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Case No: BL-2019-001956

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

Rolls Building
Fetter Lane, London, WC2A 2LL

Date: 2 August 2021

Before :

HIS HONOUR JUDGE JARMAN QC

Sitting as a judge of the High Court

Between :

(1) GABRIELE VOLPI

Claimants

(2) DELTA LIMITED

- and -

MATTEO VOLPI

Defendant

Mr Andrew Holden and Mr James Bradford (instructed by **Grimaldi SL LLP**) for the
claimants

Mr Paul Mitchell QC and Mr Tom Shepherd (instructed by **Taylor Wessing LLP**) for the
defendant

Hearing dates: 19-22 July 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this
Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE JARMAN QC

His Honour Judge Jarman QC:

1. In 2012 the claimants (Gabriele Volpi or his wholly owned company Delta) funded the purchase in the sum of CHF 4 million of an apartment (the apartment) near Lugano Switzerland for his son the defendant (Matteo Volpi) to live in with his family. The central issues which I must determine are whether the funding was by way of an interest free loan, as Gabriele Volpi claims, or by way of gift as asserted by his son, and whether a further CHF 2 million was advanced by way of gift to the son to complete the apartment, which the latter denies receiving.
2. Although those factual issues are straightforward to identify, they are not straightforward to resolve. There are several reasons for this. Whilst both Gabriele Volpi and Matteo Volpi accept that the transaction was handled on behalf of each of them by the former's financial advisor Francesco Cuzzocrea, neither of them called him as a witness. Furthermore, neither has disclosed any correspondence whether by email or otherwise passing between himself and Mr Cuzzocrea at the relevant time. There are issues as to whether the signatures purporting to be those of Matteo Volpi on documentation involved in the transaction are forgeries.
3. Gabriele Volpi, who is in his late 70s, was due to give evidence before me by video link from Monaco on the second day of the hearing but I was told that overnight he had developed several symptoms including vomiting, fever and accelerated heart rate. His condition was kept under review but by the last day of the hearing it had not changed, and medical evidence indicated that he would not be fit to give evidence that day or the next and it was unpredictable when he would be able to do so. His counsel Mr Holden applied to admit his statement under the Civil Evidence Act 1995 but I declined to do so, giving reasons. Essentially these are that his evidence is not crucial to his case, he having left the dealing with the transaction to his lawyer in Lugano Dr Baggi, and his secretary and personal assistant Mrs Catta, and to Mr Cuzzocrea. Moreover, it would not be fair to admit this evidence to be adduced without giving an opportunity for him to be cross-examined, even though this is something which could and would be taken into account in deciding what weight to give to the statement.
4. The case of Matteo Volpi is that Dr Baggi and Mrs Catta are lying about certain aspects of the transaction. These three witnesses gave written and oral evidence before me. I also had written and oral evidence from handwriting experts on both sides.
5. Before I deal with those issues, I shall set out some of the history of the transaction. Gabriele Volpi has built up very successful business interests in Nigeria and is a very wealthy individual. Matteo Volpi, and his brother Simone, worked in the business for many years, during which father and sons were resident in Nigeria. By 2011 he wished to move with his family to Switzerland and to send his children to school there. His brother made a similar move with his family.
6. In his witness statement, Matteo Volpi says that he wanted to obtain a loan to purchase the apartment, and sought help from Mr Cuzzocrea, who, he says:

“...ran the Family Office in Lugano which handled all the matters for members of the Volpi family and he was the main point of contact for administration of family matters.”

7. This led to a conversation with his father, when they were still on good terms. Matteo Volpi sets out the conversation in his witness statement as follows:

“When my father heard of my wishes and he told me that there was no need to borrow money, he said property should instead be purchased in another way by the family for me, which I took to mean that it would be purchased by one of the Trusts (of which I am a beneficiary). This was not unusual, my father had also purchased a property for each of me and Simone in Santa Margherita previously.”

