he wanted.

Q. You were coming off the mandate?

A. I was putting it in file in case he ever needed it.

Q. You recognised the October Agreement as binding?

A. No, I was doing as he asked.

Q. Look at the text message on p.911: why were you dealing with the settlement for 3CX/Fastrac?

A. It was something he had asked for.

Q. You are volunteering to do it?

A. I was getting him whatever he wanted.
If he emailed he would have it there in front of him.

Q. Look at the text message on p.912: which mandate form were you talking about?
The Plant account.
Yes I did sign such a paper
I thought it would go into the file, not that he would use it.”

389. I found these answers, and similar ones, to be disingenuous, particularly in the context of the obvious affection displayed by Claire in the myriad of text messages which she was sending Rupert. The answer about the mandate form “I thought it would go into the file, not that he would use it”, I found frankly incredible.

390. At 22.25 Claire texted

“... I would like you to be at home with me, I would like your help and I would like to be as one x”

391. This was in the context of an exchange about Mr Gratton’s behaviour. As I have mentioned above, I had not seen or heard evidence from Mr Gratton and do not make any findings about these particular allegations made against him. The exchange continued (with Rupert’s replies in italics)

“Same old you just cannot do it”

“I will do whatever it takes to keep him away, it’s another cheap shot to cause trouble”

“Yes and you can’t finish it again”

“I will ring police and take any opportunity to tell him to his face exactly what I think”

“Yes and hide it from all others as iv said before over it I’m done”

392. What does emerge from the exchanges, however, is that Rupert was convinced that Claire was not finished with Mr Gratton and, most importantly in the present context, that he regarded the romantic relationship between him and Claire as “done”, which is consistent with his evidence about regarding the romantic relationship between them as being irretrievably over since he had left the Farmhouse at the end of August.

393. What is significant is that the one thing which Claire did not do on this day, or indeed on any other day throughout October, was to get on to Mr Jones to tell him that she had been forced to sign something against her will. They were in fact in contact again in October, but the subject of the October Agreement was not raised by either of them until 1 November.

Subsequent Text Messages And Actions in October; The Payment on 17 October

394. On 13 October Claire sent Rupert another text message at 11.09

“I realise my thinking has been very wrong, and am appalled at the reality of some people, I am sorry I hurt you”

and on 14 October another text message at 22.38

“... I am very sorry ... I never meant to hurt your soul and feelings x but see now why it did x”

and on 15 October a text message at 00.10

“Plant

It’s better than paying a salary to yourself ... it’s better to keep a note and adding up the monies you have put in ... then as and when you needs funds to repay yourself, when monies have come back to both u and I this is how it’s worked not in salary form. Hope this makes sense .. thought would explain things I enter x”

and another text message at 21.03

“Never meant to make you angry ... hope ur ok love u so much xx!.

395. Claire was asked about these exchanges by Mr Fryer-Spedding and replied (with emphasis added)

“Q. The reference in the text message on p.915 to “him” refers to whom?

A. Phil, yes

I was trying to reassure Rupert that I just wanted him.

I was happy to accept cards/presents from Phil [for her daughter].

I was trying to be Mum at the end of the day.

I was apologising to Rupert because I didn’t realise it meant so much to him.

Q. P.916 again you are apologising to Rupert?

A. Because when speaking of anything from the past, Rupert was highly offended and I was sorry for that.

Q. You apologise to him, not he to you?

A. No.

Q. In the text message on p.917 the apology is from you, not him?

A. Yes the apology is from me.
No matter how many times I apologised, it didn't make any difference.

Q. You continued to live apart?

A. Yes

Q. He came every day?

A. Yes, we were on reasonably good terms.

Q. If coerced, you would have said so?

A. We were trying to make the marriage work.

I almost forgot about the [October] document.

As far as I was concerned, we were working on the marriage."

396. Two things emerge from these exchanges. The first is the extent of Rupert's sensitivity over the question of the continued presence or otherwise in Claire's life of Mr Gratton, as I have remarked above. The second is the admission by Claire that she "almost forgot about the October document". If she almost forgot about the October Agreement, it is difficult to see how she could have been subject to any ongoing duress or coercion in respect of it on the part of Rupert. I shall revert to that matter again later.

397. On 17 October Claire received £180,000 by way of interim payment from the share sale in settlement of the Clamark dispute. On the same day Claire paid £5,000 to Rupert (again on her case as a loan for the JCB, this being the fourth instalment). This was the only occasion in the series of disputed payments when payment was made directly by Claire to Rupert.

398. At 06.57 that morning she sent Rupert a series of text messages

“If ur ok with it .. Moving 5k to Jcb as Richard has been good with us my o/d will get put straight, hope your ok x”

“Moved 5k from insurance dad left leaving that acc at 1k ish

To ur acc then Jcb

So it will show at Jcb end as r jowitt rather than c jowitt thought that’s how u would want it, hope done right x”

“The rest of friends life money went into the plan to go towards first payment to Jcb thought would explain x”

“Hi Richard .. Rupert has sent across 5k wit ref of 50697 to Jcb this morning, speak later thanks for ur help/patience Claire:)”

399. On 18 October she sent another text message at 13.39

“trying to listen & pick up on the things you say ... as long as I’m not hot or humid like other day ... if cool and chance of the w lads being round will not wear shorts ..x”

400. In cross-examination Mr Fryer-Spedding asked her specifically about the payment of the £5,000 and whether it was a loan or an out and out payment (again with emphasis added):

“Q. You received £180,000?”

A. Yes.

Q. On 17 October you sent money to Rupert? There is nothing about a loan, is there?

A. No, I haven’t written that.
It was agreed between us it was all loans

Q. All/any monies were loans?

A. Whatever he wanted.

Q. There was no loan of £5,000, was there?

A. It was all verbal.

Q. There was no loan agreement for the £5,000?

A. Rupert said but we have any []

Q. Did he ask for a loan specifically?

A. He needed a vehicle.

Q. He didn't ask to borrow money?

A. Yes, on the phone.

I probably didn't say I want to loan money.

Probably the right words didn't come out of my mouth on that occasion.

Q. *There was not a loan of £5,000?*

A. *When put like that, no*

Q. You what is pleaded in the core bundle p.7 para. 36 is not correct?

A. He wanted a vehicle.

He implied it.

“What do you want me to do about it?”

Q. *There is no loan, is there?*

A. *When you put it like that, yes I agree.”*

401. It seems to me that Claire's answers (particularly the italicised ones) are wholly fatal to the argument that the £5,000 which she paid to Rupert on that day was a loan. This was the only case where the payment was said to have been made expressly as a loan and on Claire's own admission the case of an express loan was not made out.

402. At some point, although precisely when is not clear, Claire said that she spoke to her accountant, Mr Midgely, and the family solicitor, Stephen Dunn. Both of them told her that the October Agreement did not mean anything. Neither of them was called to give evidence on her behalf. Again, what is significant is that, if that be the case, she had now been advised on a further two occasions that the October Agreement was not binding, but she took no steps to

repudiate it or to make prompt complaint about it to her solicitor. Her only answer when that was put to her by Mr Fryer-Spedding was that “I was trying to make the marriage work”.

403. Rupert’s evidence was that he had put the romantic side of the relationship behind him, but that the business side of the arrangement could continue:

“Q. Was working at the Farm beneficial/convenient?

A. Working at the Farm was not convenient because of the travelling back and forth.

I work on the Farm in own time on the cart and machinery.

Q. You had nowhere else to go?

A. No, I had other options with friends.

If Claire asked me to leave, I would have done.

Q. Wasn’t it odd going back there for 9 months?

A. We agreed – I helped on the Farm and so machines stayed there.

Claire knew the marriage had ended; I knew I had [ended it], but messages from Claire kept asking me to go back as friends on the Farm After I left in August we had no physical contact save 1 night.

She came out to the yard.

No other physical contact: “goose pimples; must be cold”.

Claire sent messages saying she loved me deeply.

She didn’t come across [as that] when we were at the Farm.

Q. She was bending over backwards?

A. Not correct.

I didn’t reply to the messages because I was being forced one way.

We would pass on the yard daily: she said in messages that she wanted me back.

Q. You saying to her that you could trust her?

A. No, incorrect.”

404. He denied that he was in any sense leading Claire on to hope for a matrimonial conciliation. He was adamant that the arrangement over the use of the Farm were a purely business relationship. It was not the case that Claire allowed him to keep his machinery there because she thought that he was committed to the relationship. He told her that the Farm could never be home and never led her to believe that they could ever be together.

405. On Claire's account there was one evening when they had been to the cinema and Rupert came in and they had tea in the early hours when there was a verbal indication from him that, if she trusted him, he would rebuild the marriage, but even if that one incident occurred it must be seen in the context of Rupert's almost complete silence in not responding to Claire's incessant text messaging asking him to come back and I find that Rupert sedulously refrained from stating that he would go back and that he did not lead her to believe that they could be together again at the Farm. He had left the Farm, but was trying to get on in a working relationship and just got on with what he was doing, largely ignoring Claire's text messages. Even as late as July 2018, when there was discussion about a possible tenancy agreement or similar arrangement between them, he said that any such suggestion was purely on the basis of day to day work and was not a suggestion emanating from him to build trust between them. What happened was that he and Claire spoke in the yard of the Farm about possibly splitting the Farm and selling part of it to him. He said that he might consider the top area if she were selling it if his machinery was still there, but the proposal came to nothing.

1 November 2017

406. On 1 November Claire transferred £50,000 of the proceeds of the share sale to KSHF. On the same day KSHF transferred £9,000 to KSHP (again on her case as a loan for the JCB, this being the fifth and final instalment, the total of which was £49,000). The remaining £41,000 was transferred to KSHF's deposit account.

407. On 1 November 2017, Mr Jones said that Claire called him out of the blue and told him that Rupert had in fact forced her to sign a document which stated that certain farming assets owned by her business, KSHF, would be transferred to him and that Claire would pay him £50,000.

408. Claire's only account of this telephone call in her witness statement was to the effect that she called Mr Jones and told him what Rupert had made her do. Mr Jones asked her what the document said and told her that the document was unlikely to be legally enforceable because Rupert had forced her to sign it. He also told her that she should not give Rupert any money or take any steps to transfer the machinery to him. She had no intention of doing anything in the document, so was comfortable with his advice.

409. In cross-examination she was asked about this conversation:

“Q. On 1 November you had a conversation with Mr Jones to which you refer to in your witness statement at para. 98. Did you make any notes of the conversation?

A. No.

Q. Was there any correspondence with Mr Jones about this conversation?

A. No.

Q. How accurate is your recollection 3 years later?

A. I think it’s accurate.

Q. “Forced” is untrue, isn’t it?

A. I had no choice.

Q. Did you say “forced” or was it put another way?

A. I am not sure how I first spoke to Mr Jones.
I would have explained what happened on the day.

Q. Did you tell him about the handwritten documents about the assets?

A. No.

Q. Did you tell him about the 9 October text messages?

A. No.

Q. Did you tell him about the £5,000 payment on 17 October?

A. I am not sure, no.

Q. Did you tell him you were living apart?

A. I don’t think I went into discussion about that, I’m not sure, I don’t think I did.

Q. Did you tell him that you had ended Rupert’s permission to come to the Farm?

A. I said what I said to Rupert.
The Farm’s not just work, it’s home as well.

Q. Did you tell Mr Jones that Rupert’s permission had ended and therefore he was committing trespass?

A. No, I didn't put it in those words.

Q. Rupert was welcome at Farm until July/August?

A. He was welcome at the Farm because we were working on the marriage.

It was not just a place of work.

Q. Looking at the text message on p.928: he was as welcome as can be?

A. Yes, it was both a home and a workplace.
Yes.”

410. So again Claire did not tell Mr Jones about material elements of the background to what happened on 10 October or indeed what had happened subsequently. Her evidence is again, however, completely at variance with any claim to trespass by Rupert on the Farm such as had been originally pleaded.

411. Mr Jones's account in his witness statement was that he told Claire that the document was unlikely to be enforceable because it had been signed under duress. He told her that they could apply to the Court to get an order that the document was not enforceable. Claire explained to him that she did not wish to issue a claim against her husband; her relationship was on the brink of collapse and she still wanted to work through her problems with Rupert. Mr Jones told Claire that, if it was not possible or practical to issue a claim, she should not give Rupert any money or transfer any assets. Claire told him that she did not plan to do so. He asked her if she had sent any money to Rupert and she told him that she had not done so, although he thought that she had said that money had changed hands between her and Rupert's companies. Mr Jones accepted that he knew subsequently from evidence disclosed in the proceedings that, at that time Claire had called him, £5,000 had been sent from her personal account to Rupert.

412. On this occasion Mr Jones had made a telephone attendance note of the conversation which reads

“1.11.17 – 09.38 – CM – MIL720/1
- RJ going ok
- Not mentioned cash
- he's buying a property
* - Passed over £35k
- Does he want pay off & then to leave

-

➤ Address

Date 10 Oct 2017 – Birthday of Girl

I Claire Jowitt in front of witness wish to transfer the below assets into the sole name

KSH Farm sell machinery @ nil value but declares VAT

“Plant receives [xxx] but declares VAT

Assets – 1 – 14

Cash [xxx] Rupert – to pay £50k

➤ Surrender directorships

➤ Mandates amended

➤ “ “

➤

➤ Who witnesses it -> Business owns

➤ ->”

413. He accepted that nowhere did the note record that Claire had been forced to sign the document and nowhere was it recorded that he had advised her that the document was unenforceable. He said that it was not necessary to record that advice. His practice was to take notes of the central facts which clients told him and the content of what he did not have before, so he would only record facts, such as that it was Claire’s daughter’s birthday. He would record matters of a factual nature, not his advice per se, notes to remember of things to follow up and not notes of advice to the client.

414. He understood that Rupert had not asked her for cash and did not recall exploring with Claire that Rupert was buying a property. He had put an asterisk next to “Passed over £35k” to ask a question about it at the end, but he did not know who had paid money to whom, although he thought it more likely that money was paid to Rupert/KSHP by Claire/KSHF.

415. He was asked why he had not referred in his witness statement to the payment of £35,000:

“Q. Why not refer in that paragraph to your note about £35K?

A. A combination of reasons: (1) I don’t recall that part of the conversation at all about the £35k (2) I had no detailed knowledge of the transactions at the time.

Q. Why not mention it in paragraph 27?

A. I can't say.

Q. It is important, isn't it?

A. As you say."

416. It was put to him that there was a very different emphasis in the witness statement from the emphasis in the attendance note: the former spoke of the relationship being on the brink of collapse, but working through their difficulties, the latter about paying off and leaving, so was there a possible reconciliation or a separation? He accepted that the contemporaneous attendance note spoke of prizing assets away and then leaving the relationship and that that was different from reconciliation with Rupert. He advised Claire not to transfer any money or assets to Rupert, although it appeared that £35,000 had been paid over on or before 1 November when they spoke, in the form of £9,000 on that day, £1,000 a month earlier on 1 October and a further £10,000 on the same day and £15,000 on 4 October. He candidly admitted that he did not remember that segment of the conversation. He did recall, however, that she referred to giving Rupert £5,000 on 17 October.

417. After that discussion, Mr Jones and Claire did not discuss the matter again. He finalised the firm's dealings with her in relation to the settlement deed and the firm's invoices. That concluded his dealings with her and he closed his file. He accepted that there was a significant period when he had no instructions from Claire until shortly before the letter of claim had been sent.

418. Although on this occasion an attendance note was made by Mr Jones of this conversation, it was again not followed up by an email or a letter of advice. Again I find that surprising. What was alleged was that one spouse had in fact forced the other to sign an agreement against her will, despite Mr Jones's advice on 10 October that she should not and his now apparently erroneous assumption that nothing untoward had in fact happened since Claire had not subsequently mentioned it to him. Yet after this conversation, albeit three weeks after the event, Mr Jones did not proffer any further advice and the trail went cold until many months later, by which time relations between Claire and Rupert had broken down altogether.

419. I accept that Mr Jones's practice was to take notes of the central facts which clients told him and the content of which he did not have before, so that he would only record facts (such as that it was Claire's daughter's birthday). His practice was to record matters of a factual nature, not his advice per se, notes to remember of things to follow up and not notes of advice to the client. However, the fact that he did not record his advice to his client (or in this case follow it up with a further letter or email of advice) inevitably renders his evidence in his witness statement of what actually passed between him and his client nearly 3 years earlier on 1 November 2017 and what the state of her relationship was with her husband when the agreement was signed and steps taken in relation to it all the weaker. Indeed, on his own admission there was a material segment of the conversation, about the sum of £35,000 which he simply did not remember, despite having noted it down. Again, as with the discussion on 10 October, it does not seem to have been regarded by Mr Jones as significantly dramatic to require a follow up call by him the next day or in the days to come to warrant a letter or email of advice to her about her options for dealing with the situation in which she found herself.

420. The conversation also impacts on the extent to which Claire was still subject to any duress or undue influence after 10 October 2017. If Mr Jones's witness statement was correct, she had now been advised that she could apply to the Court to get an order that the document was not enforceable and that, if it was not possible or practical to issue a claim, she should not give Rupert any money or transfer any assets. Yet she did not issue proceedings for many months thereafter and continued to transfer money and assets to Rupert, notwithstanding the advice not to do so.

The Evidence of Mr Philps

421. Mr Philps would visit the Farm about once a fortnight, more often if a project was on, and was always made to feel welcome by both Rupert and Claire. On one occasion he also went to babysit for Claire and Rupert one night when Claire's father was in hospital. He remembered that it was quite late in the evening when Rupert called him up out of the blue and asked him if I would go over. He stayed there until around midnight to 1 am. That was the same illness which then led to her father passing away, and it was about two weeks to a month later that he died. Mr Bennion-Pedley put it to Mr Philps that the babysitting had actually happened on the very night when her father died and that she had never forgotten his act of kindness, but Mr Philps disagreed that it was that night. I do not need to resolve that difference

in recollection, but it illustrates the close bond between Rupert and Mr Philps and that the latter would drop everything to go and help his friend.

422. Mr Philps remembered that, one night in October or November 2017 when he and Rupert were working on the top yard in the same tractor together with the engine on, Claire had come out to speak to them. He could not remember exactly what work they were doing, but he remembered the occasion because of what Claire said. He did not recall exactly how the conversation started, but his account was that Claire said to Rupert that he had made her sign an agreement against her will. That seemed odd to Mr Philps because Rupert was not the sort of person to demand things and he was also definitely not a paperwork person. He never dealt with anything like that, so Mr Philps thought that it was odd that he would now be involved in drafting an agreement. As he put it

“Rupert doesn’t do anything on computers really. He’s great with a spanner but wouldn’t know how to turn a computer on properly.”

423. Rupert responded to Claire by denying that he had made her sign anything and that Claire was having him on. Mr Philps was still sitting in the tractor with Rupert, whilst Claire stood on the ground next to the tractor. He believed that he also made the same comment to Claire at the time, namely that Rupert did not even know how to turn a computer on. Claire then changed her approach, instead saying that Rupert had stood over her and told her what to write, which he also could not believe would have happened, based on the type of person that Rupert was. He recalled that Claire was smiling as she said this and he thought that she was doing so because she wanted to wind Rupert up. He did not remember quite how the conversation ended, but he did not recall much else being said and that Claire just left them to it after that. He remembered not wanting to get involved and keeping quiet since he was friends with them both and did not want to put his foot in it either way. He and Claire were still close at the time.

424. It was significant that he was not cross-examined by Mr Bennion-Pedley on this incident. Mr Bennion-Pedley submitted in closing that the incident was evidence of the unlawful pressure applied to Claire by Rupert to get her to sign the October Agreement. In my judgment the incident does not bear the weight which Mr Bennion-Pedley sought to put on it. If Claire was indeed smiling as she said what she said, that is hardly evidence of being a victim of unlawful pressure and is rather indicative, as Mr Philps thought, of Claire saying it because she

wanted to wind Rupert up. With the exception of Mr Jones, Mr Philps was the only witness to whom Claire said that Rupert had made her sign an agreement against her will and his unchallenged evidence was that Claire was smiling as she said what she said and he thought that she was doing so because she wanted to wind Rupert up.

425. Claire's own evidence on this matter in cross-examination was again wholly vague and unconvincing (yet Mr Philps is the only other witness apart from Mr Jones to whom Claire said that she had been forced to sign the agreement against her will):

“Q. There was a meeting between you, Rupert and Nicholas Philps in October 2017.

A. There were several times when Nick was at the yard.

Q. You came out and said that you had had to sign the agreement against your will?

A. To Nick Philps? Yes, I think I could have done, not sure.

Q. You had been forced to draft an agreement which he got you to sign?

A. I am not sure.

...