8. When he was cross-examined about this, he appeared to accept eventually that his father did not expressly use the word “gift,” but maintained that he assumed the apartment would be brought by family trusts which his father had set up. He added the following:

“...I thought it was going to be the trust, I'm not too sure, and then I found out it was put in my name, as the house in Italy, we had a house, myself and my brother, in Santa Margherita...originally in my name...and then under my father's request it was put into the trust, and actually using the divorce settlement with my mother.”

9. In late 2011 Dr Baggi was instructed by Mr Cuzzocrea on behalf of Matteo Volpi to prepare all necessary documents for the purchase of the apartment and this he delegated to Mrs Catta under his supervision. As Matteo Volpi was then resident in Nigeria, permission had to be sought from the First Instance Authority of the District of Lugano to make the purchase. The permission was granted, subject to appeal, on 8 February 2012, and the permission noted that Matteo Volpi was represented by Dr Baggi.

10. The next day Matteo Volpi executed a power of attorney in favour of Mr Cuzzocrea to sign on his behalf the sale and purchase deed in respect of the apartment. Those documents were drafted by Mrs Catta under the supervision of Dr Baggi. The same day Mr Cuzzocrea executed the deed, which recorded the purchase price of CHF 4 million, to which the power of attorney was then attached. An entry was made in the land register that Dr Baggi was irrevocably instructed by the parties to register the deed as soon as the time for appealing the permission had passed.

11. The deposit of CHF 400,000 was sent by Delta to Dr Baggi's firm in two tranches by 13 February. On 20 February Dr Baggi emailed Mr Cuzzocrea saying that he was sending the draft of a loan agreement between Gabriele Volpi and Matteo Volpi and attached an unsigned draft in the sum of CHF 4 million. By 28 February Gabriele Volpi had signed that agreement. The balance of the purchase price was transferred to Dr Baggi's firm by Delta on 2 March.

12. At the time of purchase, the apartment was incomplete. Matteo Volpi puts it this way in his witness statement:

“It was still under construction at the time of the purchase. It was just walls and therefore we (my wife and I) knew that once

we had purchased it we would need to do construction work on the property. We engaged, through Cuzzocrea, his brother's architectural firm to complete the construction.”

13. On 4 April Dr Baggi emailed Mr Cuzzocrea saying he was sending two drafts of the loan agreements “between father and sons” and asked him to check if they were ok. He attached a draft of an unsigned loan agreement between Gabriele Volpi and Matteo Volpi in the sum of CHF 5 million and another unsigned loan agreement between Gabriele Volpi and his other son Simone in the sum of CHF 3 million. The former was sometime later signed by Gabriele Volpi.
14. In the summer of 2012, Matteo Volpi and his family went on holiday to Italy. In late August 2012 they moved into rented accommodation in Switzerland whilst the works to the apartment were completed. He was at this time still working for his father’s business in Nigeria, and travelling back and fore between that country and Switzerland.
15. On 21 August Mrs Catta emailed Mr Cuzzocrea saying that she had been instructed by Dr Baggi to issue “mortgage notes on the properties.” He emailed her shortly beforehand, copying in two members of his staff including Ivana Sala, saying that they would inform her shortly what amounts were to be stated in the mortgages and that the power of attorney would be granted “to Ivana.”
16. The mortgages which were in the event executed are governed by The Swiss Civil Code. Section 3 of Chapter 3, deals with “mortgage certificates on paper,” by which the bearer or a specific person may be named as the creditor under the paper mortgage certificate. It must be registered with the land register to be valid. Where the debt secured is discharged the debtor may request the creditor to hand over the paper mortgage certificate without cancelling the same and it may be used again to secure a new debt. It can be passed by the creditor to another creditor to secure any borrowing of the owner of the charged property. Such a mortgage is referred to in some of the contemporaneous documentation as a bearer mortgage and that phrase was also used in the proceedings before me, so I adopt that phrase for convenience in this judgment.
17. The next day he emailed her again, copying in Dr Baggi, saying that the bearer mortgages needed to be “Matteo 6,000,000 Simone 4,000,000.” He attached to that email two loan agreements, bearing what appeared to be the signature of Gabriele Volpi, and that of Matteo and Simone Volpi respectively. Matteo Volpi denies that he signed the loan agreement.
18. On the same day Mrs Catta signed bearer mortgages on behalf of Matteo and Simone Volpi over their respective properties. She purported to do so pursuant to two powers of attorney, each bearing the date 14 August 2012, in her favour and purportedly signed by each of them respectively. Matteo Volpi’s pleaded case is that he has no recollection of signing this document and does not admit doing so.
19. There was before me no covering email or letter in relation to these powers. Mrs Catta’s evidence was that she did not prepare these documents, and they were probably prepared by Mr Cuzzocrea. She said they were “definitely given to us by hand.” She could not recall the date, but accepted it was probably after Mr Cuzzocrea’

email on 22 August 2012. No-one could recall why these bore the date 14 August, or why the proposal to grant them to Ivana was changed in favour of Mrs Catta.

20. Also on 22 August, copies of the two bearer mortgages and the corresponding powers of attorney were stamped with the notary stamp of Dr Baggi and signed by him as authentic copies.
21. The next day Mrs Catta emailed Mr Cuzzocrea, copying in Dr Baggi, attaching scanned copies of the two bearer mortgages. Dr Baggi confirmed in an email on 27 August to Mr Cuzzocrea, copying in Mrs Catta, that he would send the authenticated copies of the bearer mortgages the next day by messenger. Next day by letter he confirmed that that is what he had done.
22. After the works to the apartment were completed, Matteo Volpi and his family continued to live in the property until the summer of 2017 when he decided to sell and move to the UK. The notary public instructed to prepare the deed of sale emailed Matteo Volpi on 14 September referring to the bearer mortgage in the sum of CHF 6 million and asking whether the apartment was free of debt or whether a bank had financed him. He forwarded this to Mrs Catta. She emailed him on 19 September forwarding the draft deed of sale, which provided that the bearer mortgage would be delivered to the purchaser without claim, and said that he could talk to the notary public about a possible reimbursement of the costs of the bearer mortgage. On the 25 September, she emailed him again referring to a reimbursement of CHF 10,000 for such costs. On 2 November she confirmed to him by email that the bearer mortgage had been delivered to the notary public on behalf of the purchaser.
23. At this time relations between him and his father remained good. However in 2018 he commenced arbitration proceedings against his father in respect of the family trusts, and a partial award in those proceedings was made on 13 June 2020. There are appeal proceedings ongoing. The arbitration proceedings are subject to confidentially agreements and, to the limited extent to which they are relevant to the matters which I have to determine, have been dealt with by way of a sealed bundle, a confidential annex to Matteo Volpi's written submissions in the claim before me, and short closed sessions of evidence and submissions.
24. On 10 July 2019 Gabriele Volpi and Delta served a statutory demand on his son for repayment of a CHF 4 million loan which it was said was recorded in a loan agreement. The latter's solicitors requested a copy and in response the copy of the loan agreement in that amount signed by Gabriele Volpi and dated 28 February 2012 was sent. When asked how this was binding on Matteo Volpi it was said on behalf of his father that he believed that his son did sign but that he could not find that signed copy, but in any event asserted that his son agreed to the loan.
25. On 5 August 2019 Dr Baggi emailed Gabriele Volpi's solicitors saying that he was sending copies of the loan agreements signed by his two sons which were undated but sent to his firm on 22 August 2012. These were attached. This led to those solicitors demanding repayment of CHF 6 million in September 2019.
26. On 13 November 2019 this claim was commenced. Handwriting experts were instructed to examine Matteo Volpi's purported signatures on the CHF 6 million loan agreement and the power of attorney to Mrs Catta. Mr Stockton for the claimants and

Ms Radley for the defendant agree that this is not an easy exercise because the signature of Matteo Volpi is short and simple in form but highly variable. This makes it easy for someone else to copy it.