A. I don't remember.

Q. Nicholas Philps thought it was a wind up?

A. No, I don't remember.”

426. Claire stayed in touch with him after that day, but the matter of the day on the tractor was not mentioned again. In early 2019 Claire invited him by text to go shooting. She said that this was to thank him for the babysitting. He thought that she was trying to get one up on Rupert and to pull him away from Rupert. He did not want that to happen and so declined the invitation on the basis of not wanting to upset Rupert and to stay friends with both of them. Claire said that that was fair enough. Since then he and Claire had stayed in touch, but spoke less and less, although they would speak as normal when they did have cause to speak to each other. Mr Bennion-Pedley pressed him as to what he meant by “trying to get one up on Rupert”. He said that it was difficult to explain; they had parted and he had not particularly stayed in close contact with Claire. He thought that she wanted him to go the Farm to upset Rupert; he said

that he would have loved to go, but that it was better not to go so as to keep the peace. His concern was not to upset Rupert.

Subsequent Actions, Test Messages and Payments: November/Early December

427. Notwithstanding that Rupert had left the Farmhouse at the end of August and had made it clear that the romantic side of their relationship was at an end, Claire continued to send him many text messages over the course of many months. What is remarkable from the record of these messages is the volume of Claire's text messages on the one side and the almost complete absence of a response from Rupert on the other. It is not necessary in this judgment to recite all of them, which run for several hundred pages, and I have confined myself to reciting only the terms of the most salient of them. (I have not sought in this judgment to replicate the emojis with which they are replete.)

428. Thus, for example on 7 November she texted at 00.44

“...
I have caused hurt which I never ever meant to do
I do as u ask because that's also my choice
I could never move on from u ...

Amounts have gone across which total 50k
a 10k, 11k, 15k, 5k & 9k
Roof and tax amounts coming shortly and if more possible ...

Missing not cuddling up at night
Must be easier for you .. or you couldn't keep driving down the drive
every single night
Ps hope you liked my overalls!”

and

“5k from me to u into ur private ac to Jcb for 8 ton
11k from hathersage rents to plant
15k from dads insurance policy to plant
9k from me to farm to plant
10k from farm to plant which came from 2,900 from hathersage and
insurance policy and vat repayment that farm needs to give back in
Dec. They are reconciled to the statements please take this text together
with cash books to any accountant ... not fiddling as u kindly put it!
Money money What about us us!”

429. To that Rupert's reply was

“Because you pushed me this way and other wise you would have abused me till I was dead.”

430. Although at first blush the reference to £50,000 might appear to be a reference to the figure of £50,000 in the October Agreement, the reference is not to the figure under the October Agreement which stipulated sums to be paid *after* the execution of that document. By contrast, the £10,000 payment had been made on 27 September, the £11,000 on 1 October and the £15,000 on 5 October. The £5,000 had been paid on 17 October and the £9,000 on 1 November, but, although they were paid after 10 October, I am satisfied that they were not paid pursuant to the October Agreement since it is apparent that the £50,000 under the October Agreement was an additional sum, as Claire herself recognised when she said that, even after payment of the £50,000 in 5 tranches, “Roof and tax amounts coming shortly and if more possible ...”

431. Claire continued on 25 November at 04.51

“I tried to call you earlier ...
I love you to bits, just wouldn’t want to create any more upset than already been ... nothing to hide ... want so much to help soothe any hurt or doubt that I created in your heart”.

432. On the same day KSHF transferred another £10,000 to KSHP. On the following day another payment of £10,000 was transferred by KSHF to KSHP. These were the third and fourth in the series of 8 payments passing from either Claire or KSHF to KSHP. I am satisfied that these payments were made under the October Agreement. Significantly neither of them is described as a loan in the KSHP bank statement. Nor is either of them described as a loan in the KSHF bank statement, the source from which they emanated. I find that these payments were not loans and that they were paid outright under the terms of the October Agreement. Although Claire conceded that there was no mention of a loan, she denied that the payments were made under the October Agreement. I find, however, that that evidence is not correct and that they were paid under the Agreement.

433. On 26 November Claire sent another text message at 10.35

“Another 10k gone across today
Have told Job they will be receiving a cheque for 20th December payments :-
Have put ready for you to sign/post in December

The fastrac is 6th payment out of 60

And 3cx 12th payment out of 48

Personally I don't think point raising cost of noviation

Cheque can be sent straight from plant, trying to be honest .. if you want to do any other no problem can enquire ready for the January payments.

Any settlements of either machine let me have cheque so can contact them to let them know which settling amount etc.”

Claire denied that this was anything to do with transferring the ownership of the assets in question; it was not about transferring the JCBs from KSHF to KSHP. That, she said, was never discussed. It was simply that Rupert would ask for information and she would let him have it.

434. On 27 November she texted at 17.36

“Love you ... nice to be cared about when you say get yourself in .. take steady on roads ... night xx”

435. On 29 November KSHF paid another £8,500 to KSHP, the fifth in the series of payments. It is not described as a loan in the KSHP bank statement. Nor is it described as a loan in the KSHF bank statement. Again I find that this payment was not a loan and that it was also paid outright under the terms of the October Agreement.

436. On 30 November Gordons paid Claire the balance of £91,150 owing from the share sale agreement with her brother.

437. On 1 December KSHF paid another £1,500 to KSHP, the sixth in the series of payments. Again it is not described as a loan in the KSHP bank statement. Nor is it described as a loan in the KSHF bank statement. I find that again this payment was not a loan and that it was also paid outright under the terms of the October Agreement.

438. Claire texted Rupert on 1 December at 07.41

“... love from you when your feeling all gentle and lovely xxxxx”.

Her next three texts ended respectively with 9, 6 and 3 kisses.

439. On 4 December KSHF paid another £10,000 to KSHP, the seventh and penultimate in the series of payments. Again, as with the payments made since 25 November, it is not described as a loan in the KSHP bank statement. Nor is it described as a loan in the KSHF bank statement. I also find that this payment was not a loan and that it was also paid outright under the terms of the October Agreement.

440. Claire's evidence was that

“Q. You paid him £50,000 under the October Agreement?”

A. No, the monies were loaned across to him.

Q. Look at the text message at p.982: “both of ours”? Nothing could be more affectionate, could it?

A. No.

Q. You sent him a large number of affectionate messages until July/August?

A. Yes.

Q. You paid Rupert £50,000 pursuant to the October agreement?

A. No.

Q. Look at the bank statement vol. 4 p.701.

That was paid under the October agreement, wasn't it; there is no mention of a loan, is there?

A. No, not so.

Q. Look at the text message vol. 5, p.941 on 26 November concerning the £10,000; there is no mention of loan, is there?

A. No.

Q. It wasn't a loan, was it?

A. Yes it was.

Q. The £8,000 and the £500 were made pursuant to the October agreement?

A. No it wasn't.

Q. Look at the text message at p.944: there is no reference to a loan, is there?

A. No, it is not stated, but it was a loan.

Q. On 1 December there is an additional £1,500 to make up £10,000 with the £8000 and the £500?

A. It was money Rupert wanted.

Q. Under the October agreement?

A. No, not under the Agreement.

Q. Look at p. 929; you were agreeing that you would pay?

A. That's how it reads, but it is not what Rupert wanted."

441. When faced with the fact that these payments were not described as loans she was constrained to agree. She did not accept that they were paid pursuant to the October Agreement, but could not explain why they were paid beyond the fact that Rupert wanted them. On the footing that each was a loan, she could not explain what the purpose of each loan was. I do not accept that explanation. The more likely explanation for them, given their timing and given their amount, is that they were paid pursuant to the October Agreement rather than for some other reason.

442. Thus, between 25 November and 4 December I find that payments totalling £40,000 were made by Claire through KSHF to Rupert through the medium of KSHP under the terms of the October Agreement and that these payments were not described as loans for the very good reason that they were not loans, but were out and out payments by one company to the other.

443. On 13 December Claire texted at 12.51

"Want to put past behind us ... I am sorry for all the hurt, only interested in us x"

and at 18.54

“Think you should stop here where it’s warm and can do you soup or something before bed”.

444. On 17 December she texted at 23.05

“... I miss you being at home every single night. The floor seemed nice next to you nothing seems nice without you”

445. There are many text messages in that or similar vein, for example on 21 December at 07.51

“ ... wanting to understand when you get upset so I never do it again, spoken words must match my heart ... saying what your heart feels is what I wanting to be doing ...”

and at 13.33

“Will try to move tomorrow afternoon so can be here on yard xxx”

to which Rupert replied

“Don’t bother thanks”.

446. Claire responded

“That’s nice of you.
Team work”

and Rupert replied

“There’s never been any team work only rupert that works”,

yet on 24 December she texted at 19.22

“... hoping one year we can have our own little one”.

447. Whilst it is apparent that Claire had not given up the prospect of a reconciliation with Rupert, it is equally clear to me, both from these exchanges and from the otherwise almost complete absence of a response from him, that Rupert was not interested in any such reconciliation on the matrimonial level.

448. According to Claire in her witness statement, she did not take any steps to implement the terms of the October Agreement:

“99. After the document was signed nothing changed. Rupert continued to use the machinery owned by KSHF and brought it back to be stored at the Farm each night. I continued to try to show Rupert how much I loved him and how badly I wanted our marriage to work.

100. As I said, I did not do anything after I signed the October Document to give Rupert the impression that I believed it meant anything legally. For instance:

(i) I did not transfer the Assets to anyone and KSHF continued to record the Assets in its accounts, and does do to this day.

(ii) KSHF did not produce any sales invoices, if that is what the October Document refers to and no VAT was declared by KSHF.

(iii) I did not pay, repay or owe Rupert £50,000. I certainly did not “repay” £50,000 within 14 days of the Share sale. The only payment made from me to Rupert within 14 days of the share sale was £5,000 on 17 October 2017 which was for the purchase of a new JCB for KSHP as described above at paragraphs 41 and 42.

(iv) As to the directorships of KSHF and KSHP, Rupert had already removed me as a director of KSHP. Rupert removed me on 3 October 2017, 7 days before the October Document. At the time of the October Document I was not a director of KHSP although I was unaware of this at the time. Rupert was not removed as a director of KSHF until 26 March 2019 after it became clear he would not return the money lent to KSHP and had taken KSHF’s machinery.”

I will deal with this contention below when I consider the question of the affirmation or ratification of the October Agreement.

Winter/Spring 2018

449. On 6 January 2018 Claire texted Rupert at 17.58

“Just a thought we could close down ksh farm Ltd and de register it from vat so it becomes as it used to be just no Reg farm selling forage from its land

This leaves everything in ksh plant and can be seen ksh fam Ltd that used to be has gone

To do this though we need to just speak and do it correctly

New bank account first, then raise sales for the capital items to plant but plant does not pay for them it only pays the farm the vat which gets paid to hmrc, plant then recovers vat in the next period
Farm can then be de Reg of vat and also become non limited ...”

450. On 8 January 2018 Claire texted Rupert at 9.26

“No rush but Making an app with mr Midgley for when next in Sheffield ... see black trailer painted and in case your wanting to exchange for new ... want to get these capital items across to plant ...”

and again at 10.56

“Once invoice raised after Friday so can get vat sorted ... will post off the log books for them all and get changed into ksh plant ltd then put the insurance to match .. just think if it’s all machinery is in plant you can exchange extra easier xx”

(This confirms that Claire had in fact retained the log books after 10 October 2017, which is consistent with the accounts of Mr Murray and Mrs Bannister.)

451. On 13 February 2018 Claire texted Rupert at 10.24

“Spoke to NFU who say they can keep vehicles in farm name as you said and take payment from plant ...
They are ceasuer Reg to the farm so you might think easier this way ... rather than paying to change that ... so either log books and ceaser Reg can be changed to plant and policy changed to plant or everything can stay the same and just take payment from plant ... whichever u think best xx”.

452. It was put to her by Mr Fryer-Spedding and she replied (with emphasis again added)

“Q. Look at the text message in the supplemental bundle p.164 on 6 January 2018 – all machinery/plant is going into the name of Plant?”

A. Again it was following a conversation.

Q. You are transferring machinery across to Rupert’s company?

A. *That’s what it appears.*

But it was following a conversation.

Q. You were carrying the October Agreement into effect?

A. It was following a conversation when he said I did not care.

Q. Look at the text message on p.176 – you want to get it across to Plant? This was transferring it under the October Agreement, wasn't it?

A. No, it was following a conversation when he said I did not care.

Q. It was under the October Agreement, wasn't it?

A. No, it was following a conversation.

Q. Look at the text message on p.179: it was all about the October Agreement, wasn't it?

A. *It seems like it.*

But it wasn't under the October Agreement.

Q. Look at the core bundle p.288: who spoke to the NFU?

A. It sounds like I spoke to the NFU.

I don't know when.

It was around the time of the text.

Q. What prompted the conversation? The agreement with Rupert?
What led to the series of messages about transferring from Farm to Plant?

A. No, it was just following a conversation.

...

Q. It goes back, doesn't it to the idea in the handwritten documents - Plant pays outgoings; you give an undertaking that you don't own the assets?

A. No."

453. I do not accept that these text messages were generated by some ad hoc conversation between Claire and Rupert. I find that these text messages were all to do with the transfer of the assets under the October Agreement.

454. On 14 February she texted him at 00.33

"Listened to what you said last night ...don't want you to feel like I'm putting you under any pressure ... I'll wait as long as it takes ... and goes without saying I'll help with anything I can and be here if you ever feel comfortable to consider a fresh start ... in meantime love being with you and spending time together when we can xx".

455. On 27 February Claire paid KSHP's corporation tax in the sum of £2,214. Claire said that KSHP's accountant had emailed her to confirm the sum owed. Rupert's mother was ill at the time and Claire did not want to worry him, so she paid HMRC on the understanding that it would be repaid. Rupert's account (see above) was that Claire must have made the payment of because the paperwork still went to her and because she used to pay tax for KSHP. Rupert did not ask her to do it or need her to do it as he had sufficient income at the time. She was not a director of KSHP at that time and had no obligation to pay tax on behalf of KSHP, but did so anyway under the agreement that she had made with him that she would pay him for his work.

456. On 9 March 2018 JCB Finance wrote to KSHF about the wish for KSHP to pay the rentals due for the JCBs falling due under the 2 finance agreements. Although JCB was willing to accept payments on behalf of KSHF, that acceptance in no way inferred any assignment to a third party or that any rights were vested in them or had been transferred to them and upon discharge of JCB's interest in its security title would pass to KSHF as the original customer. In the event that KSHF went into insolvency KSHP would rank as an unsecured creditor for any payment made on its behalf. If JCB did not hear by return it would nevertheless instigate KSHF's instructions and call for payments under the name of KSHP. A mandate for payment in the name of KSHP was then produced.

457. Mr Fryer-Spedding put to Claire that his was evidence of further implementation of the October Agreement:

“Q. Look at vol. 4 p.882 (the letter from JCB to KSHF)?

A. Yes, Rupert saw it at the time.
When it came through post.

Q. [reads] So with caveats, JCB is prepared to transfer payments to KSHP on account of KSHF's obligations?

A. Yes.

Q. But reserving its rights?

A. I am not sure.

Q. But ownership has already passed from KSHF to KSHP, so this is just tidying up with JCB?

A. Invoices were going from KSHP.

There was no money in KSHF to pay the direct debits.
Rupert said not to worry.

Q. Selden work was going straight to KSHP – KSHF was short of money?

A. Not because of that.
KSHF had paid for fuel/purchases.
Lots of purchases: really high, but sales were very low.

Q. So what you say in your witness statement at para. 100 is wrong, isn't it?

A. No, it's not wrong.

Q. You paid money?

A. No, I loaned money.

Q. You changed mandates – payments were to be made by KSHP rather than KSHF?

A. KSHF had no money.

Q. You had 10 months to challenge the Agreement?

A. With the [] said not what it seems.

Q. But you had professional advice?

A. Yes.

Q. You signed the agreement of your own free will?

A. I was trying to build, not to split up.

Q. The other payments were not loans: they were for work done by Rupert?

A. Not true.

Q. Look at vol.4 p.698 you instigated payment from KSHF to KSHP on Rupert's behalf?

A. I did it on behalf of KSHF.

Q. It was you who typed the word "loan", not Rupert.

A. Yes, not what was discussed – loans.

Q. In fact they were not loans?

A. They were.

Q. The £500 was not a loan, was it?

*A. There was a general verbal agreement.
It was probably not as official as an agreement.
“If you need such and such, it is no problem.”*

Q. You were not envisaging suing Rupert for return of the money?

A. I never thought he would take it and disappear.

Q. Did you intend to sue for return of money?

A. Yes, if he didn't pay.

Q. You never intended to make agreements which would enable you to sue Rupert for return of money?

A. I had the intention to make a loan if he needed it.

*He had done all the work and was entitled to it.
He could take money if he wished.*

Q. He was in fact entitled to all the monies; it was not a loan?

A. He wasn't entitled to it.

Q. All payments were either due to Rupert under the October Agreement or monies you would pay if he wanted?

A. No, untrue; he could have the monies if he wished; if he had the money, he would give it back.

Q. Look at the text message at vol. 5 p.1007 [21 August]
The sum there mentioned is £100,500: so what sum was paid outright and which was lent?
There are 2 alternatives; which part was transferred and which part was loaned?

A. It was all loans.

Q. That's not what it says, is it?

A. Sorry, may be I worded it wrong.

Q. What work was to be paid for? What KSHF would have to pay Rupert/KSHP for?

A. No.

Q. Monies could be taken if he wanted: why?

A. He was in a relationship, the same as me.

Q. But Rupert had done the work?

A. With KSHF machinery and plant.

Q. Look at the letter of claim vol. 2 p. 379 para. 4.2

The sum there is £133,714. Not the same as the figure in the text message of £100,500?

A. May be that was off top of my head; sorry, the figures may be wrong.

Q. So are you saying that £133,714 is the correct figure?

A. I think so.

Q. Look at the Particulars of Claim core bundle p.4.

The total is £102,714.

So why are you now saying it is £133,714?

A. I don't know. I can only think it was done quite early.

That's the only reason I can think why the figures are wrong.

Probably something that cropped up.

Q. What's going on?

A. I don't know.

Q. Rupert was entitled to take all of the assets he did because he intended to own them?

A. No.

Q. Look at p.380 para. 7.1 para. 5.5 – there is no mention of 3CX or the Fastrac?

A. Yes.

Q. Why are you not asking for return of Fastrac or 3CX: why not?

A. I am not sure to be honest.

Q. Not an []

A. You've got a point.

Q. You didn't want them back because you didn't want to pay the finance costs?

A. No.

Q. But you had no reason to temper your demands at this point, did you?

A. No.”

458. I am satisfied that the interaction between KSHF, KSHP and JCB is only explicable on the basis that what was involved was implementation of the October Agreement. The evidence about whether payments made were or were not loans I shall consider later.

459. It was Claire's case that from the spring onwards (although the dates were not more clearly specified) Rupert entered the Farm and removed significant quantities of topsoil. None of this is referred to or backed up by the evidence of the contemporaneous text messages.

460. On 26 April Claire texted Rupert at 21.53

“Nothing I would love more than for this place to be both ours and to earn so we could work together and watch the little ones grow up ... bet your body thinking massage now ... Me first ... night x”

Two days later she texted at 22.58

“Thank you for every thing your doing making everywhere look lovely ... night x.”

461. On 15 May 2018 JCB Finance confirmed the settlement amount due on the JCB Fastrac, which was £78,308.92 and two days later Rupert on behalf of KSHP signed the JCB fixed rate agreement schedule and the direct debit schedule for the Fastrac.

Summer 2018

462. On 12 July 2018 Claire paid a final sum of £10,000 to KSHP, the last in the series of 8 payments. Claire said that she was at home with her friend, Kate Beckwith. Rupert rang her and asked her to send him £10,000. At the time she felt as if the relationship was in tatters and she was conscious that, if she refused to lend him more money, it might mean that he would end the relationship for good, so she agreed. I find, however, that the money was not a loan and was in fact the last instalment of £10,000 due under the October Agreement.

463. Kate Beckwith raised concerns with her about the money which she had paid to Rupert or KSHP and it was Claire's case that at that point that she realised that Rupert or KSHP needed to pay some of the money back. She therefore decided that she would not lend Rupert or KSHP any more money and that he would need either to commit to the relationship or stop using the Farm for work and leave.

464. However, on 15 July Claire texted Rupert at 11.56

“Thank you loads for helping me
Know your really busy ... keeping place nice just means a lot to me,
appreciate the help lots ... thank you”

and at 20.27

“... want you in my life not out!”

465. Again, that is hardly consistent with the case that at that point, on or around 12 July 2018, she realised that Rupert or KSHP needed to pay some of the money back, although it is clear that it was at about this time that Claire finally realised that there would not be any romantic reconciliation with Rupert.

466. Thus on 20 July she texted him at 01.16

“I had to end things as you saw them between us now ... it's not how I
feel about you so couldn't go along with it sorry.
My heart only open to you for home family and team work and I will
not settle for anything less”.

467. On 27 July at 8.07 came the first mention of the placing of the boulders

“The boulders are just so it makes it easier for them to get in and out
but will padlock so we both have keys ...
... want the boulders moving as your not going to be here ...”,

and at 10.46 she texted him

“Please try to understand what your love and help ... not just help ... rather than have nothing and know where my heart stands ... hurts too much ... but thanks for helping with water”

and on 29 July 2018 at 00.04

“... can’t stand you pushing me away ... love you too much ... it hurts”.