27. There is a purported signature of Matteo Volpi on each of the three pages of the loan agreement. In respect of the first two, the experts agree in essence that no conclusion can be reached. In respect of the third, Mr Stockton considers that there is moderate evidence to support the proposition that it was written by Matteo Volpi. Ms Radley considers that there is insufficient evidence to offer an opinion. In cross-examination she accepted that in respect of this third signature there were no significant differences with known signatures, but was more cautious than Mr Stockton because of the brevity and variability of Matteo Volpi's signature. She also accepted that in referring to evidence, she meant in handwriting terms and not in wider terms such as likelihoods.
28. As for his purported signature on the power of attorney to Mrs Catta, Mr Stockton considered there is moderate evidence to support the proposition that that is not genuine, although the possibility that it is can by no means be excluded. Ms Radley says there was limited positive evidence to support the proposition that this is a simulation of his signature by another individual, but that her opinion was far from conclusive.
29. Before I deal with the central issues, I shall make findings about Mrs Catta, Dr Baggi, and Matteo Volpi in giving evidence before me and also determine secondary issues which arise from such evidence. In doing so I bear in mind that these witnesses were trying to recall events which happened nearly ten years ago, which are not all well documented. Moreover these events were a very minor part in Dr Baggi's dealing with the complex business and family interests of Gabriele Volpi and other members of his family over many years. Mrs Catta has been his personal assistant since 1975. They each gave written statements and oral evidence in Italian which was then translated.
30. I did not get the impression from the demeanour of any of these three witnesses that she or he was seeking to mislead the court at any point. Such a conclusion, however, may be based on factors other than demeanour.
31. In submitting that Mrs Catta was lying in certain respects, Mr Mitchell QC for Matteo Volpi relied mainly on four such factors. The first is that she said in cross-examination that she wrote her own statement in Italian, but that version contains phrases in English such as "loan agreement," and in one instance refers in English to an email written in Italian. She said that she did this for practical reasons, to give a greater understanding of such concepts as bearer mortgage and mortgage certificate. Mr Mitchell invited me to infer from this evidence that she was lying when she said she wrote her statement in Italian. In my judgment that is not a proper inference. She said in evidence that she works in the English language and at times answered questions put to her in English without waiting for the translation. Her ability to do so is the most likely explanation for such references.
32. The second factor relates to her evidence that she wrote the words in Italian "attachment A to the deed No...." at the top of the power of attorney to Mr Cuzzocrea which was then attached to the sale and purchase deed. Mr Mitchell put to her that

that “was something which you type on with a typewriter to the original?” and she replied “yes, correct.” Later in cross-examination, she was asked about similar wording appearing on the power of attorney to herself attached to the bearer mortgage. Mr Mitchell put to her that these words were not added with a typewriter on this document because it was in the same font as the rest of the document, unlike the power of attorney to Mr Cuzzocrea. She replied as follows:

“Yes, because I put the document in the computer and I write and print the sentence. We do not use typewriters anymore.”

33. She added that it was a common font. It was then put to her that she had agreed that she had used a typewriter to add these words to the power of attorney to Mr Cuzzocrea. She denied saying that, and again said that she put that document “in the computer.” She then accepted from Mr Mitchell that she was referring to a printer. In my judgment the use of the word “typed” in this context is not unusual even when the machine used is a computer. The use of the word “typewriter” may be more unusual in this context but her evidence that typewriters were not used in the office in 2012 is not surprising. In my judgment, at worst this was a misunderstanding in cross-examination. I accept Mrs Catta’s evidence that she was referring to a computer and printer in respect of both powers of attorney.
34. The third factor is related to the second. Mr Mitchell put to Mrs Catta that the power of attorney to her was made by her on 22 August on the same day as the bearer mortgage to which it was attached as attachment A was signed, so the power of attorney could not have been signed by Matteo Volpi. Those words are printed on the top of the power, as they were on the earlier power of attorney to Mr Cuzzocrea, but in the former they are in the same font as the rest of the document, whereas in the latter the font is different.
35. Moreover, the vertical alignment in the former is better than in the latter, although to the naked eye the difference is slight. On each, the horizontal alignment with the rest of the document appears to be good. It is not in dispute that those words, followed by the deed number to which it is attached, can only be inserted once the deed is signed, as it is only then that the deed number (given sequentially to deeds created in the office) will be known. Moreover, in this particular case, the amount to be inserted in the bearer mortgage was not known to Mrs Catta until 22 August 2012.
36. Although the experts had not been asked to deal with these issues, Mr Mitchell put them to each, without objection from Mr Holden. They agreed that tests could be carried out to the original documents to assist on these issues, and that these have not been carried out. They agreed that although the font appeared universal in the later power of attorney, it was a common font. That supports what Mrs Catta said in cross-examination. Moreover, although they agreed that it was difficult to attain precise alignment when adding printed words to a printed document, there were various templates to achieve this and it could be done by someone who has reasonable knowledge of how to do it.
37. Mrs Catta has many years’ experience as Dr Baggi’s secretary and personal assistant. In my judgment it is likely that she was able to add the words in the way she described. Her answers in cross-examination about the provenance of this documentation came across as genuine and I accept her evidence on this point.

38. The fourth factor is that in her written statement and at one stage in cross-examination she gave the impression that she was present when Dr Baggi phoned Matteo Volpi, as he says he did and as the latter denies, to confirm that it was his signature on the power of attorney given to Mrs Catta, before notarising the bearer mortgage. However when she was questioned in more detail she readily accepted that she was not present when the phone call was made, but said that Dr Baggi had told her shortly afterwards that he had done so. In my judgment the latter acceptance was a hallmark of truth rather than lack of credibility. If Mrs Catta had come to court to give false evidence to support that of her employer, it would have been very easy for her to maintain the impression that she was present during such a conversation. I accept her evidence on this point. It does not necessarily follow from Dr Baggi's telling her at the time that he had made the phone call that he had in fact done so.
39. I then turn to Dr Baggi. He has been an attorney and notary since 1970 and is entitled to the respect due to a holder of such an office. On the other hand, his close association over many years with Gabriele Volpi in complex business and family matters, who it is accepted has a controlling personality, does suggest that he would be keen to support him where he could. Mr Mitchell referred me to some 16 paragraphs of the findings of the arbitration tribunal, chaired by Lord Neuberger, of that involvement and Dr Baggi's credibility. I have read each of them, but do not repeat them in this open judgment.
40. It does not necessarily follow from those findings that Dr Baggi lacks credibility on the issues before me. An indication of the danger of jumping to such a conclusion was given when Mr Mitchell put to him in cross-examination that he was lying when he said that he had in his office the original of the bearer mortgage with the power of attorney to Mrs Catta attached. He said that as a notary he was obliged so to keep the originals and to release only authenticated copies to the parties. This was also said by Mrs Catta when the same point was put to her.
41. At my invitation, and without objection from the parties, he agreed to produce the originals the next day, which he did. A photographic image of the power of attorney was emailed to me and Dr Baggi showed by video what he said were the originals of the documents, which he said were retrieved from his office by him. Although that was not an ideal way to view the documents which he produced, the allegation that he was lying about having the originals was not pursued and I accept his evidence on this point.
42. However, the findings of the arbitration tribunal referred to above do cause me to be cautious about accepting Dr Baggi's evidence on controversial matters at face value.
43. Perhaps the most controversial aspect of his evidence, was that he spoke to both Gabriele Volpi and Matteo Volpi in 2011 about the proposed loan from father to son, and that he phoned Matteo Volpi to verify his signature of the power of attorney to Mrs Catta, and that such verification was given. He said he was required to do this as a notary before notarising the bearer mortgage. However, in cross-examination he accepted that he made no written record of these phone calls. There is no confirmatory email or other correspondence in relation to them. He said that he makes attendance notes sometimes depending on the topic. He only does so if necessary. Moreover, in his oral evidence he said that he had several telephone calls with Matteo Volpi at this time, whereas only one is mentioned in his witness statement.