468. However, on 30 July at 20.49 she texted

“I am not carrying on next year in a passionless, emotionally unavailable relationship that hurts so very much”

to which she added on 31 July at 11.35

“I’ll pick up some chains today for gates so boulders can be moved thanks”

and on 1 August 2018 at 11.44 she texted

“Forgiveness is an expression of love and if you can’t find it in your heart .. we don’t feel the same ... and you feel like this please walk away from here, me and Mia”

to which Rupert briefly replied

“Ok I have tried I’ll be gone soon”

to which Claire replied by return

“... all I want is to be loved and looked after and you to protect me, our home and family and do what you think best ... but it can never be business my heart loves you way too much”.

469. On 16 August Claire crossed her Rubicon and sent a text message to Rupert at 10.25 referring to the money which she or KSHF had paid to him or KSHP over the last 10 months:

“As a result of us being separate I wanted to let you know that I have been discussing the assets the farm purchased and the cash the business has transferred to you/Ksh plant over the last 10 months or so.

The advice I have had is that the assets, including those listed in the letter you made me sign on the 10th October, still legally belong to the farm. The cash totalled £100,500.00

With us being separated I would appreciate your views on how we can rectify the problem of the farm owning the machinery you use. Farm assets need to be kept here at the farm and regarding the van I would appreciate it if you would return along with both sets of keys”.

470. Claire said that that was when Rupert changed. He placed large boulders outside of the outbuildings at the Farm which housed KSHF’s machinery and parked a green trailer outside the container in the bottom yard where wood was stored so that she could not access it or use it. He replaced several padlocks on gates and outbuildings so that she did not have the keys to remove them. It is in fact apparent that the boulders were in place before this; the reason for their being here I shall consider shortly.

471. It was her case that, shortly after she sent the text message on 16 August, Rupert started to remove the assets listed as items 1 to 4 and 6 to 15 in the Schedule to the Amended Particulars of Claim from KSHF’s premises. He had already been using the Ford Transit (item 5 of the Schedule) for some time prior to refusing to return the keys to her.

472. On 20 August Rupert sent Claire a text message at 19.04

“Any further communication should be in writing via text or email so there is a record. Please ensure any paperwork that you have mentioned is emailed to me by tomorrow evening ...”

473. On 21 August Claire sent a further text message to Rupert at 20.51, suggesting a settlement figure for him to repay, taking into account what she said were the cash loans and the value of KSHP’s assets used to purchase new machines for KSHF:

“I have had a look at what the farm has bought, the cash it has transferred to you/your business and what money/assets/you have put in.

Farm machinery excluding Jcb’s have approx. net value of £141,500
On the Jcb 3cx and Jcb fastrac the farm paid £6871 towards the 3cx Jcb and £56,350 towards Jcb fastrac if you take into account the £48,000 paid to you for the new Holland and the instalments.
In addition I/the farm has transferred/lent £100,500 to you/the plant business. So in total that comes to £305,221

I know you have done work for the farm but plant business has also used the farm without paying anything to the farm and there is some work the farm will have to pay for.
Please can we agree terms so you/the plant business can pay back the 305k”.

474. The final unravelling of the last vestiges of the relationship can be seen from the series of text messages passing between Claire and Rupert between 4 September and 2 October 2018.

475. On 4 September Claire texted at 14.30

“Please could you remove off the farm the large pile of rubble/clay material that’s in Midin area and there’s a small pile of similar clay/stone material that’s at the side/behind it ... Along with the digger that doesn’t run. When could this be done please. Thanks.”

to which Rupert replied at 17.00

“On my way for yellow tank thanks Rupert”

476. On 5 September he texted her at 16.37

“Coming down to collect sheep shortly cheers Rupert”

to which she replied

“Ok thanks ... when are you able to move the digger please in the back yard ... need to use that area, thanks”

to which Rupert replied at 16.37 the next day

“On my way for the digger cheers Rupert”

and at 18.22

“Digger collected yard left tidy will be in touch to collect my other belongings hope your have ing a nice time with your x there’s only one bet that my money’s on lol enjoy”.

477. Claire replied by return

“Stop accusing me ... your totally out of order ... Mia is with grace and she saw her dad we live in a small area ... that’s it ... stop making something up that isn’t true just to suit you”

to which Rupert answered on 7 September at 10.06

“Claire Iv lost 3 years of my life being black mailed by you against the fact that Phil abused you and if I left he would do it again ... I would just like to say thank you for taking 3 years of my life from me, destroying me and on top of this is the 2 years of Mia’s life I have lost kind regards Rupert”.

478. On 11 September Claire texted Rupert at 11.37

“Please can you remove your lock off top building wood store ... do have you any idea please when you can remove the pile of stone/clay in and next to middin? Thanks”

to which Rupert replied at 15.54

“Hi yes remove the lock as soon as I have removed my other logs. I aim to do this in the next week and will sweep through and remove pallets as well so the bay is all clean. I will come back to you shortly with dates for the stone removal regards Rupert”.

479. On 17 September Claire texted Rupert at 11.53

“Please can you text me dates for the stone/clay in middin to be removed from farm .. thanks”

and at 14.22

“Also Just wanting to check this week you will be removing your lock from wood shed here so I can access my shed. Thanks.”

480. Rupert replied on 21 September at 09.38

“Hi ... I will be up this afternoon and evening to start and move stone etc from the top yard please confirm this is ok regards. Rupert”

and Claire replied by return

“Thank you, the priority for me please if ok is that you unlock my barn so can use it, remove the clay/rubble in and next to middin, remove scrap and any site materials from farm.

Please can you remove the tree stumps that you have deposited on the farm. If you could address these items first that would be appreciated thanks”.

481. On 25 September she texted him at 11.46

“Hi Rupert

Please would you

Within 2 days – remove your lock from empty wood shed

Within 7 days – Remove your belongings from farm

and remove what’s blocking access to green container

Within 14 days – remove clay/rubble in and next to middin

Within 28 days – remove other stone piles

Thanks”

482. Rupert replied on 28 September that it was best if they only had contact through solicitors in writing, but on 1 October he texted Claire at 15.49

“Hi will be attending the farm on Thursday 4th October to remove the last of my belongings. I will require access to the workshop & storage area & the hall. I will organise for the container to be removed and returned within 21 days once I have removed my belongings from it. Thanks Rupert”

483. On 2 October Claire texted him at 11.48

“Hi sorry I had to remove your lock from barn so I could get in it. Without permission farm belongings have been removed and not returned when asked.

Consequently the container is not to be moved and currently you have no access to those areas ... your belongings will all be in storage areas. Roughly what time Thursday?”

to which Rupert replied

“I will attend around 4pm on Thursday. Please ensure that all of my personal belongings from the house including my fathers possessions are in the storage area along with the washing machine which is mine from The Shuttle. I will empty the container in situ.”

484. Claire said that on 2 October she removed the lock herself by grinding it off. The wood store was empty when she gained access to it.

Trespass At The Farm

485. When Rupert moved out of the Farmhouse it was Claire's original case said that she made it clear to him that he could not continue to use the Farm as his place of business unless they were to reconcile their relationship. In conversation with Rupert she said that she told him that the Farm was not to be seen by him as a place of work, but always a home. She made it very clear that he was breaking her heart in continuing to use the Farm as a business premises.

486. She told him that, if he was done with the relationship, he would go. The fact that he continued to come and go from the Farm and continued to run his business from there made her think that there was some hope that Rupert wanted the relationship to work too.

487. By contrast, it was Rupert's case that, after he left the Farm in August 2017, Claire never told him that he was not allowed to be there working or to keep his machinery there. She did try to get him to continue with the relationship, but she never said that he had to agree to that in order to continue to use the Farm. There were dozens of messages from her because she would keep on texting him constantly and for the most part he would ignore them and rarely speak to her on the phone. The main occasions when he spoke to her was when he was at the Farm in person.

488. He carried on working there and Claire was pushing him to do things with her to bring him back into the relationship. She would offer to go to the cinema or have dinner or ask if he wanted tea. If ever someone else was around she made it very prominent that she was there and would ask them if they wanted drinks and food. If Rupert declined, she would still make the tea or would bring out a bowl of chips or chicken nuggets or fish fingers. If Rupert went to the Farm to fix a car in the shed for a friend, she would bring a drink and something to eat with her.

489. Apart from the text messages begging him to come back, she also posted pictures on social media thanking him for the work which he did. None of that made sense if she now said that he was trespassing the whole time, during which she was trying to get back with him.

Mr Murray's Account

490. Mr Murray continued to work with Rupert throughout 2017 and 2018 and regularly went to the Farm for work purposes throughout that period. After Claire and Rupert had split up there were 2 cars which he owned (a track car and his regular car) on which Claire allowed him to work at the Farm and remove the engines from them. Sometimes Rupert helped with them. Mr Murray continued to go to and work at the Farm regularly. Claire would still bring them drinks when they were working and offered them ice creams when the weather was hot, although sometimes she would try to give them more than they wanted.

491. Claire was always quite nice with him, but Mr Murray always felt that she was someone who could make problems out of nothing. She would occasionally come into the garage where he and Rupert were working and it seemed as if she were being overly nice to him, just to make it seem as if it were Rupert who was in the wrong and that he was the reason for them having had a disagreement. She would also try to be overly helpful, to the extent that he believed that it was not sincere and there was some sort of ulterior motive, to wind Rupert up a bit. For example, there were times when Claire would start washing one of Rupert's machines at a time when she knew that he needed to be using it and it seemed as if she were doing that sort of thing on purpose either to stop Rupert from leaving or to wind him up. Even after they split up, Claire would come and try and get in the tractor cab with Rupert, when she knew that Rupert no longer wanted to be in a relationship. At that time Rupert just wanted to work and separate their affairs. When they had split up, Rupert just tried to keep away if possible and get on with what he had to do. Claire would make that difficult by doing those sorts of things, but Rupert was too good natured to ignore Claire when she said she needed help. Claire would continue to say to Rupert that he should come back to the Farm and move back in. Even towards the end when Rupert was moving things out of the Farm, Claire was asking him in Mr Murray's hearing if he would come back.

492. Throughout the time they were working at Selden, they would finish on site usually around 3 pm or 4 pm, with Rupert often staying later and they would go back to the Farm to take machinery back and to do some work there. Claire would often bring out buckets to wash the vehicles with and would bring out hay and straw so she would continue to make them feel welcome in that way too, even after they had split up.

493. On Mr Murray's last visit to the Farm, Rupert offered several times to Claire that he would come back and tidy things up if she needed. That was not because he had done anything or caused it, but because he continued to want to be helpful, as he had been doing all that time even though they had split up. However, Claire started being, as he put it "a bit off" with Rupert and saying she was going to call the police although Mr Murray did not understand why. He did not believe that the police ever turned up, certainly not while they were there.

494. Mr Murray's evidence was that at no time until that last visit was he ever aware that it was alleged that Rupert had been trespassing at the Farm or that his or their presence at the Farm doing things like collecting plant and tools, fixing vehicles and cleaning machinery would have been considered by Claire to be trespassing. There was never any attempt to prevent them from doing so; in fact it was the opposite, in that both Rupert and Mr Murray had been encouraged to be at the Farm and made to feel welcome by Claire. It was only on that very last visit that she seemed "a bit off" and did not want them there.

Mr Mycock's Account

495. On 20 October 2017 Mr Mycock said that he had been asked by Claire by text whether he would be able to repair a pair of wooden horse jumps which had been broken by the wind. He went to the Farm the next day to check what the job involved. He understood that she and Rupert were no longer a couple, but the atmosphere was not awkward. He remembered that Claire asked Rupert for his opinion on the joinery work, so they were still speaking to each other and she involved Rupert in decision making. Once he had finished the job, he went back to the Farm a couple of days later to see Rupert and Mr Murray, who were fixing the brake callipers on his car in return for fixing the horse jumps for Claire. Claire came out of the workshop, asked if they wanted a drink and brought out drinks and chips for them. He did not do any further work for them after that, but if driving past the Farm he would often stop to say hello. Rupert was still doing work for Claire if she asked him to, so it appeared to him that they were continuing a working relationship at least. He did not see any hostility between Claire and Rupert and everything seemed amicable as far as he could tell.

496. Mr Mycock had been to the Farm with Rupert to remove his possessions. His final visit to the Farm was on 4 October 2018 to help collect some of Rupert's personal possessions. By that stage all of Rupert's tools and furniture had gone. Rupert had asked him to accompany him to the Farm because he wanted someone there as a witness. They loaded up the van with

tools and then went to ask Claire for access to a locked shipping container, towards the back of the yard, next to a diesel fuel tank, which Rupert said had some last items in it. However, Claire refused to allow access and became angry, although he could not remember specifically what she had said or the reason for her refusal. They then left the Farm. At no time during his visits had Claire suggested that Rupert was trespassing on the Farm. All that he knew about that was what Rupert had told him; Rupert was allowed to operate from the Farm and in exchange he would do work on the Farm. Rupert did not speak about Claire or what he thought of Claire at that stage and Mr Mycock was not aware of her asking Rupert to return money, the van or the farm machinery.

Mr Philps' Account

497. Mr Philps visited the farm on several occasions in 2017 and 2018 with Rupert in order to fix vehicles and various other work activities and he said that it felt normal for them to do so. Whenever they visited, Claire would always make them feel welcome, both before and after she split up with Rupert. They were regularly brought food and drinks and he specifically remember being asked if he wanted a slice of cake on at least one occasion. At no time was it ever alleged that Rupert had been trespassing at the Farm or that his or their presence at the Farm collecting plant, trailers and tools or fixing vehicles was considered by Claire to be trespassing. There was never any attempt to prevent them from doing so. Claire and he had remained friends since and he did not think that he would have been invited shooting if he had been trespassing with Rupert on the Farm.

Mr Foden's Account

498. Mr Foden visited the Farm on several occasions in 2017 and 2018 with Rupert in order to pick up plant and tools and to admire the vast improvements made to the Farm during that period of time. He first attended the Farm just to see what Rupert was all about and get to know him before starting at Selden. At that initial period Rupert would tell him about his plans for the place and how he hoped to have wedding receptions there and other projects in future.

499. As Rupert and Claire's relationship continued to deteriorate, Rupert mentioned to Mr Foden that he would need a weekend to move all of his equipment and find somewhere to keep it. He called on various friends and family to do so. The directors of Selden also agreed that he could store some equipment on site and Rupert stored some of his machinery at the Selden site from end of August 2018 once he had removed it from the Farm.

Mrs Bannister's Account

500. Mrs Bannister said that the relationship was “a bit odd” because on one hand Rupert was telling her that they were no longer together, whereas Claire was continuing to act as if they were still in a relationship and building a future together. There was one particular sunny day after they had split up, when Mrs Bannister had gone to collect hay, when Claire was mowing the front grass and weeding the drive. Mrs Bannister stopped to comment on how much space Claire had to maintain, knowing that they were no longer in a relationship and so would now be responsible for it all. However, Claire responded to say that she and Rupert were going to “make a go of it”, in the sense that they were still building their lives together and developing the Farm. Mrs Bannister knew that that was not the case, but she did not comment or get involved. By that time Rupert was living with his mother and Mrs Bannister assumed that he did not want to live at the Farm and that the marriage was not therefore moving forward, despite what Claire was saying. Rupert for his part never said that he would not make a go of it, but that was what Mrs Bannister assumed was the case.

501. She would also visit the Farm to pick up hay made by Rupert for her horses. Rupert would leave a vehicle loaded with hay, with the keys on the wheel and she would leave the vehicle in which she arrived and take the loaded one. Each time she attended, Claire was always delightful, offering drinks and things to eat and would even specifically buy Rupert gluten-free biscuits as he had an intolerance to gluten.

502. She did not usually take Claire up on the offer of refreshments, but her husband and his friend did take up her offer once whilst Mrs Bannister was using the horse manege. However, after a while, her husband refused to go to the Farm as he found it too awkward because Claire was continuing to act as if she and Rupert were in a happy relationship, when the reality could not have been more different. Rupert was living at his mother's house, but Claire never acted like that was the case. There were times when Mrs Bannister was present when Rupert pulled up at the Farm and Claire would be there to greet him as if everything was normal. However, Mrs Bannister found her to be over-friendly and it was that which made her feel awkward; food and drink would be offered, even if she was only stopping off and collecting or dropping off something.

503. She visited the farm on average three or four times a month throughout 2017 and 2018 in order to pick things up or drop them off. At no time was it ever alleged that Rupert had been trespassing at the Farm. It was put to her that it was odd that he should continue to operate from the Farm, but she assumed that there was an agreement that he would keep his machines there.

504. The general trespass claim was abandoned at opening of trial in the light of a number of the text messages which I have set out above in the body of this judgment and the evidence of the various third parties which I have set out above. In my judgment, in the light of those text messages and the evidence of the third parties, the claim was rightly abandoned. I do not therefore need to deal in any detail with the allegations in relation to general trespass on the Farm after August 2107 made against Rupert, with which he dealt at some length in paragraphs 150 to 162 of his witness statement.

505. Again, in the light of the abandonment of the aggravated damages claim at the outset of the trial, I do not need to deal with the allegations of abusive behaviour with which he dealt in paragraphs 163 to 169 of his witness statement.

506. However, the allegations raised are relevant to the weight which I can properly give to Claire's evidence and her reliability as a witness, since they were further examples of her propensity to make allegations, but then having to abandon them in the light of the fact of compelling evidence to the contrary.

Damage to Property

507. Although the general trespass claim and the concomitant aggravated damages claim were withdrawn at the commencement of the trial, there were still four allegations of particular instances of damage to property.

508. In the first place, Claire alleged that Rupert removed soil from two of the fields at the Farm and removed it from site. She did not tell him that he could do this and he did it without her consent. She replaced the missing topsoil in both fields and re-seeded them.

509. Secondly, she said that Rupert had damaged a third field by dumping rubble and a concrete pipe. The field still needed to be repaired. The rubble and concrete pipe were waste material from a job on which Rupert was working. She did not know that Rupert had planned to dump the rubble in the fields and at the time she believed that he would remove it. The rubble and concrete pipe were finally removed from the Farm on 3 September 2020 as she was receiving

enquiries from Peak Park (instigated, she believed, by Rupert) as to when it would be moved. Claire accepted that she had not made any contemporaneous complaint about the alleged dumping of the rubble and stone

“A. I didn’t complain; I tried to trust what he was doing.
No, I didn’t raise it; I just trusted him.”

510. Thirdly, in September 2018 she said that Rupert removed an oil tank from the Farm which was connected to the underfloor heating throughout the Coach House. That had been installed on 24 October 2016. She did not know why Rupert took the tank. She certainly did not tell him that he could and did not know that he was going to do so before he did.

511. Fourthly, when Rupert removed firewood from the outbuilding, he damaged two stone walls, one of which formed part of the outbuilding.

512. Rupert’s answers to these allegations were as follows. There were only two instances of him moving topsoil. The first was because he put in tracks for the livery yard. When the horses walked across the Farm, it was better if it was not a field and if there was a track. He suggested putting in a membrane, some aggregate and woodchip on top. As far as he knew, everyone at the livery yard liked that. He moved the topsoil which he had removed to make the tracks to where Claire and Mr Gratton had dumped rubble on the land to tidy it up again. It might be that Claire referred to those tracks when she said that he dumped rubble and stone on fields. That was the only instance which he could recall of doing anything like dumping rubble.

513. The other instance of him removing topsoil was in relation to the work on the Selden site. Sometime into the job (around June 2017) he had to move the topsoil away so that construction could begin. He agreed that he could move the soil to the Farm where he could use the majority of it as he wanted. A small portion would have to go back to the site for landscaping when construction was finished. This was done on multiple occasions, but it was always topsoil which had been moved to the Farm from the construction site on condition that portions would go back. In the end perhaps 70% stayed at the Farm (something, he thought, in the region of 100 tons). Topsoil was a valuable commodity; it sold on average now for £75 per ton bag and loose for £50 per ton.

514. The concrete pipe which Claire alleged that he had dumped was a concrete pipe which he had agreed to take from the Selden site and had offered to Claire as a soakaway drain for the Farm. The top yard kept flooding and needed the drain. In and of itself it was probably worth £600. Whilst he was away, she hired some lads from Naylor's to do contracting work for the Farm. Some other work was done with smaller diggers and one of the lads smashed the pipe, which now showed a crack at the top along with two of the gate posts. He was not able to collect the concrete pipe in the end because Claire did not want him to do so.

515. The oil tank he took with Claire's permission. It was not being used and not fixed to the ground and Claire agreed that he could take it because she had sold the tank which he previously had at the house in Calver. A new tank cost around £1,200. In evidence Rupert said that

“Q. What about the oil tank?

A. She allowed me to take it – it was not fastened down.

Q. It was connected to the Coach House, wasn't it?

A. I couldn't say whether it was connected or not; I couldn't say for definite whether it was connected or not.

Q. Look at vol. 3 p. 501: it was connected and was part of the heating system, was it not?

A. It was empty and I cannot say whether it was connected or not; I wouldn't have left uncoupled if it would have caused any harm.