44. In my judgment, such phone calls would have been important and it should have been necessary to record the confirmation of the signature on the power of attorney to Mrs Catta if that were a requirement before he could authenticate the bearer mortgage. In the absence of such records, and notwithstanding my finding that Dr Baggi told Mrs Catta at the time that he had confirmed the signature, I cannot be satisfied that his recollection of such phone calls so long after the event is accurate.
45. I turn finally to Matteo Volpi. Many of his answers in cross-examination were long and sometimes contained irrelevant points, even when the question was straightforward. He had a tendency to argue his case rather than give a straightforward answer. This meant that it was not always easy to understand what his answer was.
46. One of the surprising, if not suspicious, features of this case is the lack of contemporaneous emails passing between Mr Cuzzocrea and Gabriele Volpi and Matteo Volpi in relation to the purchase of the apartment. When the latter was cross-examined about this he accepted that generally speaking he would deal with Mr Cuzzocrea and members of his staff both by email and telephone. When it was put to him that he had not disclosed one email between him and Mr Cuzzocrea regarding the purchase of the property, he said this:
- “The communications were many. I don’t recall how many were by email and how many by phone calls. If I haven’t disclosed it, then it’s been mostly by phone calls.”
47. He added that with regard to the apartment, he was in contact with Mr Cuzzocrea’s office “for everything.” The matter was pursued, and he then repeated then that there were “not many emails.” Even if this answer is to be taken to refer to his communications generally with Mr Cuzzocrea, it would be surprising, given that he was then based in Nigeria although travelling to Switzerland from time to time, and Mr Cuzzocrea’s office was based in Lugano, that this did not also apply to the purchase of the apartment. He did not, in my judgment, deal satisfactorily with the reason why not one such email has been disclosed.
48. Another part of his oral evidence which I found to be unsatisfactory related to why his father should be prepared to make him a gift of the purchase price of the apartment. This was against the background that he accepted that his father was very concerned, or obsessed as was put to him, to protect his assets for himself and his blood line and against any claim, for example from his daughters-in-law upon any subsequent breakdown of their marriage to his sons. The way he put it in his witness statement was as follows:

“When I wanted to buy the home in Lugano in 2012, my father told me the trust would purchase it for me, for reasons of asset protection. It was not unusual for my father to be minded to protect assets, in particular property. My father is a very wealthy man and is, unsurprisingly, concerned with preserving his wealth (and the family's wealth). However, my father's views on asset protection include a fear by him that the family assets will be depleted through marriage and divorce and he has therefore always tried to make sure that none of the assets are held by any of our wives, so they cannot have a claim on any of

the assets... I do not agree with this approach and I want my assets to be shared with my wife and be for the benefit of me and my family.”

49. Although Matteo Volpi said he thought originally that the apartment would be purchased by the family trusts of which he was a beneficiary, he accepted that he saw the purchase deed at the time which showed the purchase in his own name. He says when he saw the bearer mortgage on the apartment, which he did much later, he assumed this was his father’s way of seeking to protect family assets. As to whether he believed in the meantime that his father was seeking to protect family assets, he gave these explanations:

“I told Cuzzocrea we were married under separation of assets in our marriage certificate to cut him off, because the truth is that I didn’t want to protect my own assets against my wife, I don’t think it’s fair, and considering what happened to my mother, I think I was right...since I told Cuzzocrea that our matrimonial law was in separation of assets as far as my father was concerned, it would be satisfied.”

50. His reference to what happened to his mother relates to her divorce from his father. In my judgment these explanations were unsatisfactory. If his father was very concerned about, or obsessed with, asset protection, it is unlikely that he would make a gift to him of the purchase price of the apartment on the basis of an oral assurance given to Mr Cuzzocrea that this would be achieved by a separation agreement which he claimed he had with his wife, but which he did not in fact have.
51. These two unsatisfactory parts of his evidence on important points cause me to be cautious about accepting at face value his evidence on contentious issues.
52. I now turn to deal with the central issues, the first of which is whether Matteo Volpi signed the loan agreement with his father for CHF 6 million. In doing so, given the caution which I have expressed above in relation to some of the witness evidence, contemporaneous documentation (such as it is) and inherent likelihoods are particularly important. The paucity of emails between Mr Cuzzocrea and the parties concerning the purchase of the apartment are neutral factors in determining this issue, as they apply to both sides.
53. Several factors were relied upon by Mr Holden to indicate a loan rather than a gift. I shall deal with the most significant of these. The first is that Matteo Volpi himself does not say that the word gift was used in his discussions with his father. This in my judgment is not a strong indicator. If the father had intended the purchase price to be a loan then he may have been expected to make this clear to his son.
54. The second factor is that a gift is unlikely, given his father’s obsession with protection of family assets, including against potential claims by his daughters-in-law. In my judgment, this is a moderately strong indicator. As I have already said, given the evidence about his father’s control regarding family assets, it would be surprising if his father would be prepared to accept an oral assurance via Mr Cuzzocrea that there was sufficient protection by a separation agreement between him and his wife, without at least making further inquiries or asking to see a copy.

55. Third, the contemporaneous documentation shows that all necessary arrangements were put in place for Matteo Volpi to sign a loan agreement, and he accepts that Mr Cuzzocrea did “everything” for him in respect of the purchase. In my judgment this is a strong indicator.
56. Fourth, similar arrangements were made in respect of his brother’s purchase of property, although the price in that case was less and that property was purchased some time previously. It was not suggested that the funding for that purchase was intended as a gift or that his brother is claiming not to have signed his loan agreement or powers of attorney. In my judgment this is a moderate indicator. Matteo Volpi accepted in cross-examination that he and his brother were provided with monthly loans after they left their father businesses in 2016. Although he said he was provided with a document to say these loans would not be called in, he also accepted that such a document doesn’t have the “same strength it a court of law” as a loan. In my judgment this tends to suggest that Gabriele Volpi sought to deal with funding of the Swiss properties for his sons on an equal basis, if not amount.
57. Fifth, the expert evidence suggests that the signature on the final page of the loan agreement is likely to be genuine. Although Ms Radley took a more cautious approach because of the ease of simulation, she accepted that in respect of that signature, there were no significant differences to known signatures. In my judgment the preponderance of the expert evidence gives a fairly strong indication that this signature is genuine. This conclusion is not detracted from significantly by the unchallenged evidence of Matteo Volpi that he would regularly sign blank pieces of paper at the request of Mr Cuzzocrea. The signatures on each page of the loan agreement, including in particular the third signature which appropriately follows a few lines of text, fit neatly with the text on each page.
58. On the other hand, there are indicators of a gift rather than a loan, as relied upon by Mr Mitchell. The first is that Matteo Volpi says that his father indicated the family would provide funds to purchase the apartment without making it clear that this was a loan, and that he denies signing the loan agreement. Given the concerns I have expressed above, this at best in my judgment is a moderate indicator.
59. The second is that there is no direct or contemporaneous evidence to show that he did sign or how and when he signed. This in my judgment is a moderate indicator. The failure to call Mr Cuzzocrea is more telling in this regard against the claimants, although Matteo Volpi accepts that there was a parting of the ways with his father. He was acting on behalf of both parties and made the arrangements for signature and sent the agreement purportedly signed by both parties to Dr Baggi’s office. It does not necessarily follow that he was present at the signing, but in light of Matteo Volpi’s denials, it might reasonably be expected that further light could be shed by calling this witness.
60. The third is that the expert evidence is inconclusive as to the first and second signatures on the loan agreement and Ms Radley does not consider it likely that the third signature is that of Matteo Volpi. I have already concluded for the reasons given that the preponderance of the expert evidence points to a genuine signature rather than a simulated one.