Q. Look at the invoice on p.534: Claire had to replace it, didn't she? She needed it for the heating system.

A. She sold the tank when I spoke to her about it; she said I could sell it.”

516. The two stone walls on the outbuilding which Claire said that he damaged were damaged prior to him being there, but it was also possible that the lads working with the small diggers damaged the outside wall further when they damaged the concrete pipe and the gate posts. The building was used as a log shed and Claire might have thought that he damaged it when he stored logs there, but that was not the case. It might be that the damage was hidden while the

logs were stored there and only became apparent after he left and the store of logs became depleted as it was not being replenished any longer.

517. Rupert denied that he had stolen any logs from the Farm. As a trained tree surgeon he would do contracting work on occasion. If he removed a limb he would take it back to the Farm, split it and make logs. Any timber made from trees on the Farm itself he left. In any event, after he moved to the Farm, any logs on the Farm were ones which he had split on rainy days with local men who spoke to the police when questioned about loading the logs. When he left the Farm, he did eventually take the logs which he had made from his work for others. Any logs from the Farm he left there. Because fresh wood needed to be seasoned it was always stored in organised piles in a way which made sense to Rupert because he had to keep track of what was ready to be used as firewood. When he left, he therefore knew that everything in a particular pile was from the Farm because it had been there for no more than 12 months.

518. Nor, he said, had he removed any hay from the Farm. He had rented farmland from different people since he was very young. He currently had three fields, all of which he rented for minimal rent or rent free, but with an obligation to carry on the upkeep - cutting the hedges, repairing the fencing, spraying and fertilising the fields. The hay and haylage from the Farm would go towards the stables, but he would often provide his own haylage for the girls on the livery yard. A bale of hay cost £30 and the amount which Claire alleged that he took would take multiple trailers to move and simply did not happen. He also had a yard at Calver where he stacked the bales of hay from his fields. Those bales only went to the Farm if they were needed for the livery or if they were transferred on to be delivered somewhere.

Mr Foden's Account

519. In mid-June 2017 Mr Foden agreed for Rupert to remove topsoil from the Selden site to be stored at the Farm and to be returned at a later date for landscaping, although the agreement was never put in writing. It was agreed that some of the soil would be used to top off the field previously levelled off to the front of the Farm. The reason for that was because one of the first jobs was to remove the topsoil. Most of it was taken off to various places, but Mr Foden told Rupert that he would need some back for landscaping in around 18 months' time. He agreed that he would store some at the Farm for this purpose. There was no payment involved; it was just as a goodwill gesture and the benefit of free topsoil for the field. The problem was that by the time that Jarvale needed the soil back, Claire and Rupert's relationship had broken down

and they were unable to move it back as Claire would not allow it and the soil was never returned to the site. Mr Foden believed that Claire would have known about the soil and why it was there because of her involvement in all the paperwork for the work at Jarvale.

Mr Murray's Account

520. Mr Murray said that, not long before last visit to the Farm, he had put loads of stone down on the entrance to the driveway to sort it out. It was getting worn away with horses passing over it and needed some rocks. Rupert had brought all the stone in and he asked Mr Murray to do it. It was a long driveway and took a while. That was again work which Rupert had done to be helpful or at Claire's request.

521. The last time he visited the Farm was when Rupert was moving out to live in his bungalow. Mr Murray thought that Claire was being a bit funny with Rupert on that occasion, not so much nasty, but obstructive and more confrontational with Rupert than she had been before. By that stage, whenever Claire was speaking, Mr Murray tried to do something else so as not to hear. It appeared that by this time Claire was trying to pick faults with Rupert. For example, she blamed him for leaving a manhole ring which had been smashed. Mr Murray was with Rupert when he rang up the contractors to find out what had happened and he knew that the lad who had hit it with his digger had admitted to it. He thought that his name was Connor and he had been working for Naylor's, who had been working for Claire to sort some things out at the Farm.

522. As to the allegation that Rupert had damaged some walls at the Farm, he thought that the walls were damaged by the same lad from Naylor's, who was not competent on the digger. The lad on the digger was not able to handle the digger and, as he put it, "was bashing things about". He thought that the same man was responsible for both incidents because the broken manhole ring was by the wall.

Letter Before Action

523. On 8 November 2018 Gordons, on behalf of both Claire and KSHF, wrote a letter before action demanding repayment of the money owed and return of the machinery which Rupert had taken from the Farm, followed by a further letter enclosing draft particulars of claim on 8 March 2019, to which Irwin Mitchell (who were then acting on behalf of Rupert and KSHP) replied on 5 April 2019. Gordons issued the claim form on 3 June 2019 and on 6 May 2020

Rupert petitioned for divorce, a petition which remains currently unresolved pending the outcome of these proceedings.

G Approved List of Issues

524. The list of issues as initially approved by His Honour Judge Klein appears below, although as Mr Fryer-Spedding pointed out in closing it is not a definitive list (for example, it does not include the question of the affirmation or ratification of the October Agreement and still included issue no longer pursued, such as the general trespass claim and the aggravated damages claim) and in my judgment needs to become somewhat recast.

Money Claim

1. Did KSHF lend the following sums of money to KSHP?

27 September 2017	£10,000
1 November 2017	£ 9,000
25 November 2017	£10,000
26 November 2017	£10,000
29 November 2017	£ 8,500
1 December 2017	£ 1,500
4 December 2017	<u>£10,000</u>
	£59,000

2. Did Claire lend the following sums of money to KSHP?

14 September 2017	£ 500
1 October 2017	£ 1,000
1 October 2017	£10,000
4 October 2017	£15,000
7 February 2018	£ 2,214
12 July 2018	<u>£10,000</u>
	£38,214

3. Did Claire lend the sum of £5,000 to Rupert on 17 October 2017?

4. If the transfers of the monies identified in the above tables were not loans, were the monies paid pursuant to either:

4.1 the October Document or

4.2 as a result of a further alleged agreement relating to repayment of inheritance tax and for tiles purchased for the Coach House?

5. Who were the parties to the document signed on 10 October 2017 (the “October Document”)?

6. Whether the October Document has any legal effect and if so what effect? Or whether it is void or voidable by reason of (i) duress, (ii) undue influence or (iii) both?

7. Whether the deadline for the share transfer between Claire and Mark Miller was 10 October 2017 and whether the share transfer would have failed if the document was not signed on this date?

Conversion of Chattels

8. Who had immediate entitlement to possession of the chattels as particularised at Paragraph 45.1 of the Amended Particulars of Claim (the “Assets”) at the time of the alleged conversion?

9. Who owned the Assets at the time of the alleged conversion?

10. Were any of the Assets wrongfully seized and removed by Mr Jowitt from the Premises?

11. What was the value of the Assets at the time of the alleged conversion?

12. What is the value of the Assets now?

Trespass to Land

13. Was Rupert authorised, and those working for him permitted, to come on to the premises after August/September 2017?

14. On what basis did Rupert and/or his agents:

14.1 remove significant quantities of top soil from Claire's property in the spring of 2018;

14.2 remove the oil tank in September 2018 from Claire's property;

14.3 deposit a significant quantity of rubble and stone at Claire's property.

14.4 park trailers in front of the outbuildings;

14.5 place boulders in front of storage containers?

15. Is Rupert liable in damages as a consequence of the actions referred to at 14 above?

16. Whether two stone walls at the premises were damaged on or around 27 September 2018 and whether Rupert and/or his agents were responsible for this damage and, if so, what sum (if any) is he liable to pay in damages?

17. Whether Rupert used abusive and insulting language whilst on the premises in October 2018?

18. Whether Claire asked Rupert or any of his employees to leave the premises on any of the occasions in which she claimed that Rupert was trespassing or whether she made it clear that the premises could not be used unless the parties continued their relationship?

H The Money Claim

525. As originally cast, the first three issues identified the payments in question with reference to the identity of the respective payer and the payee, thus (i) KSHF to KHSP (7 payments) (ii) Claire to KSHP (6 payments) and (iii) Claire to Rupert (1 payment):

Issue 1: Did KSHF lend £59,000 in 7 tranches between 27 September and 4 December 2017 to KSHP?

27 September 2017	£10,000
1 November 2017	£ 9,000
25 November 2017	£10,000
26 November 2017	£10,000
29 November 2017	£ 8,500
1 December 2017	£ 1,500
4 December 2017	<u>£10,000</u>
	£59,000

Issue 2: Did Claire lend £38,214 in 6 tranches between 14 September and 12 July 2018 to KSHP?

14 September 2017	£ 500
1 October 2017	£ 1,000
1 October 2017	£10,000
4 October 2017	£15,000
7 February 2018	£ 2,214
12 July 2018	<u>£10,000</u>
	£38,214

Issue 3: Did Claire lend the sum of £5,000 to Rupert on 17 October 2017?

526. In fact the distinction between the payments lay not so much in the identity of the payer and the payee, but whether they were advanced for the purpose of purchasing a new JCB (£49,000 in 5 tranches) or whether they were advanced on an ad hoc basis (£51,500 in 8 tranches together with £2,214 to pay corporation tax), a total of £102,714. With the exception of the sum of £5,000 paid by Claire to Rupert on 7 October 2017 (paragraph 37 of the Amended Particulars of Claim), which was said to have been the subject of an *express* agreement for repayment on demand, all of the sums in question were said to have been paid on the *implied* understanding that they would be repaid (paragraphs 31 and 34 thereof).

527. The first three issues are therefore perhaps most appositely recast as

Issue 1: were sums amounting to £49,000 advanced in 5 tranches between 27 September 2017 and 1 November 2017 for the purpose of purchasing a new JCB in the case of (i)-(iii) and (v) on the implied understanding that they would be repaid and in the case of (iv) on the basis of an express agreement for repayment on demand, as follows:

(i) 27 September 2017 £10,000 (KSHF to KSHP)

(ii) 1 October 2017 £10,000 (Claire to KSHP)

(iii) 4 October 2017 £15,000 (Claire to KSHP)

(iv) 17 October 2017 £ 5,000 (Claire to Rupert)

(v) 1 November 2017 £ 9,000 (KSHF to KSHP)?

Issue 2: were sums amounting to £53,714 advanced in 9 tranches between 14 September 2017 and 12 July 2018 on an ad hoc basis on the implied understanding that they would be repaid, as follows

(i) 14 September 2017 £ 500 (Claire to KSHP)

(ii) 1 October 2017 £ 1,000 (Claire to KSHP)

(iii) 25 November 2017 £10,000 (KSHF to KSHP)

(iv) 26 November 2017 £10,000 (KSHF to KSHP)

(v) 29 November 2017 £ 8,500 (KSHF to KSHP)

(vi) 1 December 2017 £ 1,500 (KSHF to KSHP)

(vii) 4 December 2017 £10,000 (KSHF to KSHP)

(viii) 27 February 2018 £ 2,214 (Claire to KSHP) (for the purpose of paying corporation tax)

(ix) 12 July 2018 £10,000 (Claire to KSHP)?

Issue 3: this becomes redundant in the light of the recasting of issues 1 and 2, but I shall leave it blank so as not to upset the numbering of the other issues.

Issue 4: If the transfers of the monies were not loans, were the monies paid pursuant to either:

4.1 the October Agreement or

4.2 as a result of a further alleged agreement relating to repayment of inheritance tax and for tiles purchased for the Coach House?

528. This issue is intimately bound up with the first three issues and falls to be considered together with them.

Issue 1:

529. It seems to me that the following four payments all stand or fall together:

(i) 27 September 2017 £10,000 (KSHF to KSHP)

(ii) 1 October 2017 £10,000 (Claire to KSHP)

(iii) 4 October 2017 £15,000 (Claire to KSHP)

(iv) 1 November 2017 £ 9,000 (KSHF to KSHP)

530. Although these sums, taken together with the sum of £1,000 paid by Claire to KSHP on 1 October 2017 and the £5,000 paid by Claire to Rupert on 17 October 2017, together amount to £50,000 and might at first blush be thought to have been the sum which was included in the October Agreement, that is not in fact so in that (i) all but one of those four payments were paid before 10 October 2017 (as indeed was the sum of £1,000 on 1 October 2017) and (ii) it is clear that in Claire's text message of 00.44 on 7 November 2017 they were regarded as different sums and that, even after payment of the £50,000 encompassed in those payments, additional sums were due under the October Agreement.

531. That the sums were advanced to allow Rupert to purchase the JCB is apparent from the evidence (which I have set out in paragraphs 212 and 231). The question is whether they were advanced to him by way of loan in circumstances where there was an implied agreement that he should repay them or whether they were out and out payments

532. The best contemporaneous evidence of the basis on which the monies were paid is provided by the descriptions in the KSHF and KSHP bank statements where the first three payments, together with that of £1,000 on 1 October 2017, are said to be loans. Mr Fryer-Spedding made the point that if Claire wrote up certain sums in question as loans in bank statements or in her company books, that of itself did not definitively characterise the payments as such. That I accept. I also accept that Rupert did not see the bank statements or the company books at the time and was content to leave that side of things to Claire.

533. Mr Fryer-Spedding also pointed out that there was evidence, in connection with the purchase of the McHale mowers, that Claire wrote up KSHF's books to show certain items of Rupert's as belonging to KSHF and he submitted that the books (at least when read in isolation) were therefore not an accurate or reliable record. It is the case, however, that she separately recorded the correct position, of Rupert's ownership, on stickers which she put on those books.

534. Nevertheless, the best contemporaneous evidence is that, at the time at which they were made, the first three payments (and the payment of £1,000 on 1 October 2017) were described as loans. I can see no reason why Claire would have falsely described the payments as loans when she made them. The more likely inference is that she described them as loans when she made them because they were loans and loans for the purchase of the JCB. Although the payment of £9,000 is not so described, it is clearly intimately bound up with the purchase of the JCB. On balance I am satisfied that the payments of £10,000 on 27 September 2017 from KSHF to KSHP, of £10,000 from Claire to KSHP on 1 October 2017, of £15,000 from Claire to KSHP on 4 October 2017 and of £9,000 from KSHF to KSHP on 1 November 2017 were made by way of loan. Thus KSHP must repay Claire £25,000 and must repay KSHF £19,000.

535. On the basis, however, of Claire's own evidence, as set out in paragraphs 392 and 393 above, I find that the fourth payment, that of 17 October 2017 of £5,000 (Claire to Rupert), which was the only one said to have been paid on the *express* understanding that it was a loan, was not in fact a loan, but an out and out payment and that Claire is not entitled to its repayment.

Issue 2:

536. As I have found in paragraphs 432, 435, 437, 439 and 462, the following sums were paid under the October Agreement:

(iii) 25 November 2017 £10,000 (KSHF to KSHP)

- (iv) 26 November 2017 £10,000 (KSHF to KSHP)
- (v) 29 November 2017 £ 8,500 (KSHF to KSHP)
- (vi) 1 December 2017 £ 1,500 (KSHF to KSHP)
- (vii) 4 December 2017 £10,000 (KSHF to KSHP)
- (ix) 12 July 2018 £10,000 (Claire to KSHP)

Significantly none of them is described as a loan in the KSHP bank statement. Nor are any of them described as a loan in the KSHF bank statement, the source from which they emanated. Consequently, having been paid under the October Agreement, they were not paid on the implied understanding that they would be repaid.

537. Claire sought to argue that they were not paid under the October Agreement because they were paid more than 14 days after the event, whereas the payment stipulated under the Agreement was to be made within 14 days of the completion of the Clamark share sale agreement. The payments may have been made more than 14 days afterwards, but that does not preclude them from being payments due and owing under the October Agreement, even if they were paid late.

538. Moreover, it is apparent that the first four payments at least (and, by implication, the fifth because of its proximity in time to the others) was regarded by Claire at least as forming part of a whole since she texted Rupert at 7.41 on 1 December 2017 when the fourth payment was made

“1,500 gone across to plant making this last group of payments 30k at the moment”.

“At the moment” clearly suggests that the payments of this group have not been exhausted and that there is more to come, which is consistent with the further payment of £10,000 3 days later.

539. The final sum of £10,000 was not paid by Claire to KSHP until much later, on 12 July 2018. Although there are text messages in the supplemental trial bundle for the period between 5 July and 15 July 2018, there is no reference to that payment in any of Claire’s numerous text messages, as one might have otherwise expected if she had been loaning money to Rupert after

such a considerable gap in time, and one is left with the conflict of evidence between Rupert (at paragraph 226) who said that it was a payment under the October Agreement and Claire (at page 462), who said it was a loan to Rupert. The absence of any reference to the payment is more suggestive of a payment which was bound to be made rather than something sought out of the blue and anticipated to be repaid at some point in time, and in my judgment the inference more naturally to be drawn was that it was the last payment due under the October Agreement, rather than a payment to Rupert by way of loan following an out of the blue phone call asking for money. Why it was not paid when the other payments were made in late November and early December is not apparent, but it may be indicative of Rupert's financial disorganisation that he did not chase the last payment due under the October Agreement at the time.

540. That leaves three individual payments which fall to be considered separately in each case:

- (i) 14 September 2017 £ 500 (Claire to KSHP)
- (ii) 1 October 2017 £ 1,000 (Claire to KSHP)
- (iii) 27 February 2018 £ 2,214 (Claire to KSHP) (for the purpose of paying corporation tax)

541. So far as the payment of £500 by Claire to KSHP on 14 September 2017 is concerned, Claire's oral evidence on that payment was that

“Q. The payment on 14 September was not a loan?

A. I didn't say so, but we always had that agreement.

Q. You may claim so but it wasn't.

A. We had this agreement.

Q. When did you agree this?

A. It was a general verbal agreement.

Q. When did you reach this agreement?

A. It was not as official as that, but we just recognised that if Rupert needed something for such and such or if he asked if we could buy something and if he did that would not have been a problem.”

542. The date and terms of this general verbal agreement are not apparent. The high water mark of Claire's case in relation to this payment was simply that they recognised that, "if Rupert needed something for such and such or if he asked if we could buy something and if he did that would not have been a problem." That wholly amorphous recognition in my judgment does not discharge the burden of proof on Claire to show that, in relation to such a small sum passing between spouses (albeit at that stage romantically estranged and no longer living under the same roof), there was an implied agreement that the sum advanced should be repaid.

543. So far as the payment of £1,000 by Claire to KSHP on 1 October 2017 is concerned, that by contrast is marked as a loan in the KSHF bank statement and in the corresponding KSHP statement. Although it was paid on the same day as the other sum of £10,000 passing from Claire to KSHP, it was not Claire's case that it was loaned for the purpose of acquiring the JCB, as was the case with the four payments totalling £44,000 to which I have referred above. Again, however, I can see no reason why Claire would have falsely described the payment as a loan when she made it. The more likely inference is that she described it as a loan when she made it because it was a loan, albeit that it was not part of the series of loans for the purchase of the JCB. Thus KSHP must repay Claire an additional sum of £1,000, as well as the £25,000 to which I have referred above.

544. As regards the payment of £2,214 by KSHF on 27 February 2018 to pay KSHP's corporation tax, I accept that Rupert's mother was ill at the time and that Claire, having been alerted to the need to pay the bill by her accountant, paid it the bill so that Rupert would not have to be bothered by it. In her mind she may have thought that it would be repaid to KSHF, but there is nothing in the contemporaneous text messages to suggest that she told Rupert what she had done or that the payment was made on the understanding or the agreement that it would be repaid nor is there any evidence that Rupert asked her to make the payment on his behalf or that he ever offered to reimburse her.

545. In fact there was no financial need for KSHF to pay such a relatively small sum since on that day the KSHP account was in credit to the sum of £41,380.05 and the outstanding corporation tax bill could easily have been paid by KSHP. Claire was not by this time a director of KSHP nor did she have any obligation to pay tax on behalf of KSHP. It is also highly unlikely that Claire paid this sum under any general agreement which she might have made with Rupert that she would pay him for his work. The inference which I draw from the surrounding evidence

is that Claire simply paid the bill since Rupert's mother was ill and she did not want to trouble him, thinking that she would be repaid, but that there was no agreement between her and Rupert whether express or implied, to that effect. Consequently there is no contractual liability to repay the sum of £2,214.

546. Mr Bennion-Pedley sought to argue in the alternative that that sum was nevertheless paid to discharge KSH Plant's liability for corporation tax. In the absence of an express agreement to lend the money, KSHF would be entitled to reimbursement of that sum in restitution. KSHP must be taken to have been enriched by the payment, either because it was paid pursuant to a general authority to do so or because KSHP had subsequently ratified and taken the benefit of the payment (see for example *Electricity Supply Nominees Limited v Thorn EMI Retail Limited* (1991) 63 P & CR 143 at 148 per Fox LJ, cited in Goff & Jones on The Law of Unjust Enrichment, 9th ed., at 5-73):

“The rule has prevailed in English law that a defendant's obligation to a creditor is not discharged if the creditor is paid by an unauthorised intervener acting voluntarily—i.e. by an intervener whose intention to pay is not vitiated in any way, and who does not pay pursuant to a legal liability. This rule was restated by Fox LJ in *Electricity Supply Nominees Ltd v Thorn EMI Retail Ltd*:

“If a person makes a voluntary payment intending to discharge another's debt, he will only discharge the debt if he acts with that person's authority or the latter subsequently ratifies the payment. Consequently if the payor makes the payment without authority and does not obtain subsequent ratification he normally has no redress against the debtor.”