61. The fourth is that the claimant's case has shifted from relying on the loan agreement for CHF 4 million signed only by Gabriele Volpi in serving the statutory demand, through various changes, to relying upon another agreement in the sum of CHF 6 million. In my judgment this is a weak indicator. It is clear that in relying on the former (some 7 years after the event), Gabriele Volpi was saying that he believed that there was an agreement signed by his son which he could not then find. It is also clear that the latter came to light when referred to by Dr Baggi. The increase in amount is not surprising, given that it is accepted that further monies were spent on completing the construction of the apartment with the need to obtain architectural services. The issue was who paid for these works rather than the cost. No documentation was put before me showing the source of that extra funding. However, in my judgment it is likely that the costs were in the region of CHF 2 million.
62. Fifth, it is plausible that Matteo Volpi's signature was forged on the loan agreement given his father's obsession with family asset protection and his practice of signing blank sheets of paper for Mr Cuzzocrea. I accept that it is plausible, but I have already concluded that this obsession tends to support a loan rather than a gift and the signature of blank sheets of papers does not readily explain how the signatures on the loan agreement fit neatly with the text.
63. There were other points which, in my judgment, are not weighty points. There was no mention of the loan on the sale of the apartment. The loan was only mentioned when the parties were preparing their cases in the arbitration proceedings. In my judgment it is not very surprising that a very wealthy father should choose not to call in such a loan until after he and his son had fallen out and he was facing arbitration proceedings brought by his son. Matteo Volpi's evidence was that his father had previously given him and his brother properties in Santa Margherita was not explored in any detail and does not take matters very much further.
64. Weighing up these factors for and against, in my judgment the balance of probability tips firmly on the side of a loan. The two most weighty factors are, first, that all arrangements were put in place for a loan agreement to be signed by each of his sons in the context that Gabriele Volpi was at the time obsessed with protecting assets against possible claims by his daughters-in-law. The second is that the preponderance of the expert evidence suggests that it is likely that the loan agreement was signed by Matteo Volpi.
65. Accordingly, the claim succeeds in that Gabriele Volpi is entitled to judgment against his son in the sum claimed. Delta was added in case it was argued that any repayment was due to it rather than Gabriele Volpi, but that point was not argued before me.
66. That conclusion makes it strictly unnecessary, on one view, to deal with the issue whether Matteo Volpi also signed the power of attorney to Mrs Catta to sign the bearer mortgage, particularly as the apartment has been sold and the bearer mortgage handed over. However, Mr Mitchell submits that if Matteo Volpi did not sign the power of attorney, it is likely that he did not sign the loan agreement.
67. I cannot be satisfied on the evidence that it has been shown that the signature on the power of attorney is likely to be that of Matteo Volpi. Although some of the indicators referred to above in relation to the loan agreement apply also in relation to the bearer mortgage, and in particular that all arrangements had been put in place for Matteo

Volpi and his brother to grant a bearer mortgage to secure the loan to his father who was obsessed with asset protection, the most marked difference is that the expert evidence suggests that the signature on the power of attorney to Mrs Catta is unlikely to be his. That also casts doubt on the recollection of Dr Baggi that Matteo Volpi confirmed that the signature was genuine during a telephone call.

68. However, the fact that I cannot be so satisfied does not alter my firm conclusion that it is likely that Matteo Volpi signed the loan agreement with his father for the sum of CHF 6 million. Accordingly, the claim succeeds. I am grateful to all counsel for their thorough written and oral submissions. Counsel helpfully indicated that any consequential matters which cannot be agreed would be the subject, initially at least, of written submissions. Any such submissions should be filed together with a draft order agreed so far as possible, within 14 days of handing down this judgment.