547. It is apparent from what I have said above that there was no prior agreement or authorisation by Rupert or KSHP to Claire for her or KSHF to discharge the debt on KSHP's behalf. A restitutionary claim would only lie if KSHP had subsequently ratified and taken the benefit of the payment, but no such claim was pleaded and it is not open to KSHP to advance such a claim in the absence of a pleaded case to that effect.

Issue 3:

548. As stated above, this issue becomes redundant in the light of the recasting of issues 1 and 2, but I have left it blank so as not to upset the numbering of the other issues.

Issue 4:

549. The six payments which I have identified above, totalling £50,000, were paid under and as a result of the October Agreement. There was no further alleged agreement relating to repayment of inheritance tax and for tiles purchased for the Coach House, although the calculation of the £50,000 to be paid to Rupert included sums which encompassed the sum which he had loaned Claire for the purchase of the tiles and the sum which he had paid to Gordons to allow for the negotiations of the Clamark dispute to take place.

I The Assets Claim

Issue 5: Who were the parties to the document signed on 10 October 2017 (the “October Agreement”)?

550. Mr Bennion-Pedley submitted that, although one of the underlying purposes of the October Agreement was to procure a particular outcome, in the sense of the transfer of the machinery listed as KSHF assets to Rupert/KSHP, the companies were not in fact party to the October Agreement in that

(i) the October Agreement was a purely personal document between Claire and Rupert

(ii) the companies were not named as parties

(iii) the directorships were mentioned, but they did not purport to sign the Agreement in their capacity as directors.

551. Mr Fryer-Spedding countered that the Defendants’ case was that the October Agreement was a contract by which the Claimants agreed to transfer certain assets to KSHP and to pay Rupert the sum of £50,000. The contract was intended to transfer property in the Farm assets immediately and was effective for that purpose. Claire’s obligation to pay Rupert £50,000 was conditional on the completion of her share sale to Mr Miller and that condition was duly satisfied.

552. He submitted that, on the true construction of the Agreement, both of the Claimants and both of the Defendants were parties to it. The companies, KSHF and KSHP, were controlled by Claire and Rupert respectively (as both directors and shareholders): under the Agreement

KSHF transferred assets and KSHP received them. The commercial context in which the Agreement was signed was that Rupert did all of the contracting work, earning the money to service the finance agreements. The Defendants needed the equipment and could afford to service the finance agreements. The Claimants, by contrast, had no future need for the equipment and could not meet the finance obligations. Claire was concerned about carrying the can for machinery which she could not use and she did not want liability for machines she could not use. It was therefore important that Rupert and KSHP should have control over the assets. The commercial aim of the Agreement was that KSHP should take ownership of assets and then service the associated finance agreements, to the exoneration of KSHF; that meant that both of the companies had, sensibly, to be and to be seen as parties to the Agreement.

553. I do not accept that the October Agreement was a purely personal document between Claire and Rupert. It is true that the Agreement was not a professionally drawn agreement under which the companies would have been formally named as parties, but I am satisfied that the companies were parties to the Agreement and that Claire and Rupert signed it in their capacity as directors of their respective companies.

554. The Agreement makes clear that under it KSHF was to transfer the listed assets and KSHP was to receive them. Claire and Rupert were to resign their directorships of the other's company (in fact Rupert had removed Claire as a director of KSHP the previous week, but that does not affect the point currently under consideration) and the bank mandates of each company were to be amended by the removal of the other signatory. Those steps could only be achieved if the companies were parties to the Agreement.

555. Moreover, as Mr Fryer-Spedding was in my judgment right to submit, the October Agreement did not come into being in a vacuum. The commercial aim of the Agreement was that KSHP should take ownership of assets and then service the associated finance agreements, to the exoneration of KSHF; that meant that both of the companies had, sensibly, to be parties to the Agreement. In their absence the Agreement would have been nugatory. It was important that Rupert and KSHP should have control over the assets. Rupert was doing at the very least the vast majority of the contracting work and was earning the money to service the finance agreements. He and KSHP needed the equipment and could afford to service the finance agreements, whilst Claire and KSHF could not meet the finance obligations and she was concerned about having a liability for the machines.

556. I am therefore satisfied that the parties to the October Agreement were both of the Claimants, Claire and KSHF, and both of the Defendants, Rupert and KSHP and that it was not a purely personal agreement between Claire and Rupert.

Issue 5A: consideration

557. The point had not been pleaded, but it had nevertheless already made it way on to the List of issue and as it involved a matter of law I allowed it to be argued. The Claimants' primary position was that the October Document had no legal effect as it was unsupported by any consideration. Mr Bennion-Pedley submitted that

(a) the doctrine of consideration is based upon the idea of reciprocity, namely that "something of value in the eye of the law" must be given for a promise in order to make it enforceable as a contract;

(b) the consideration provided must move from Rupert and/or KSHP as alleged promisees; and

(c) in the case of the promise to repay money allegedly owed by Claire and/or KSHF, performance of an existing contractual duty was no consideration at all.

558. Accordingly, submitted Mr Bennion-Pedley, and putting aside that Claire was, prima facie, promising to transfer machinery which she did not own and (in the case of the financed machinery – the JCB 3CX and the Fastrac) that KSHF did not own either, there was no reciprocal benefit or detriment capable of rendering the gratuitous promise enforceable. There was nothing of value which passed from Claire to Rupert. This was part of the submission that the Agreement was a purely personal agreement between Claire and Rupert, a contention which I have rejected.

559. Similarly, to the extent that the October Agreement contained a promise to repay what was, on Rupert's case, an existing liability, that too was unenforceable as a separate free-standing contractual liability. Likewise any debts incurred after the date of the Agreement were not existing liabilities under it.

560. Mr Fryer-Spedding submitted that the Court was not concerned with the adequacy of consideration nor with whether the October Agreement was a good bargain for one party or the other. “Although consideration need not be adequate, it must be ‘of some value in the eye of the law’, that is, it must be capable of estimation in terms of economic or monetary value, even though there may be no very precise way of quantifying that value” (Chitty on Contracts, 33rd ed., para. 4-022). There was, however, clearly a quid pro quo for the October Agreement: Rupert’s position vis-à-vis Claire was that “if you sign this, I will sign the settlement agreement”.

561. He submitted that the Defendants plainly did provide consideration for the October Agreement since:

(a) Rupert agreed to resign as a director of KSHF and come off its bank mandate

(b) the Claimants’ own case was that, by making the October Agreement, Claire obtained the benefit of Rupert agreeing to sign the settlement agreement with Mr Miller

(c) KSHP undertook future liability for the vehicle finance agreements, to the exoneration of KSHF, which was clearly a benefit to KSHF (whether that was achieved by way of indemnity or by way of novation).

562. I agree with Mr Fryer-Spedding. I am not concerned with the adequacy of the consideration provided nor with whether the October Agreement was a good or sensible bargain for one party or the other.

563. Whatever the status of the £50,000 (and whether that was simply a promise to repay what was, on Rupert’s case, an existing liability), there was very clearly a quid pro quo for the October Agreement: by entering into it, Claire obtained the very real and practical benefit of Rupert agreeing to sign (and actually signing) the settlement agreement with her brother.

564. As part of that quid pro quo, Rupert agreed to resign as a director of KSHF. He also agreed to come off its bank mandate. Moreover, what the provision to the effect that “Any debts incurred after third date will be sorted out by sole director” was designed to achieve, apart from a general unscrambling of the corporate liabilities, was that KSHP would undertake

future liability for the vehicle finance agreements, to the exoneration of KSHF, which was clearly a benefit to KSHF (whether that was achieved by way of indemnity or by way of novation).

565. I am therefore satisfied that Rupert/KSHP provided good consideration for the October Agreement and that (absent any vitiating factor, to which I shall now turn) the October Agreement was valid and enforceable as a contract according to its tenor.

Issue 7: Whether the deadline for the share transfer between Claire and Mr Miller was 10 October 2017 and whether the share transfer would have failed if the document was not signed on this date?

566. Issue 7 is part of the factual background in which issue 6 needs to be determined and will be considered as part and parcel of the resolution of issue 6.

Issue 6: Whether the October Agreement has any legal effect and if so what effect? Or whether it is void or voidable by reason of (i) duress, (ii) undue influence or (iii) both?

567. Although it was initially pleaded (not by Mr Bennion-Pedley) that the October Agreement was void by reason of duress or undue influence, it was common ground that the vitiating factor of duress or undue influence would only have made the October agreement voidable and not void.

Duress

568. The Claimants submitted that the October Agreement was obtained by economic duress. There was very little, if any, dispute between the parties as to the applicable principles of law in this area. Rather the dispute between them was as to the application of the law to the facts.

569. According to Lord Goff in *Dimskal Shipping Co Sa v International Transport Workers Federation (The Evia Luck)* [1992] 2 AC 152 at 165

“... it is now accepted that economic pressure may be sufficient to amount to duress ... provided at least that the economic pressure may be characterised as illegitimate and has constituted a significant cause inducing the claimant to enter into the relevant contract.”

570. Thus to establish duress successfully, Claire needed to establish that Rupert applied *illegitimate* economic pressure; and that that illegitimate economic pressure constituted a *significant cause* inducing her to execute the October Agreement.

571. It is sometimes said that there is a third pre-requisite, namely that the party coerced must show that she had no real choice but to succumb to the pressure applied. Whether that is a separate limb or simply a mechanism for assessing the propriety of the demand or the causative potency of the alleged economic pressure is open to some academic debate, which for present purposes does not need to be resolved. What is clear, though, is that the pressure must have been “decisive or clinching”, see Mance J (as he then was) in *Huyton SA v Peter Cremer GmbH & Co* [1999] CLC 230 at 250

“The minimum basic test of subjective causation in economic duress ought, it appears to me, to be a ‘but for’ test. The illegitimate pressure must have been such as actually caused the making of the agreement, in the sense that it would not otherwise have been made either at all or, at least, in the terms in which it was made. In that sense, the pressure must have been decisive or clinching... it also seems clear that the application of a simple ‘but for’ test of subjective causation in conjunction with a requirement of actual or threatened breach of duty could lead too readily to relief being granted. It would not, for example, cater for the obvious possibility that, although the innocent party would never have acted as he did, but for the illegitimate pressure, he nevertheless had a real choice and could, if he had wished, equally well have resisted the pressure and, for example, pursued alternative legal redress.”

572. It was also common ground that economic duress cannot be committed where a threat is made to do an act which is lawful unless the person making the threat acts in bad faith. This is because

" In deciding the present case, it is enough to say that these precepts are not, in my judgment, engaged where a party uses lawful pressure to achieve a result to which it considers itself in good faith to be entitled. I say this in a context of commercial dealings where parties owe no duties as to the manner in which they exercise their personal rights and where parties may choose whether to enter into a contract and, if so, on what terms, and against a background where the courts have repeatedly rejected both inequality of bargaining power and the use of a monopoly position as grounds for setting aside contracts.

...

... the doctrine of lawful act duress does not extend to the use of lawful pressure to achieve a result to which the person exercising pressure believes in good faith it is entitled ... whether or not, objectively speaking, it has reasonable grounds for that belief. The common law and equity set tight limits to setting aside otherwise valid contracts. In this way undesirable uncertainty in a commercial context is reduced. I appreciate that in the context of the present case, which concerns the reasonableness of the grounds for resisting a claim, it can be said that a test of unreasonableness is not uncertain, because it can be tested and decided according to conventional legal standards. But that will not be the case in the much more common situation of a party using lawful commercial pressure in support of a purely commercial demand. There is no yardstick by which to judge such demands, save those that can be set out in legislation such as that applying to consumer contracts. Such demands are a matter of negotiation against the background of the pressures operating on both parties.

The relevant considerations go beyond uncertainty. In judging the use of lawful acts or threats of lawful acts as commercial pressure, there is a sharp distinction between such use to pursue demands made in good faith and those made in bad faith. As I earlier mentioned, a lack of good faith on the part of a contracting party is a feature in a number of the grounds on which contracts may be avoided. Rescission on grounds of fraudulent misrepresentation or unconscionable transaction are examples. It is a clear criterion involving conduct which all can agree is unacceptable and which is a fact capable of proof, often as it happens by reference to the lack of any reasonable grounds for the belief. By contrast, not only is reasonableness in this context a standard of very uncertain content but it is also very unclear why or on what basis the common law should hold that a party with a private law right, whose exercise is not subject to any overriding duty, cannot use it to achieve a purpose which is both lawful and advanced in good faith.”

(Times Travel (UK) Ltd v. Pakistan International Airlines Corporation [2020] Ch 98 per David Richards LJ at [103]-[106]).

573. In his skeleton argument in opening, Mr Bennion-Pedley submitted that it was common ground that

(a) Rupert had been appointed as a director of Clamark and Holmes solely for the purpose of avoiding a deadlock. Save for encouraging Claire to realise her interest in those companies, Rupert had no interest or involvement in them at all;

(b) Claire believed herself to have been excluded from the management of those companies and had not received any financial benefit from them for a significant period leading to a dispute and potential legal action that she could ill afford;

(c) Claire had had long and difficult negotiations with her brother which had resulted in an agreement in principle to sell her minority interests;

(d) by 4 October 2017 terms of a written settlement deed had been prepared and provided to Claire (and Rupert) for signature;

(e) on 9 October 2017, Claire's brother was demanding completion that day and saying that, in default of completion, his funding would likely be withdrawn;

(f) in the event that deal went off, Claire could not have pursued litigation and so would have lost £283,750, retaining her minority interest but with no practical means of deriving any financial benefit from it;

(g) in Rupert's words, he was "not bothered by that" and simply wanted to come away with the machines.

574. That was where the parties departed. Claire's case was that Rupert used the threat of refusing to join in the settlement in order to extract from her the October Agreement. In contrast, Rupert said that it was he who was pressured to sign by Claire.

575. Mr Bennion-Pedley submitted that the Court was entitled to conclude that the matters set out above constituted duress on either of the following approaches:

(a) if the Court concluded that Rupert's conduct crossed the line between ordinary and acceptable commercial pressure and coercion, see *Pao On and Others v Lau Yiu Long* [1980] 1 AC 615 at 635B per Lord Scarman

"Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree with the observation of Kerr J in *Occidental Worldwide Investment Corporation V. Skibs A/S Avanti*

[1976] 1 Lloyd's Rep. 293, 336 that in a contractual situation commercial pressure is not enough. There must be present some factor “which could in law be regarded as a coercion of his will so as to vitiate his consent.” This conception is in line with what was said in this Board's decision in *Barton v. Armstrong* [1976] AC 104, 121 by Lord Wilberforce and Lord Simon of Glaisdale - observations with which the majority judgment appears to be in agreement”

and/or

(b) by adopting the “range of factors approach” first advocated by Lord Scarman in *Pao On* and since widely adopted, for example, by Dyson J (as he then was) in *DSND Subsea Ltd v Petroleum Geo-Services ASA* [2000] BLR 530 at [131]:

“The ingredients of actionable duress are that there must be pressure, (a) whose practical effect is that there is compulsion on, or a lack of practical choice for, the victim, (b) which is illegitimate, and (c) which is a significant cause inducing the claimant to enter into the contract: see *Universal Tanking of Monrovia v ITWF* [1983] AC 336, 400B–E, and *The Evia Luck* [1992] 2 AC 152, 165G. In determining whether there has been illegitimate pressure, the courts take into account a range of factors. These include whether there has been an actual or threatened breach of contract; whether the person allegedly exerting the pressure has acted in good or bad faith; whether the victim had any realistic practical alternative but to submit to the pressure; whether the victim protested at the time; and whether he affirmed and sought to rely on the contract. These are all relevant factors. Illegitimate pressure must be distinguished from the rough and tumble of the pressure of normal commercial bargaining.”

576. Mr Bennion-Pedley submitted that the Court should conclude that:

(a) Rupert deliberately and cynically threatened to withhold his consent to the settlement agreement in order to extract the October Agreement from Claire;

(b) he did so unfairly and without any reasonable justification, knowing that, if he carried out his threat, it could cost Claire a very significant sum of money;

(c) Claire felt that she had no real alternative but to comply with Rupert's demands;

(d) Claire protested at the time and afterwards (for example, to Mr Philips).

577. Mr Bennion-Pedley submitted that the Claimants were not required to prove that Mr Miller would in fact have called the deal off, only that Claire believed that he would or was likely to. It was the effect of the threat on her decision making which was material and not the need to establish a counterfactual.

578. If the Court was satisfied of that, then the effect was either to preclude the Defendants from relying on the October Agreement in order to justify their removal and retention of the machinery and/or to provide adequate grounds upon which to set the October Agreement aside.

579. Mr Fryer-Spedding countered that, on the facts of this case, Rupert simply did not coerce or unduly influence Claire into entering into the October Agreement. The best contemporaneous documentary evidence was at odds with any such conclusion. Claire did have a practical choice about whether or not to enter into the October Agreement. She did not have to make the October Agreement or the agreement with her brother. Furthermore, Rupert's wish to separate his affairs from Claire's was legitimate and he had acted as he did in good faith. The October Agreement was drafted by Claire and carried into effect what she had said the previous day: i.e. "*I am totally fine with splitting whatever u like selling Audi etc I am only interested in future with u*".

580. Mr Fryer-Spedding summarised the Defendants' case as follows:

(a) the Claimants' pleaded case as to duress/undue influence was not supported by the evidence

(b) they did not plead that Rupert acted in bad faith; nor did he. He simply took up proposals which Claire had earlier herself formulated

(c) the October Agreement was to all parties' mutual advantage

(d) Claire had realistic practical alternatives to making the October Agreement and her case failed as a matter of causation

(e) Claire did not protest at the time

(f) she later affirmed and sought to rely upon the October Agreement

(g) Claire was not in a position to rescind the October Agreement.

(I shall deal with the questions of affirmation/ratification and rescission later).

581. As to (a), Mr Fryer-Spedding argued that the Claimants' pleaded case as to duress/undue influence was not supported by the evidence:

(i) the contemporaneous evidence showed that the first occasion on which Mr Miller mentioned a deadline for completion was by his solicitor's email at 11.08 on 9 October 2017 (11:08)

(ii) by 5pm the next day Rupert had signed the settlement agreement as Claire asked and it was emailed back to Mr. Jones.

582. Claire's case that Rupert held her to ransom in some way over the days between 4 October and 10 October 2017 was untrue. Significantly:

(i) the pleaded case at para. 7.3 of the Amended Reply was not supported by her own witness statement (para. 90), either as to the timing of her brother's deadline, or a refusal by Rupert to sign when so requested

(ii) nor was such a case part of her original letter of claim

(iii) the letter of claim said that, after the settlement agreement was sent to Claire on 4 October 2017 "*Over the coming days, Gordons chased Mrs. Jowitt to arrange for the Share Agreement [sic] to be signed by her and Mr. Jowitt, but Mr. Jowitt was refusing to sign the Share Agreement.*" That case – that Rupert was refusing to sign – was not supported by Claire's evidence at trial

(iv) when Mr. Jones sent the settlement agreement to Claire on 4 October 2017, his covering email spoke of no urgency; nor did Claire respond in such terms

(v) Mr. Jones' email to LFL of 14.27 on 9 October 2017 was a particularly important document. It stated "*Today is also the first time your client has made us aware of any deadline for funding.*" The email of 4.19 pm was merely one counterparty leaning on another; it was not saying that the deal was off if not signed. Claire was offering an asset split in that context and in light of her handwritten notes

(vi) the text messages from 10 October 2017 showed that it was Claire persuading Rupert to sign the settlement agreement, not a contrary exercise of Rupert dictating terms to Claire.

583. The best evidence showed that Claire did, contrary to her denial, go to the Selden Site on 10 October 2017 (that was the evidence of Rupert, Mr Murray and Mr Foden; Mr Sheldon's normal tractor was being serviced and so he was working at the back of the site in a position from which he could not have seen Claire).

584. Similarly, the best evidence did not support Claire's case that Rupert attended the Farmhouse in the evening of 10 October 2017 and demanded changes to the October Agreement:

(a) such changes as were made were modest, not fundamental, nor were they greatly to the Defendants' benefit

(b) Mr Sheldon and Mr Murray did not give accounts that supported Claire's case

(c) Rupert denied standing over Claire and dictating to her as she alleged and that seemed implausible, given what was involved in those changes.

585. Claire's present case was strongly at odds with her apologies and highly affectionate messages to Rupert in the immediate aftermath of the occasion on which Rupert was said to have forced her to sign a document against her will.

586. In any event, there were two separate and distinct threads in Claire's evidence: (a) that she was being manipulated for financial gain by a cynical, jealous man, who was given to barking instructions at her; and (b) that she tried to reassure someone she saw was upset, vulnerable and looking for reassurance.

587. These two submissions were inconsistent with each other; either he was domineering or he was vulnerable, but there was no single consistent case: Claire advanced both, but they could not be reconciled.

588. Bad faith on the part of Rupert was not pleaded, said Mr Fryer-Spedding, and did not happen: Rupert simply took up proposals which Claire had earlier herself formulated. In order to find in Claire's favour, it would be necessary to ignore the contemporaneous documents, prepared by Claire and given to Rupert, that presaged the terms of the October Agreement. Those were very important documents in establishing the truth of what transpired on 10 October 2017. The terms of the October Agreement were evidently her idea and Rupert simply took her up on her offer, in recognition of the end of their relationship.

589. The handwritten documents were not a remedy for reconciliation; they were instead a recognition of living apart and having their business apart. How could Rupert be faulted in October for acting on Claire's suggestions?

590. Mr Fryer-Spedding further submitted that it was important to recognise that the October Agreement made good commercial sense from all parties' perspective:

(a) once Claire and Rupert had separated, Claire and KSHF risked being in a position where they owned the assets and had the obligation to service the associated finance agreements, but would not have the income generated by Rupert's work so as to meet those obligations; assets passed to Rupert/KSHP, but in return for release from outgoings which would have crippled the Claimants

(b) for Rupert and KSHP's part, they had a need for the assets to continue to trade, but were not parties to the finance agreements

(c) thus, the terms of the October Agreement served those respective commercial purposes, reflected Claire's willingness to divide up their collective property and reflected Rupert's wish (accepted to this extent, and evidently very reluctantly, by Claire) to end his personal relationship with her. In her own words of 9 October 2017 "*I am totally fine with splitting whatever u like selling Audi etc I am only interested in future with u*"

(d) what then happened was that the Claimants and the Defendants agreed not to trouble formally to transfer the finance agreements over to KSHP. Instead KSHP simply started making the payments which fell due.

591. The Claimants' case as to duress was nebulous, but was at its clearest in paragraph 7.3 of the Amended Reply to the effect that Rupert unreasonably refused to sign the settlement agreement with Mr Miller, notwithstanding that on or about 4 October 2017 Claire told him that Mr Miller would withdraw his offer to her "*if completion did not take place imminently because his funding would be withdrawn.*"

592. It was, however, perfectly reasonable for Rupert, when confronted with the settlement agreement on 10 October 2017, to want to seek legal advice and not to sign until then.

593. Mr Fryer-Spedding submitted that one practical alternative to signing the October Agreement was that Claire and her brother, acting together, could have removed Rupert as a director of Clamark and Holmes without his involvement.

594. The second alternative course of action was simply not to sign. That was provided by Mr. Jones' evidence that he advised Claire on 10 October 2017 "*I told Claire she should not sign anything Rupert was asking her to sign*".

595. The third alternative was that in the course of the day Claire offered to arrange a meeting with her brother rather than have the documents signed that day.

596. Mr Fryer-Spedding submitted that Claire did not protest at the time of the signing of the October Agreement, contrary to the case which she had advanced. On the contrary, she apologised to Rupert for her conduct. Nor could she have protested: in short order she was implementing what she and Rupert had agreed.

Findings

597. In English law, the person who signs a written contract is, in the absence of some such vitiating factor, bound by that contract, even if that person privately did not agree with it (or some term or terms in it) and did not wish to enter into it, whether in that form or at all. Commercial life could not be carried on if a person could outwardly demonstrate assent to a contract, but later say that she was not bound because she had a private reservation, not communicated to the other parties (see HHJ Matthews in *De Sena v. Notaro* at [175]). Accordingly, the real battleground in the present case is in substance whether there is any basis for setting aside the otherwise effective October Agreement.

598. I have dealt with the importance of the handwritten notes at paragraphs 192 to 206. I have found that they were produced with a view to being shown to Rupert and were given to Rupert by Claire. They are important in the chronology of the case because they demonstrate what Claire was prepared to contemplate offering to Rupert well before there was any pressure to complete the Clamark deal with her brother on 9 and 10 October and are therefore relevant to the questions of the legitimacy of Rupert's actions on 10 October 2017 and whether he was acting in bad faith, to which I shall come shortly. Claire was prepared of her own free will to contemplate giving Rupert up to £46,400, a figure very close to the £50,000 which was recorded in the final version of the October Agreement. In addition she was prepared to contemplate Rupert having all of the remaining assets; they were always to be his and she was prepared to give him an undertaking that he would not make an adverse claim on them. Again, that is very similar to the terms set out in the October Agreement. In summary, those proposals did not emanate from thin air on the day of the execution of the October Agreement under some constraint of time, but had been in contemplation on Claire's side as potential options for some time.

599. I have dealt with the events of 4 to 9 October 2017 in paragraphs 242 to 271. Although Claire's pleaded case was that she had told Rupert on (or about) 4 October that her brother had imposed a deadline and that he would withdraw from the transaction unless the settlement deed was signed, as was averred in paragraph 7.3 of the Amended Reply, I have found that there had been no chasing of Rupert between the 4th and the 10th because there had been no deadline. The complaint that, in the face of such a deadline and a threat to withdraw, Rupert's failure to sign the settlement deed between 4 and 10 October was unreasonable must therefore fall since there

was no such deadline. As between Claire and Rupert, what is significant from the text messages of 9 October 2017 is that there is no mention by Claire in those exchanges of the need to sign the settlement deed or any other documentation or of there being any deadline about it. Indeed on Claire's account it was actually not until early on the 10th that she contacted Rupert about the Clamark settlement deed.

600. I have dealt with the evidence relating to the question of whether Claire visited the Selden site on the morning of 10 October 2017 in paragraphs 284 to 307 and made my findings thereon in paragraphs 308 to 311. I have found that, contrary to her evidence, Claire did indeed go the Selden site that morning. I do not regard that fact as unimportant. On the contrary, not only does it colour the veracity of Claire's evidence as to what happened later that day, but it also important as to the genesis of the October Agreement and mirrors the relationship at that point as between Claire and Rupert. Rupert had left the Farm in a state of profound unhappiness at the end of August and had decided that the romantic relationship between them was over, although the business and practical side of the arrangement between them might continue. Claire by contrast wanted Rupert back, wanted the romantic side of the relationship between them to be restored and saw what became the October Agreement, foreshadowed in the handwritten documents, which she had given to Rupert, as a way of recovering his affections. Nevertheless, I am satisfied that she was not being forced by Rupert to sign a document against her will and that it was she who was the impetus for the creation of the first version of the October Agreement.

601. The evidence relating to the events at the Farmhouse later that day when the October Agreement was actually executed I have reviewed at paragraphs 342 to 364 and made my findings as to what occurred in paragraphs 365 to 370. I reject Claire's account that Rupert came into the Farmhouse and, prior to Mr Murray and Mr Sheldon coming in, demanded that further changes were made to the October Agreement and that she sign it. He did not go upstairs to the office nor did he stand over her at the computer and instruct her to make changes. The review of the draft agreement and the changes needed to perfect it were discussed in the presence of Mr Murray and Mr Sheldon; they were not discussed by Claire and Rupert alone before the others came in. The amendments made after they had discussed the second version at the kitchen table in front of Mr Sheldon and Mr Murray were largely administrative and clerical and not substantive. Claire may have been annoyed that the document required yet further amendment, but her annoyance went no further than that. The substance of the

agreement had already been set out in the second version of the agreement some hours previously. There would in any event have been no need for Rupert to stand over Claire at the computer and instruct her to make what were largely administrative and clerical changes. I am satisfied that Claire did not sign the October Agreement under protest nor did she make any such protest. She did not tell Rupert that what he was doing was not legal and had no effect. If she was trying to reassure Rupert by signing the October Agreement given his alleged insecurity and paranoia, she can hardly have been saying to him at the same time that it meant nothing and had no legal effect. If Rupert were indeed quite as unstable and paranoid as she suggested, that is the last thing that she would have said. Finally, and decisively, it was her own evidence that

“I was happy for him to do whatever he wanted to do.”

If Claire was happy for Rupert to do whatever he wanted to do, that is the end of the case based on duress or undue influence.

602. I come back to the handwritten notes. I accept Mr Fryer-Spedding’s submission that those were very important documents in establishing the truth of what transpired on 10 October 2017. The embryonic terms of what ultimately became the October Agreement were evidently her idea and Rupert simply took her up on her offer, in recognition of the end of their relationship, although he was not prepared to accept her opening gambit as enshrined in the first version of the document under which he was due to receive all of the machinery, but only £10,000 in cash. In those circumstances I do not consider that Rupert acted in bad faith on 10 October 2017. If he was acting to achieve a result which he thought in good faith he was entitled to, it matters not whether, objectively speaking, he had reasonable grounds for that belief. It is not therefore necessary to consider whether Rupert had reasonable grounds for believing that he was owed £50,000 rather than £10,000 as reflecting the work which he had done for Claire and/or KSHF. In summary, the handwritten documents were not a remedy for reconciliation; they were instead a recognition of Claire and Rupert living apart and needing to have their business apart. Rupert can hardly be faulted on 10 October for acting on Claire’s suggestions. He was not acting in bad faith nor making an illegitimate demand when he took up her own suggestions. After all, she had herself said

“Whatever you decide I will respect & do as you wish – X - ”.

603. I am satisfied that Rupert had never seen the Clamark settlement documentation before he saw it on site on 10 October 2017 and that he said that he needed to look at it properly and to take his own legal advice before signing it. I have found in paragraph 309 that that was an entirely reasonable stance for Rupert to take, given that he had not been privy to the detail of the negotiations (although it was his money which had fuelled the ability of Gordons to negotiate on Claire’s behalf in the first place) and additionally given that he was a man who was not at home with paperwork and who was not a man who came easily to documentation.

604. That Rupert put Claire under some pressure to reach an acceptable resolution to their own affairs on 10 October 2017 I accept. I find that he realised, at latest after seeing the first version of the October Agreement, that he was in a position to exert leverage against Claire and to drive a hard bargain if she wanted him to sign the Clamark settlement deed that day. He may have been brusque on the telephone earlier in the morning and not wanted to engage with her day and his bargaining thereafter might have been self-centred and curt. He was looking out for his interests and that of KSHP, but that is not wrong. To put pressure on another person to do a deal that one would like to do is not without more wrong. Taking the evidence as a whole, in my judgment Claire has not proved conduct on the part of Rupert which can properly be regarded as acts of *improper* or *illegitimate* pressure or coercion. This was a case of a hard negotiation by parties to a failed marriage, but not more than that.

605. I also accept for the reasons advanced by Mr Fryer-Spedding in paragraph 590 that the October Agreement made commercial sense in the unscrambling of the parties’ business affairs. Whether it was wise or sensible for Claire to denude herself of the farming assets is another matter, but that is not the test which I have to apply.

606. The first mention of any deadline for the signature of the Clamark settlement deed between Claire and her brother did not occur until 11.08 on the morning of 9 October 2017. Putting the case at its highest the LFL email of 14.54 that afternoon stated that

“Our client is still committed, but is at serious risk of the funders asking for their money to be returned due to the length of time it has taken from the documents being agreed to being signed”

and at 17.11 that

“We have managed to satisfy the funder for today, however it is vital that first thing tomorrow morning we have the signed scans of the documents. As every hour that passes significantly increases the risk of the funders requesting their funds back.”

Neither of those emails states that the funding would be withdrawn if the signed documents were not returned. Indeed it is apparent that it was not vital that the signed scanned documents were received first thing on the morning of the 10th; indeed they were not returned by Mr Jones until that evening. At 11.46 the next morning LFL emailed

“It really is important that we complete today, as we were not able to yesterday”

and again at 16.49

“Have you heard anything further from your clients regarding when then will be able to sign and scan documents to you? Are you still expecting to receive the documents this afternoon/evening?”

We do need to complete as soon as possible.”

In my judgment the correct inference to be drawn from those emails was that there was a serious risk that funding would be withdrawn if the matter did not complete on 10 October 2017, but the position was not as concrete as demonstrating that funding *would* be withdrawn if the matter did not complete on that day. Indeed the fact that LFL was not saying as late as 16.49 that the financial plug would be pulled by the funders that day in the absence of signed documents by close of business suggests that completion could in reality have been delayed for a further 24 hours. Although therefore LFL had indicated, but only on 9 October 2017, that there was a deadline for the share transfer between Claire and Mr Miller and that that deadline was extended to 10 October 2017, I do not find that the share transfer would have failed if the document was not signed on that date, but that completion could in reality have been delayed for a further 24 hours. Claire had been advised by Mr Jones not to sign the October Agreement and she had the option not to do so, although the likelihood in that event is that Rupert would not have signed the Clamark settlement deed.

607. Whether or not a meeting with Mr Miller would have been a feasible option on 10 October 2017 seems to me to be a matter of speculation rather than something which has been proved. Such a meeting was mooted by Claire, but whether Mr Miller’s commitments would have

allowed for such a meeting that day or the next, or whether he would have been prepared to have one at all, or whether such a meeting would have had any effect, was not the subject of any evidence on which I can base a positive finding. All of those options remain speculative.

608. I am not, however, impressed by Mr Fryer-Spedding's submission that one practical alternative to signing the October Agreement was that Claire and her brother, acting together, could have removed Rupert as a director of Clamark and Holmes without his involvement. Although technically, Claire and Mr Miller together could have removed Rupert from his position as a director of both companies had they wanted to, that would not have been in Claire's best interests to remove Rupert prior to completion of the settlement and would indeed have led to the very deadlock which Rupert's appointment had been designed to avoid. Claire's leverage against her brother was board control. If she lost board control, she would lose her leverage and without board control she could not do very much. Claire's ability to explore any realistic practical alternative to the October Agreement was therefore significantly circumscribed, but that does not make the pressure which Rupert brought to bear on her illegitimate. As Dyson J explained in *DSND Subsea Ltd*, in determining whether there has been illegitimate pressure, the courts take into account a range of factors, one of which (but only one of which) is whether the victim had any realistic practical alternative but to submit to the pressure. It is also relevant to consider whether the person allegedly exerting the pressure has acted in good or bad faith, whether the victim protested at the time and whether she later affirmed the contract – and indeed the genesis of the ultimate contractual arrangement and whose idea the contractual arrangement originally was.

609. As I have stated above, I am satisfied that Claire did not sign the October Agreement under protest nor did she make any such protest. She did not tell Rupert that what he was doing was not legal and had no effect. Any reservations she may have expressed to Mr Jones on either 10 October or 1 November 2017 (albeit that the latter would have been well after the event and not contemporaneous with the execution of the document) were not communicated to Rupert. The evidence of Mr Philps I have dealt with in paragraphs 421 to 426. If Claire was indeed smiling as she said what she said, that is hardly evidence of being a victim of unlawful pressure and is rather indicative, as Mr Philps thought, of Claire saying it because she wanted to wind Rupert up. With the exception of Mr Jones, Mr Philps was the only witness to whom Claire said that Rupert had made her sign an agreement against her will and his unchallenged evidence

was that Claire was smiling as she said what she said and he thought that she was doing so because she wanted to wind Rupert up.

Undue Influence

610. However, after the evidence had been heard Mr Bennion-Pedley put his case rather differently, essentially relying on a cause of action in undue influence rather than duress.

611. As he put it in his closing submissions:

“The economic duress claim is challenging and the Court may well think that the factual matrix here sits more comfortably within the undue influence framework;

- The window in which the matters said to constitute economic duress is narrow;

- To succeed in economic duress, the [Claimants] need to establish that Rupert acted in bad faith (the statement of the law at paragraph 4.7 of [the Defendants’] skeleton is correct – indeed there is not likely to be much if anything between us on the law in this area);

- [Claire’s] oral evidence seemed to link the execution of the October Document to a desire to save the relationship rather than any economic imperative arising out of the Clamark/Holmes deal – causation is therefore a little shaky.

- In contrast, the requisite components in undue influence are met. As confirmed in opening this is a case of actual (or directly proved) undue influence rather than presumed. The pattern is similar though (see Chitty 8-058 and 9-067 and the cases cited).

- Here we have a relationship in which [Claire] was emotionally controlled and bullied. She was clearly very much in love with [Rupert] and desperate for the relationship to work. [Rupert] played upon that affection and created in [Claire] a need to demonstrate and prove her love. Quite simply [Claire] would have done anything to keep [Rupert] and he knew that and was prepared to take advantage – see for example his quite egregious use of the Farm for 10 months after (on his case) he decided he wanted no loving relationship with [Claire] at all;

- If undue influence is proved, it is not necessary to show that transaction or document is manifestly disadvantageous – although that can of itself assist in proving the undue influence. Here it quite clearly was though. The effect of the October Document (if enforceable) was to strip Farm of its machinery and leave it unable to operate”.

612. It was against this background, he argued, that the “thoughts and feelings” documents, in which Claire considered putting the assets into Rupert’s name, had to be considered. Claire would do whatever it took to build a relationship with Rupert, even to the point of giving him every single item of machinery, irrespective of ownership, even if it left the Farm without any means of operating the Farm at all.

613. In that context he relied on the statements of principle in *Chitty on Contracts* at paragraphs 8-067 and 8-072:

“If there is no special relationship of the kind to be mentioned below, between the parties, or if there is such a relationship but the transaction that is challenged is not one that “requires explanation”, the onus is upon the person seeking to avoid the transaction to establish that undue influence was used. In *Bank of Credit and Commerce International SA v Abouby Slade L.J.*, delivering the judgment of the Court of Appeal, said:

“... we think that a person relying on a plea of actual undue influence must show that (a) the other party to the transaction ... had the capacity to influence the complainant; (b) the influence was exercised; (c) its exercise was undue; (d) that its exercise brought about the transaction.”

It seems that undue influence may be proved by showing one of various forms of conduct.

...

The House of Lords has held that in order to show actual undue influence, or rather if undue influence is actually shown to have been exercised, it is not necessary to show that the transaction was “manifestly disadvantageous” or “one that called for an explanation”. In *CIBC Mortgages Plc v Pitt* Lord Browne-Wilkinson said that actual undue influence was a species of fraud, and the victim is entitled to have the transaction set aside as of right. He continued:

“No case decided before [*National Westminster Bank Plc v Morgan*] was cited (nor am I aware of any) in which a transaction proved to have been obtained by actual undue influence has been upheld nor is there any case in which a court has even considered whether the transaction was, or was not, advantageous.”

However, the complainant may have to show that the other party at least “preferred his own interests”. This phrase several times formed part of Lord Nicholls’ description of “actual undue influence” in the

Etridge case. It certainly seems sufficient that the defendant took advantage of the claimant's willingness to trust him to prefer his own interests. Nor in such a case does it seem to matter that the transaction was not unfair to the claimant in purely financial terms: relief may be given even though, for example, the claimant obtained a reasonable price for property they were selling if the sale was disadvantageous to them, and advantageous to the defendant, in some other way. It is also clear that the defendant need not have derived any personal advantage from the transaction.”

614. He pointed in particular to Rupert's statement in paragraph 88 of his witness statement that he was not bothered about whether Claire would have been able to continue the litigation against her brother and all that he wanted was to come away with the machines. His clearly stated objective was the machines and that was what he achieved. He was alive to leverage: she would have money if she settled with her brother, but could not otherwise afford to litigate; he left the Farm without machinery to operate; when he arrived the Farm had equipment, when he left it did not.

615. The matters relevant to the plea of duress applied equally to the Claimants' plea of direct undue influence in the form of improper pressure or coercion. Such a plea, in addition to one of duress, was appropriate and ought to provide an alternative ground if the Court accepted:

(a) Claire's evidence that Rupert was emotionally unstable, abusive and/or controlling; and/or that

(b) Rupert abused his relationship with Claire (and/or her desire to make a proper go of the marriage) in order to extract pecuniary advantages.

616. Mr Bennion-Pedley also relied on the speeches of Lord Nicholls at [11] and Lord Clyde at [92]-[93] in *Royal Bank of Scotland v. Etridge (No.2)* [2002] 2 AC 733:

“11. The principle is not confined to cases of abuse of trust and confidence. It also includes, for instance, cases where a vulnerable person has been exploited. Indeed, there is no single touchstone for determining whether the principle is applicable. Several expressions have been used in an endeavour to encapsulate the essence: trust and confidence, reliance, dependence or vulnerability on the one hand and ascendancy, domination or control on the other. None of these descriptions is perfect. None is all embracing. Each has its proper place.

...

92. I question the wisdom of the practice which has grown up, particularly since *Bank of Credit and Commerce International SA v Aboody* [1990] 1 QB 923 of attempting to make classifications of cases of undue influence. That concept is in any event not easy to define. It was observed in *Allcard v Skinner* (1887) 36 Ch D 145 that "no court has ever attempted to define undue influence" (Lindley LJ, at p 183). It is something which can be more easily recognised when found than exhaustively analysed in the abstract. Correspondingly the attempt to build up classes or categories may lead to confusion. The confusion is aggravated if the names used to identify the classes do not bear their actual meaning. Thus on the face of it a division into cases of "actual" and "presumed" undue influence appears illogical. It appears to confuse definition and proof. There is also room for uncertainty whether the presumption is of the existence of an influence or of its quality as being undue. I would also dispute the utility of the further sophistication of subdividing "presumed undue influence" into further categories. All these classifications to my mind add mystery rather than illumination.

93. There is a considerable variety in the particular methods by which undue influence may be brought to bear on the grantor of a deed. They include cases of coercion, domination, victimisation and all the insidious techniques of persuasion. Certainly it can be recognised that in the case of certain relationships it will be relatively easier to establish that undue influence has been at work than in other cases where that sinister conclusion is not necessarily to be drawn with such ease. English law has identified certain relationships where the conclusion can prima facie be drawn so easily as to establish a presumption of undue influence. But this is simply a matter of evidence and proof. In other cases the grantor of the deed will require to fortify the case by evidence, for example, of the pressure which was unfairly applied by the stronger party to the relationship, or the abuse of a trusting and confidential relationship resulting in for the one party a disadvantage and for the other a collateral benefit beyond what might be expected from the relationship of the parties. At the end of the day, after trial, there will either be proof of undue influence or that proof will fail and it will be found that there was no undue influence. In the former case, whatever the relationship of the parties and however the influence was exerted, there will be found to have been an actual case of undue influence. In the latter there will be none."

617. Mr Bennion-Pedley submitted that there was no inconsistency in Claire's case. Rupert, he said, was controlling Claire by playing the victim card. The text messages showed that Claire was desperately seeking to appease Rupert was an indication of that. Rupert's typical reply was

that “if you had any love for me, we would not be where we are”, in other words, it was all Claire’s fault and if only she would try a little harder.

618. He submitted, however, that test of causation different in the case of undue influence: all that need to be shown was that there had been a relationship of ascendancy which had been abused.

619. Mr Fryer-Spedding’s point on undue influence was short and simple. The plea of undue influence was a make-weight allegation. To borrow from *Holyoake v. Candy* [2017] EWHC 3397 (Ch) per Nugee J (as he then was) at [406-407]:

“... it is not clear [] what, if anything, the plea of actual undue influence adds to the plea of duress, or how it could succeed if [] the plea of duress fails on the facts.”

620. The plea of undue influence was, he submitted, an unsuccessful attempt to revive coercion under another name, but a bad case in duress did not make a good case in undue influence. He relied on the statements in *Chitty on Contracts* at para. 8-068

“Undue influence may be proved by showing that there was coercion by the donee. This does not necessarily involve a pre-existing relationship between the parties.

However, these cases are probably now better viewed as cases of illegitimate pressure and, accordingly, they were treated in the previous section”

and at 8-069

“However, “importunity and pressure ... [are] neither always necessary nor sufficient”.

...

The critical question is whether the complainant was allowed to exercise an independent and informed judgment”

and he submitted that Claire had exercised an independent and informed judgment.

621. The fundamental problem with the plea of undue influence, however, is that it is pleaded in exactly the same terms as the case in duress. (The full text of the pleaded case in paragraphs

22 to 29 of the Amended Particulars of Claim is set out at the beginning of the next section in the context of the question of ongoing duress/undue influence after 10 October 2017.)

622. If the plea of duress fails on the pleaded grounds, as I have held that it does, by the same token the plea of undue influence, which relies on exactly the same factual averments, must also fall. There is no room for a different and more expansive case of undue influence other than the one pleaded as being coterminous with and relying on the very same averments as the case in duress. An unsuccessful case in duress cannot be rebadged and relaunched as a good case in undue influence if it relies on exactly the same factual allegations. To paraphrase Nugee J in *Holyoake v. Candy*, the plea of actual undue influence does not add anything to the plea of duress and it cannot succeed if the plea of duress fails on the facts.

623. The pleaded case of undue influence, as Mr Bennion-Pedley candidly accepted, was framed in a very narrow temporal window, essentially coming down to the events of 10 October 2017. If it were sought to expand the ambit of the application of the illegitimate pressure or coercion beyond the ambit of that date, it would have been necessary to set out a positive pleaded case of trust and confidence, reliance, dependence or vulnerability on the one hand and ascendancy, domination or control on the other in the weeks and months leading up to 10 October 2017. No such case was pleaded.

624. Lord Browne-Wilkinson said in *CIBC Mortgages v. Pitt* [1994] 1 AC 200 at p.209 that

“Actual undue influence is a species of fraud ... The effect of the wrongdoer's conduct is to prevent the wronged party from bringing a free will and properly informed mind to bear on the proposed transaction which accordingly must be set aside in equity as a matter of justice”,

but I do not accept that Rupert abused his relationship with Claire (or her desire to make a proper go of the marriage) in order to extract pecuniary advantages from her such that she was precluded from bringing a free will and properly informed mind to bear on the October Agreement, the genesis of which she had proposed. Nor do I accept that Rupert was taking advantage of Claire by using the Farm for 10 months after the relationship has broken down. The use of the Farm with her consent can hardly be described as “egregious”, particularly since

he had made it clear (whatever she may have wished, or hoped against hope, to the contrary) that the romantic side of the relationship was over.

625. Moreover, this case was very far removed from cases where a plea of actual undue influence was made out, such as *Bank of Montreal v Stuart* [1911] AC 120, where the wife succeeded in establishing undue influence, even though her husband had put no pressure on her because none was needed, as “she had no will of her own ... she was ready to sign and do anything he told her to do” or *Bank of Credit and Commerce International SA v Aboody* [1990] 1 QB 623, where the wife trusted her husband in business matters and signed documents he put before her without question; although there was also evidence that he bullied her and that she signed because she wanted peace, the Court of Appeal did not rely on those facts and considered that, if the husband had intentionally exploited her trust to get the wife to sign manifestly disadvantageous documents without explaining them to her, that would constitute undue influence.

626. Nor was this a case where one party exploited the other’s trust to get her to enter the transaction in question without proper consideration or explanation such that he should be held to be exercising undue influence; this was not a case where the influenced party’s mind was (to quote *Aboody* at p.969) still “a mere channel through which the will of [the influencing party] operates”. On the contrary, the genesis of the October Agreement emanated from Claire in the form of the handwritten notes which she had given to Rupert. It was not the case that Rupert simply put the October Agreement before Claire and had her sign it without question.

The Question Of Continuing Duress/Undue Influence

627. The pleaded case in duress/undue influence in the Amended Particulars of Claim is a very narrow one in point of time and refers only to the events of October 2017. It does not suggest that there was any *ongoing* vitiating factor in the subsequent weeks or months:

“22. On or around 4th October 2015 Mrs Jowitt verbally asked Mr Jowitt to execute the Shareholder Agreement which had been drafted.

23. In response to Mrs Jowitt’s request Mr Jowitt refused to execute the Shareholder Agreement and expressly told her that he would not sign the same or resign as a director unless he financially benefited.

24. On or around 10th October 2017 Mr Jowitt:

24.1 contacted Mrs Jowitt by telephone and:

24.1.1 told her that he would only execute the Shareholder Agreement if she paid him the sum of £50,000 and assigned specified assets owned by KSHF to him and/or his company KSHP; and

24.1.2 further demanded that this was recorded in writing and that she prepare a document which recorded his demands; and

24.1.3 told her that he would only come to the Premises that day to sign the Shareholder Agreement once she told him that the document had been prepared.

25. Under duress Mrs Jowitt drafted a document and advised Mr Jowitt by telephone later that day that she had done so and asked him to attend the Premises to sign the Shareholder Agreement.

26. Later that day Mr Jowitt attended the Premises, entered the farmhouse and demanded to see the homemade document which she had prepared.

27. Upon considering the homemade document Mr Jowitt told Mrs Jowitt that it was not good enough and demanded that he dictate a revised document to her and that he would then sign before he signed the Shareholder Agreement.

28. Under duress and in circumstances where Mr Jowitt was refusing to sign the Shareholder Agreement unless she did, Mrs Jowitt:

28.1 typed out Mr Jowitt's dictation on her computer with Mr Jowitt standing next to her ("The October Document"); and then

28.2 signed the October Document at Mr Jowitt's direction.

29. In so far as Mr Jowitt may seek to rely upon the October Document in defence of any of the claims herein particularised, Mrs Jowitt will assert that it is void by reason of duress and/or undue influence and reserves the right to give further and better particulars of the same should Mr Jowitt and/or KSHP seek to rely on the same".

628. The Re-Amended Defence pleaded to those averments that Claire ratified the October Agreement and remained bound thereby in that she made payments to Rupert and transferred ownership and possession of the assets mentioned therein to him (paragraph 27A), or alternatively, if she did sign the Agreement under duress and/or undue influence, while no longer subject to that duress/undue influence, she failed to take steps to set it aside and ought

to be taken to have affirmed it, inter alia by making the payments and transferring ownership and possession of the assets (paragraph 27B).

629. In response to that, the Amended Reply to the Re-Amended Defence pleaded that

“9A. As to paragraphs 27A and 27B of the Re-Amended Defence (the Defendant’s plea of ratification or affirmation and/or the Defendant’s contention that the October Agreement is at best voidable) the Claimants plead as follows:

9A.1 it is denied that Mrs Jowitt affirmed the October Agreement.

9A.1.1 Mrs Jowitt signed the October Agreement under protest;

9A.1.2 Thereafter, she took no steps to pay money to the Defendants pursuant to the October Agreement and/or to transfer possession or ownership of those assets referred to in it. The sums paid by the Claimants to the Defendants were by way of loan(s) as aforesaid; and/or

9A.1.3 Neither Defendant (having knowledge of the circumstances in which Mr Jowitt had extracted the October Agreement from Mrs Jowitt) could reasonably have believed and/or placed any reliance upon a belief that Mrs Jowitt and/or KSHF intended to proceed or be bound by the October Agreement.

9A.2 it is denied that the doctrine of ratification is capable of applying here (it being concerned with adoption of the acts or transactions of others). Alternatively, the Claimants re-state the matters immediately above;

9A.3 It is denied that it is incumbent upon the Claimant(s) to apply to set aside the October Agreement;

9A.3.1 The Claimants’ primary case is that no money or property passed pursuant to the October Agreement and that, accordingly, the Claimants do not need the October Agreement to be set aside;

9A.3.2 On the contrary, if the Defendants wish to set up and rely upon the October Agreement in order to retain sums paid to them and/or to justify their removal of machinery from the Property, then it is for the Defendants to satisfy the Court that the October Agreement is enforceable. In circumstances in which it was obtained by duress and/or undue influence it is not;

9A.3.3 Alternatively, the Claimants will ask the Court to set the October Agreement aside on such terms as the Court sees fit”.

630. Again there was no averment of ongoing duress or undue influence. However, when opening the case, Mr Bennion-Pedley argued that the vitiating factor of duress/undue influence did not end in October, but continued until August of the following year. The duration of that influence was important, he submitted, because of the affirmation case pleaded by Rupert; there was therefore a need to make findings about the acts in question which had been done after the Agreement and the question of the duration of the influence to decide when Claire ought to have avoided the October Agreement and when she was free to make an election whether to affirm the Agreement or not since, if Rupert was still holding out hope of a reconciliation, it was not fair to require her to make an election prior to that date.

631. Mr Fryer-Spedding immediately took the point that ongoing duress/undue influence had not been pleaded and referred to paragraphs 28 and 29 of the Amended Particulars of Claim and paragraph 9A.1 of the Amended Reply, which I have set out above, which was the latest stage at which continuing duress/undue influence should have been pleaded. The case in continuing duress/undue influence had not been pleaded and should not now be allowed in.

632. It seemed to me that a case in continuing duress/undue influence, which was part of a cause of action and not merely a defence to the plea of affirmation or ratification, had indeed not been pleaded and I made it clear during the opening that I expected that position to be addressed in due course, although I said that I would rule formally on the point at a later stage and that I would hear the evidence relevant to the Defendants' affirmation or ratification case in any event.

633. In response to further questioning from me, at the end of the closing submissions Mr Bennion-Pedley produced a draft amendment to the Amended Reply to plead ongoing duress/undue influence in the form of a new paragraph 9A.1.4 to the effect that

“9A.1.4 Alternatively, Mrs Jowitt was not free of Mr Jowitt’s undue influence and/or duress until around July or August 2018 when he stopped attending the Farm”,

although he submitted that the amendment was in fact unnecessary in that the question of ongoing duress or undue influence was part and parcel of the Defendants' case on affirmation or ratification.

634. Mr Fryer-Spedding objected to the proposed amendment on one preliminary substantive ground and three other grounds:

(i) there was no formal application to amend before the Court. As a matter of procedure, only if there were a formal application would there be power to amend the Reply; if there were no formal application, the application was not properly constituted. By virtue of the Practice Direction to CPR rule 17, PD 1.2 required that

“When making an application to amend a statement of case, the applicant should file with the court:

(1) the application notice, and

(2) a copy of the statement of case with the proposed amendments”

and PD 1.4 required that

“If the substance of the statement of case is changed by reason of the amendment, the statement of case should be re-verified by a statement of truth”.

(ii) the formulation of the amendment: the plea was couched in extremely vague terms e.g. “around July or August”. When did it start? Of precisely what did the ongoing duress or undue influence consist? When was Claire released from it? Moreover, it was not suggested that paragraph 7.3 of the Amended Reply was to be deleted. Who would feel confident enough to sign a statement of truth based on the new plea? It was certainly not right to allow the new amendment to be pleaded without the signing of a statement of truth to that effect. It was also against the weight of the evidence: the October Agreement was Claire’s idea and the proposed amendment was not reasonably arguable.

(iii) prejudice: the law as to late amendment meant that there was a heavy burden to discharge before such a late amendment could be allowed. It was not explained why it had not produced earlier. It had been made clear in opening that the Court did not consider that the case had been pleaded properly and that an application to regularise the position would be necessary. Yet it had not been produced until the Court itself had raised the issue again during submissions. It was against the interests of justice to allow the amendment to be made now: Rupert’s witness statement had been drawn up without knowing of such a case; the cross-examination of Rupert

had proceeded without him knowing the details of any such case. It was not a matter for compensation in costs.

(iv) delay: this related to his first and second objections; there was no explanation for the delay. It was an attempt to reinvent the case because of the failure of the primary case.

635. The relevant authorities on late amendment were examined and applied by Hamblen J (as he then was) in *Brown v. Innovatorone Plc* [2011] EWHC 3221 (Comm)

“5. I was referred to the often cited dictum of Lord Justice Peter Gibson in *Cobbold v Greenwich Borough Council* which has for some time been set out under the heading "General principles for grant of permission to amend" in the White Book at 17.3.5. It states as follows:

"The overriding objective of the CPR is that the court should deal with cases justly. That includes, so far as is practicable, ensuring that each case is dealt with not only expeditiously but justly. Amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party [or parties] caused by the amendment can be compensated for in costs, and the public interest in the [efficient] administration of justice is not significantly harmed."

6. In recent years the courts have been more willing to recognise that prejudice may be caused by amendments which cannot be compensated for by costs, particularly in the context of late amendments. As Lord Griffiths stated in *Ketteman v Hansel* [1987] AC 189 at page 220E "... justice cannot always be measured in costs ..."

7. If, for example, an amendment requires an adjournment, that may well cause significant prejudice regardless of any award of the costs of the adjournment. Parties to litigation have a legitimate expectation that trials will be conducted on the dates fixed for trial by the court and that the trial will not be put back or delayed without good reason. The disruption caused thereby to other litigants is also now recognised as a relevant factor to take into account.

8. As stated by Lord Justice Waller in the case of *Worldwide Corporation v GPT Limited* [1998] EWCA Civil 189 at pages 12 to 13:

"... in previous eras it was more readily assumed that if the amending party paid his opponent the costs of an adjournment that was sufficient compensation to that opponent. In the modern era it is more readily recognised that in truth the payment of the costs of an adjournment may well not adequately compensate

someone who is desirous of being rid of a piece of litigation which has been hanging over his head for some time, and may not adequately compensate him for being totally (and we are afraid there are no better words for it) 'mucked around' at the last moment. Furthermore, the courts are now much more conscious that in assessing the justice of a particular case, the disruption caused to other litigants by last minute adjournments and last minute applications have also to be brought into the scales."

9. A party against whom an amendment is sought to be made may well be reluctant to request an adjournment precisely because of the disruption and prejudice it will cause. Prejudice may nevertheless be suffered if, for example, the party will be significantly hampered in the preparation for, and conduct of, the trial.

10. As Lord Justice Waller observed in the *Worldwide* case at pages 11 to 12:

"Equally when a case has been prepared with witness statements and experts' reports on one way of putting the case, it is harsh to criticise advisors of the defendants for asserting that they would need some period in which to examine the extent to which the amendments affected them and their witnesses. The periods laid down for production of witness statements and experts' reports are there so that they can be served on the other side in good time and so that the conduct of a trial can be as expeditious as possible. Forcing a party to look again at those statements and the experts' reports at the same time as conducting the trial is not fair or conducive to the efficient conduct of the trial."

11. In the light of considerations of this kind, it has been stated that a heavy onus lies on a party making a very late amendment to justify it. Lord Justice Waller stated in the *Worldwide* case at page 21:

"We accept that at the end of the day a balance has to be struck. The court is concerned with doing justice, but justice to all litigants, and thus where a last minute amendment is sought with the consequences indicated, the onus will be a heavy one on the amending party to show the strength of the new case and why justice both to him, his opponent and other litigants, requires him to be able to pursue it."

12. That passage was cited in the later Court of Appeal case of *Swain-Mason v Mills & Reeve* [2011] 1 WLR 2735 in which Lord Justice Lloyd stated as follows at paragraph 72:

"As the court said, it is always a question of striking a balance. I would not accept that the court in that case sought to lay down an inflexible rule that a very late amendment to plead a new case, not resulting from some late disclosure or new evidence, can only

be justified on the basis that the existing case cannot succeed and the new case is the only arguable way of putting forward the claim. That would be too dogmatic an approach to a question which is always one of balancing the relevant factors. However, I do accept that the court is and should be less ready to allow a very late amendment than it used to be in former times, and that a heavy onus lies on a party seeking to make a very late amendment to justify it, as regards his own position, that of the other parties to the litigation, and that of other litigants in other cases before the court."

13. He also observed at paragraph 104:

"The matters which need to be considered for this purpose include the terms of the amendment, the previous history as regards amendment, including the sequence of events in April 2010 which led to the first amendments, the absence of any evidence explaining why the re-amendment was sought to be made so very late, and the various factors relevant to prejudice to each side...."

14. As the authorities make clear, it is a question of striking a fair balance. The factors relevant to doing so cannot be exhaustively listed since much will depend on the facts of each case. However, they are likely to include:

- (1) the history as regards the amendment and the explanation as to why it is being made late;
- (2) the prejudice which will be caused to the applicant if the amendment is refused;
- (3) the prejudice which will be caused to the resisting party if the amendment is allowed;
- (4) whether the text of the amendment is satisfactory in terms of clarity and particularity.

636. The observations of Waller and Timothy Lloyd LJJ make it apparent that, where a last minute amendment is sought, the onus will be a heavy one on the amending party to show the strength of the new case and why justice both to him and his opponent requires him to be able to pursue it.

637. In this case the amendment was sought to be made at the very end of closing submissions, even though I had made it clear at the outset of the case that I did not consider that a case in continuing duress/undue influence had been pleaded and that I considered that an application

would be necessary to regularise the position. There was no real explanation as to why it was made as late in the day as it was. Although refusal of the amendment would cause obvious prejudice to the applicants if the amendment were refused, since they could not make a case based on continuing duress/undue influence, that is outweighed by the prejudice which would be caused to the Defendants if the amendment were allowed. Rupert's witness statement had been drawn up without knowing of such a case; the cross-examination of Rupert had proceeded without him knowing the details of any such case. Moreover, as Mr Fryer-Spedding submitted, the text of the amendment was not satisfactory in terms of either clarity or particularity. Finally, I am satisfied, now that I have heard the evidence, that the allegation is not borne out by the evidence in any event. I am satisfied that there was no duress or undue influence exercised by Rupert over Claire on 10 October 2017 when the October Agreement was signed. I am also satisfied that there was no duress or undue influence exercised by Rupert over Claire subsequent to 10 October 2017, whether until July or August 2018 or otherwise. For all those reasons I refuse permission to the applicants to amend the Amended Reply by the addition of the proposed new paragraph.

Affirmation

638. In the light of the conclusions which I have reached about the claim in duress/undue influence, it is not necessary for me to go on to consider the questions of affirmation or rescission, but I shall do so briefly for the sake of completeness. (I can see no practical difference between the pleas of ratification or affirmation.)

639. Affirmation is a species of election and its application to cases of duress arises because a contract entered into under duress is voidable rather than void. After the duress has ceased, a party may either avoid the transaction or affirm it (see *North Ocean Shipping v Hyundai Co (The Atlantic Baron)* [1979] 1 QB 705 at 720B per Mocatta J:

then what is said in *Chitty on Contracts*, 24th ed. (1977), vol. 1, para. 442, p. 207, to which both counsel referred me, is relevant, namely, that a contract entered into under duress is voidable and not void:

"... consequently a person who has entered into a contract under duress, may either affirm or avoid such contract after the duress has ceased; and if he has so voluntarily acted under it with a full knowledge of all the circumstances he may be held bound on the ground of ratification, or if, after escaping from the duress, he

takes no steps to set aside the transaction, he may be found to have affirmed it."

640. Whether Claire ought to be taken to have affirmed the October Agreement was, in large part, to be determined upon what the Defendants could reasonably have believed (ibid. at 721C):

"I do not think that an intention on the part of the owners not to affirm the agreement for the extra payments not indicated to the Yard can avail them in the view of their overt acts. As was said in *Deacon v. Transport Regulation Board* [1958] V.R. 458, 460 in considering whether a payment was made voluntarily or not: "No secret mental reservation of the doer is material. The question is - what would his conduct indicate to a reasonable man as his mental state." I think this test is equally applicable to the decision this court has to make whether a voidable contract has been affirmed or not, and I have applied this test in reaching the conclusion I have just expressed.")

641. Mr Bennion-Pedley submitted that, on Claire's case, she signed the October Agreement under protest which she re-stated after the event. Further, there was an issue as to when, in fact, the duress or undue influence ceased. This was an unusual situation in which Claire sought to keep the prospect of a life with Rupert alive and one in which (on her case) it was necessary to tread carefully around him on these issues.

642. Quite apart from Claire's assertion that she protested at the time and afterwards, the Court was also invited to conclude that the operative period of the duress and/or undue influence persisted beyond the point at which Claire's deal with her brother completed.

643. In that context Mr Bennion-Pedley relied on the dictum of James LJ in *Moxon v. Payne* (1873) LR 8 Ch App 883 at p.885 about the will of his client, who continued to maintain her infatuated confidence in the defendant. The evidence of the text messages demonstrated, said Mr Bennion-Pedley, that the one-sided relationship persisted right through to the time when Claire finally woke up to what Rupert was doing. Until then the October Agreement remained unperformed.

644. By contrast, the Defendants submitted that the evidence shows that the October Agreement was indeed carried into effect. The £50,000 payment was made, albeit late and in various instalments. As to the Farm assets, rather than transfer the finance agreements for the

Farm vehicles from KSHF to KSHP, Claire suggested that KSHP should simply assume (as it then did) responsibility for paying the instalments due under those agreements.

645. In short, it was submitted that, even if there had been any vitiating factor affecting the October Agreement, Claire's subsequent conduct showed her to have ratified or affirmed it. More particularly, early the next day Claire said that she would arrange to change the bank mandate and obtain settlement figures from JCB for the 3CX and Fastrac vehicles. She and KSHF then went on to pay a large amount of money to Rupert and KSHP, including the £50,000 for which the October Agreement provided. KSHP assumed responsibility for making finance payments for the transferred vehicles, notwithstanding that Claire and Rupert agreed to the finance agreement remaining in KSHF's name. It was also striking that Claire's present argument took a long time to emerge: the claim attacking the validity of the October Agreement of 10 October 2017 was only issued on 3 June 2019.

646. I am satisfied that, even if the October Agreement had been procured by duress/undue influence on the day of its execution, Claire's subsequent conduct for months after the event in arranging for her removal from the KSHP bank mandate, obtaining settlement figures from JCB for the vehicles, paying over (albeit late and in several tranches) the full amount of the £50,000 due under the October Agreement, and arranging for KSHP to assume responsibility for making finance payments for the transferred vehicles, notwithstanding that she and Rupert agreed to the finance agreement remaining in KSHF's name, all showed her to have ratified or affirmed it.

647. Any private intention on the part of Claire not to affirm the October Agreement could avail her in the light of those overt acts. From those overt acts Rupert could reasonably have believed that she was implementing the October Agreement. In the light of those overt acts, I find Claire's statement that she did not do anything after she signed the October Agreement to give Rupert the impression that she believed that it meant anything legally to be untenable.

Rescission

648. Mr Fryer-Spedding submitted that, if the October Agreement were to be avoided, then the result would have to be that Rupert would have to be restored as director of KSHF, Clamark and Holmes. The former had not been offered and the latter was no longer in Claire's control.

KSHP would also have to give counter-restitution of the benefits it had received through KSHP having paid the finance instalments in the manner which appeared in the Scott Schedule.

649. Mr Bennion-Pedley submitted that Mr Fryer-Spedding was right when he said that a document could not be set aside in part, but that was not the essential issue and there was an important distinction between setting aside and subsequent restoration. It was not a prerequisite to rescission that the Court must be able to restore the parties to their exact previous positions. Rescission was an equitable remedy and what was required was practical justice. The Claimants must be in good a position as before so that they did not suffer unjustified prejudice. The inability to restore Rupert as a director of Clamark and Holmes was therefore immaterial. That position was of absolutely no practical benefit or value to him whatsoever. The Court was entitled to tread a middle ground and could tailor its response to revise the transfer of the grassland machinery.

650. Had it been material to decide the point I would have accepted Mr Bennion-Pedley's submission that rescission is an equitable remedy and what is required is practical justice. The inability to restore Rupert as a director of Clamark and Holmes would have been immaterial: the directorships would have been of absolutely no practical benefit or value to him and restoration of the directorships of Claire to the board of KSHP and Rupert to the board of KSHP would have led to pointless deadlock in both companies on that footing, had the Agreement fallen to be rescinded, KSHP would also have had to give counter-restitution of the benefits which it had received through KSHP having paid the finance instalments in the manner which appeared in the Scott Schedule, but in the circumstances I do not need to consider that matter further.

The Assets Claim: No Passing Of Title

651. Mr Bennion-Pedley submitted that title in the assets did not pass on execution; indeed on Claire's case she said so at the time, but I do not find that that contention has been made out as matter of fact. I have found that Claire did not protest to Rupert nor did she say that the October Agreement was of no legal effect.

652. Mr Bennion-Pedley also submitted that further implementation had to happen on the paper trail in terms of the mandate and the JCB finance, but that no administrative steps had been taken to the end. Although steps may have been taken to deal with the transfer of the JCBs to

KSHP, no steps were ever taken in relation to the other machinery. Payment of direct debits did not impact on title. In summary, no assets were transferred pursuant to the October Agreement; the assets may have been taken by Rupert and steps may have been taken to allow KSHP to pay for the JCBs in place of KSHF, but that was a different matter.

653. Mr Fryer-Spedding riposted that, although that argument was foreshadowed in the Claimants' opening skeleton argument (where it was asserted that they did not have title in the two JCBs), that was not the way in which the Claimants had pleaded their case. The Amended Particulars of Claim pleaded in relation to the assets (paragraph 43.1) that KSHF "was the legal owner" of the assets (as similarly in the table at paragraph 45.1 and in the Scott Schedule). It was perhaps for that reason or because KSHF did not want to (or because it was unable to) resume serving the finance agreements connected with the JCB 3CX and the Fastrac, that the Claimants did not demand the return of those items in the original letter of claim.

654. Moreover, even if Claimants were to amend to plead a different case (which they did not seek to do), he submitted that the true meaning of the October Agreement was that:

(a) KSHF agreed to do what was reasonably necessary to secure that KSHP acquired title to these items (e.g. by agreeing a novation); and

(b) KSHF would not assert a superior right to possession and ownership of the goods to that of KSHP: so that, if the goods were sold (as they subsequently were - the JCB 3CX was sold on 20 October 2020 for £41,500, the JCB Fastrac on 17 May 2018 for £45,063.44), the net proceeds would belong to KSHP.

655. I am satisfied that that argument is not open to the Claimants. That was not the way in which the Claimants had pleaded their case. The Amended Particulars of Claim pleaded in relation to the assets (paragraph 43.1) that KSHF "was the legal owner" of the assets (as similarly in the table at paragraph 45.1 and in the Scott Schedule). If it were sought to argue that title did not pass on execution because the Claimants did not have legal title to some or all of the assets in question, that claim should have been pleaded. Moreover, I agree with Mr Fryer-Spedding's submission that on the true construction of the October Agreement KSHF agreed to do what was reasonably necessary to secure that KSHP acquired title to these items and that

KSHF would not assert a superior right to possession and ownership of the goods to that of KSHP.

Conversion of Chattels

Issues 8 to 12:

656. In the light of the conclusions which I have reached about the validity of the October Agreement, it seems to me that the issues relating to the alleged conversion of chattels (in the form of the farm machinery) do not arise. The October Agreement was valid and effective according to its terms and was not the subject of any vitiating factor.

657. It follows that none of the assets listed in the October Agreement was wrongfully seized and removed by Rupert from the Farm premises in August 2018 and that issues relating to their value at the time of any alleged conversion (which is not the case) or their value now do not arise.

658. I have dealt with the questions of the removal of the hay and logs in the context of the individual heads of trespass where they more naturally fell at the trial.

Trespass to Land

Issues 13, 17 and 18:

659. In the light of the abandonment of the general trespass claim and the aggravated damages claim, I do not need to make any further findings on these issues. In short, it is clear that Rupert was permitted, and those working for him were authorised, to come on to the Farm premises after August/September 2017 and that they did not trespass in doing so. He and those working for him were not asked to leave the Farm premises while they were working there. Although Claire may have wanted Rupert to use the premises on the basis that the the parties continued their relationship, it was not a condition of access which she imposed on pain of trespass. Although tempers may have been short and voices raised when Rupert was on the premises in October 2018, I do not find that his behaviour would have justified an award of aggravated damages in any event.

Issue 16:

660. Although Mr Bennion-Pedley did not formally abandon the claim for damage to the two stone walls, he did not press it with any enthusiasm and it is clear from the evidence of Mr

Murray that the damage to the walls was done by an inexperienced young third party who was employed by an independent contractor for whom Rupert was not responsible. Rupert is therefore not liable for any such damage. The allegation in paragraph 58.3 of the Amended Particulars of Claim must fall and with it the averment of special damage in paragraph 59.3.

661. That leaves Issues 14 (the specific instances of damage in relation to removal of topsoil, removal of the oil tank and dumping of rubble and stone) and 15 (damages consequent thereon).

662. Issue 14.4 (parking a trailer in front of the outbuildings) and 14.5 (placing boulders in front of storage containers) seem to me to go very much together.

Issue 14.1 (removal of significant quantities of topsoil from Claire’s property in the spring of 2018)

663. On this issue I prefer the evidence of Rupert and the evidence given on his behalf by, in particular, Mr Foden. I also note that none of the alleged removal of topsoil by Rupert, which was said to have occurred in the spring of 2018, was the subject of complaint by Claire in any contemporaneous text message, which one would have expected if Rupert were doing significant damage to the Farm by extracting topsoil, which was a valuable commodity, from it. That is particularly so since the pleaded allegation is that during the spring of 2018 Rupert entered the premises on at least four occasions and removed significant quantities of topsoil from three of the fields. The allegations which she now makes of such wholesale deprecations from the Farm in the spring of are wholly inconsistent with her texting Rupert on 28 April 2018 at 22.58

“Thank you for every thing your doing making everywhere look lovely
... night x.”

and on 15 July at 11.56

“Thank you loads for helping me
Know your really busy ... keeping place nice just means a lot to me,
appreciate the help lots ... thank you”.

664. I find that there were only two instances of Rupert moving topsoil. The first was when he put in tracks for the livery yard, which involved moving topsoil to make the tracks, but the soil

did not leave the Farm. That was clearly work done with Claire's consent. The other instance of moving topsoil was in relation to the Selden site, where I accept the evidence of Mr Foden. He and Rupert had agreed that the latter could remove topsoil from the Selden site to be stored at the Farm and returned at a later date for landscaping. Some of the soil eventually went back to the Selden site, but most of the soil was never returned because of the final breakdown in relations between Claire and Rupert in the late summer of 2018.

665. It follows that the allegation in paragraph 58.1 cannot be made out and that Claire cannot recover the special damage for replacing soil and reseeding one of the fields as alleged in paragraph 59.5.

Issue 14.2 (removal of the oil tank in September 2018 from Claire's property)

666. On this issue I am faced with a straight conflict of evidence. Despite my many misgivings about her evidence, on this particular point I prefer the evidence of Claire in the light of the contemporaneous documentation and find that the oil tank was removed by Rupert without Claire's permission.

667. It is clear that Elliotts of Bakewell had installed a new oil boiler and domestic oil tank and had run an oil line to the boiler in the Coach House and connected it to the tank in or about 24 October 2016 at a cost of £4,159.20 (including VAT). It is also clear that in October 2018 Elliotts had to supply and fit a new bunded oil tank to replace that tank at a cost of £1,656.00. There is no documentary evidence that it was subsequently uncoupled or unconnected and Rupert's own evidence on that point was equivocal; he could not say whether it was connected to the Coach House or not, although he said that it was not fastened down. I find on balance that it was connected to the Coach House, although it may have been lying on the ground rather than attached to the ground. The tank must have been usable, otherwise there was no reason for Rupert to take it. However, it seems to me that it would have made no sense for Claire to have allowed Rupert to take it away and then have to buy herself another tank, particularly if the tank was not damaged.

668. Subject to the question of whether it was attached to the ground, I find that the allegation in paragraph 58.2 is made out and accordingly Rupert is liable to compensate Claire for the cost of the installation of the new tank in the sum of £1,656.00 as averred in paragraph 59.2.

Issue 14.3 (depositing a significant quantity of rubble and stone at Claire's property)

669. On this issue I prefer the evidence of Rupert and the evidence given on his behalf by, in particular, Mr Murray. Again it is significant that there was no contemporaneous complaint about the activity when it is said to have occurred in July 2018 and that the first mention of it occurred after the final breakdown of relations in early September. I find that Claire needed a soakaway drain and that Rupert provided her with the concrete ring for that purpose which was subsequently smashed by the young man with the digger who had damaged the two stone walls and for whom Rupert was not responsible since he did not employ him. The alleged dumping of rubble was either to do with the construction of tracks for the surface of the new livery yard at a much earlier stage of their relationship or was the result of the work done by Mr Murray shortly before his last visit to the Farm. His evidence was that he had put loads of stone down on the entrance to the driveway to sort it out since it was getting worn away with horses passing over it and needed some rocks. Rupert had brought all the stone in and asked Mr Murray to do the work. It was a long driveway and took some time to complete. Both of these activities were done with Claire's consent and consequently cannot be the subject of complaint by her.

670. It follows that the allegation in paragraph 58.4 cannot be made out and that Claire cannot recover the special damage for removing rubble and ancillary works as alleged in paragraph 59.1, 59.4 (to the extent that it does not relate to the alleged removal for the topsoil), 59.5 and 59.6.

Issues 14.4 and 14.5 (parking/placing a trailer/boulders in front of outbuildings/storage containers)

671. This issue was not the subject of a claim to special damages under paragraph 58 and the particulars thereunder, but was said to be part of the cause of action in relation to the claim for aggravated damages, which was in any event abandoned by Mr Bennion-Pedley at the outset of the trial. Although I do not therefore strictly need to deal with it, it seems to me that I should make certain findings about it because it impacts of the evidence which I have received from Claire throughout the course of the trial and what reliance I have been able to place on it.

672. The pleaded allegation in paragraph 61.1 and 61.2 was that in mid to late 2017 Rupert entered the premises and placed trailers at the entrance to two outbuildings and a shipping container and placed boulders at the entrances with the deliberate intention of preventing Claire from accessing them and that, despite repeated requests by her to remove them, he did not do

so until October 2018, after he had removed the machinery from the Farm. That is inconsistent with Claire's witness statement, in which she said that it was *after* she had sent the text message about the money which she said that she had loaned Rupert or KSHP over the preceding 10 months and the assets which she said were still hers, that he changed and started placing boulders and a trailer so that she could not access the outbuildings and the wood store.

673. She was asked about this inconsistency in cross-examination and replied that

“Q. Rupert was blocking them with boulders for security?”

A. No.

... No, big boulders

Q. It was for security, was it not?

A. No, he had never done that before.

Q. So when were the buildings first blocked?

A. He used to put boulders in front of the gates/paths.

He was paranoid.

Someone would come on to the land.

When he first moved to the Farm

Q. When did he fit the boulders in place?

A. I would have had dates on the particulars of claim: late 2018.

Q. Para 61.1 of the Particulars of Claim says mid-late 2017; is that your evidence?

A. I thought it was 2018.

Q. So when were you blocked in?

A. I would have to look at the pleadings

Q. Not in 2017?

When do you say the boulders were put in place?

A. Mid 2018

Q. So the Particulars of Claim are wrong, are they?

A. I'm not sure, they could be, I have a bad memory.

I am trying to remember when the acts were done; perhaps it was a typing error.

Q. Look at your witness statement para. 56: a year and a bit later?

A. Yes, the earlier date is a typing error.

Q. P.13: it is part of your claim for aggravated damages?

A. Yes.

Q. Para. 61.1 says: mid-late 2017?

A. It should have read 2018.

Q. Look at para 61.2: so case now at its highest case is that it only occurred between August-October 2018?

A. He put boulders in front of the doors.

It was only months, not a whole year.

Didn't ask for logs back.

I changed the locks around time Rupert collected his things.

Q. Only in July 2018 you asked to remove the boulders?

A. I asked him before.

Q. Look at the supplemental bundle p.305: [reads]
That was the first mention of boulders, wasn't it?

A. I was already asking over phone; I can't remember when.

Q. Look at the supplemental bundle p.321: the boulders can be moved; previously you were happy they were there?

A. I had been asking for them to be moved.

Q. It was about security – you were happy they were there until you launched this claim?

A. Not true.

Q. It was a method of security for the outhouses?

A. Not true"

674. This passage illustrates and encapsulates many of the problems and inconsistencies with Claire's evidence. First it is said that Rupert had never done this before; then it was said that he had done it when he first came to the Farm. First it was denied that he had done it for reasons

of security; then it was said that it had been for reasons of security. The pleaded case was that it had been done in mid to late 2017; then it was accepted that it had not been done until mid-2018. That was said to be a typing error, but it clearly was not and had been alleged as part and parcel of the unsustainable general trespass claim which was alleged to have gone on for a year in the face of text messages and witness evidence which had made it clear that the general trespass claim was not sustainable.

675. It is clear that, whenever the boulders and the trailer had first been placed where they were, that was done for reasons of security and not to preclude access by Claire. That is consistent with the text messages which Claire sent on 27 and 31 July 2018: it was necessary for Claire to pick up chains for the gates so that the boulders could be moved. The issue of the boulders and the trailer did not become an issue between Claire and Rupert until late July 2018; they were gone by October and were not said to have been the cause of any special damage. They only related to the claim for aggravated damages and that claim was abandoned at the outset of the trial.

Issue 15:

676. Save for the averments in paragraphs 59.7 and 59.8 I have dealt with the issues of the alleged special damage in my consideration of the sub-issues arising under Issue 14 above. As to the remaining averments of loss, it seems to me that, since I have found that the removal of the machinery was legitimately done under the terms of the October Agreement, it was not wrongful and that Claire cannot recover the cost of hiring additional seasonal agricultural workers under paragraph 59.7. It is not clear to which of the sub-paragraphs of paragraph 58 the averment of loss in paragraph 59.8 applies, although it is not connected to the question of the removal of the oil tank and it must therefore fail in any event.

677. That leaves two minor issues for consideration: the firewood/logs valued at £600 and hay/haylage valued at £3,000, both said to have been wrongfully removed by Rupert from the Farm between 16 and 27 August 2018 at the same time as he took the vehicles and machinery.

678. They are part of the asset claim assets numbered 13 and 14 in the table of assets set out in paragraph 45 of the Amended Particulars of Claim. Although they are technically part of the assets claim, they fell more naturally at the trial to be dealt with as an adjunct to the trespass claim (it is notable that the schedule or table referred to “vehicles and machinery” wrongfully

taken). That was certainly how the questions were framed and where they occurred in the respective cross-examinations and it is convenient to deal with them here.

679. With regard to the logs, Rupert's oral evidence, which I accept, was that there were two sources of logs: trees from the Farm and trees elsewhere on which he had done tree surgery. The wood was split into logs and dried and secured. Farm timber was usually stored inside, his own logs from tree surgery usually outside. On the second occasion when he tried to remove his own logs and was loading up timber from work he had done off the Farm, Claire asked him to leave timber and he did. He left timber and split logs, but did not leave the Farm without logs altogether, although there was only one open fire in the Farmhouse, which was rarely used. I am satisfied that the firewood which Rupert removed was firewood which already belonged to him through work he had done on it or which he had collected from his own land.

680. As to the hay, Claire said in cross-examination that Rupert only had 1 field which he rented or "he doesn't have fields of his own", but I prefer his evidence that he had three fields, all of which he rented for minimal rent or rent free, but with an obligation to carry on their upkeep and that it was that hay from his own fields which he brought to the Farm. He only brought it to the Farm if it was to be eaten by horses in livery there or if bales were in transit. Claire said that a number of the girls in the livery yard saw Rupert taking the hay, but none of them was called to give evidence on Claire's behalf.

Conclusion

681. The Money Claim: KSHP must repay Claire £25,000 and must repay KSHF £19,000 (paragraph 534) and an additional sum of £1,000 to Claire (paragraph 543), making a total of £26,000 to Claire and £19,000 to KSHF, that is to say £45,000 in all.

682. The Assets Claim: this claim is dismissed.

683. The Trespass Claim: Rupert is liable to compensate Claire for the cost of the installation of the new oil tank in the sum of £1,656.00 (paragraph 668).

684. Save to the extent set out above, the claims of Claire and KSHF against Rupert and KSHP are dismissed.

