Neutral Citation Number: [2021] EWHC 2272 (Ch)

Case No: F30BM064

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS
9 August 2021

Before :

HHJ Richard Williams
(Sitting as a Judge of the High Court)

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Between :

Ashok Singh **Claimant**

- and -

(1) Parminder Singh Jhutti

(2) Harmale Singh Jhutti **Defendants**

- -
- -

Hugh Jory QC (instructed by UK Law Solicitors) for the **Claimant**
Stuart Hornett and Tom Frazer (instructed by Trowers & Hamlins LLP) for the **Defendants**

Hearing dates: 22, 23, 24, 25, 26 February, 1, 2, 3, 4, 5, 15, 16, 17, 18 March 2021

Draft judgment circulated to the parties' legal representatives on 29 July 2021 by email.

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JUDGMENT

His Honour Judge Richard Williams:

Introduction

1. This is my judgment following the hybrid trial of liability only in connection with 26 properties ("***the Properties***"), which were purchased in the names of Mr Parminder Singh Jhutti ("***D1***") and/or Mr Harmale Singh Jhutti ("***D2***"), who are respectively father and son (together "***the defendants***").

2. The Properties were previously registered in the name of Mr Ashok Singh ("***C***") subject to mortgages with National Westminster Bank Plc ("***NatWest***"), which on 21 July 2011 appointed Messrs Hunt and Judd of GVA Grimleys as Law of Property Act receivers ("***the Receivers***") over the Properties.

3. On various dates from December 2011 to April 2012, the defendants purchased the Properties (either directly from the Receivers or from associates of C, who had first purchased them from the Receivers). The total of the prices paid to the Receivers for the Properties was £2.25 million.

4. In summary, it is C's case that:

    a. Prior to the appointment of the Receivers, C's close family and friends (including C's mother as well as D1 and his wife) invested significant amounts of money into the Properties ("***the Original Investors***"). D1 and his wife had funds invested totalling £250,000;

    b. C was the victim of the banking scandal when his monthly mortgage payments spiralled as a result of having been mis-sold interest rate hedging products by NatWest, which led to the appointment of the Receivers. C found out that the Receivers were about to auction the Properties with reserves well below what they were worth;

    c. The Original Investors would have lost their investments if the Receivers sold the Properties at auction at an undervalue. Therefore, C obtained an injunction to restrain the Receivers from selling the Properties at auction. C approached family and friends ("***the Alleged Buy Back Consortium***"), who offered to loan total funds of £935,00 to go alongside bank funding to purchase the Properties from the Receivers. The Alleged Buy Back Consortium included some of the Original Investors such as D1, who otherwise stood to lose their investments if the Properties were sold by the Receivers at auction. D1 offered to lend C the sum of £400,000;

    d. NatWest insisted that any Properties purchased in more than one lot had to be purchased by a single nominated purchaser. As the acquisition was to be funded in part by bank finance, D1, who had the best credit rating, was chosen by C (in consultation with C's financial adviser) and agreed to act as representative for the Alleged Buy Back Consortium;

    e. There was an oral agreement between D1 and C that D1 would sell the Properties back to C within 12 to 18 months of the acquisition and at the same price that D1 had paid for them. C's intention during the interim period was to renovate and then refinance the Properties in his own name so that he could apply the monies he raised against the Properties to –

i. repay the monies loaned by the members of the Alleged Buy Back Consortium; and

ii. give the Original Investors the options of either (1) being repaid the amounts of their original investments or (2) retaining their original investments in the re-acquired property portfolio.

f. As negotiations with the Receivers progressed and in order to provide some comfort to the Receivers, C arranged for third parties (including other members of the Alleged Buy Back Consortium), who had their own funds and so were not reliant upon bank funding, to purchase some of the Properties on the understanding that they would later be sold to the defendants and once adequate finance was in place.

g. As a result of continuing delays in obtaining bank finance in the name of D1 -

i. Bridging finance was required to complete the purchase/re-purchase of the Properties from the Receivers/third parties. It was the bridging companies that insisted that D2 act as co-representative in light of D1's age, and

ii. In order to reduce the amount of the required lending from the bridging companies, C arranged for the defendants to purchase by way of deferred consideration those Properties that had been acquired in the names of the other members of the Alleged Buy Back Consortium. Those members of the Alleged Buy Back Consortium agreed to lend the purchase monies to C and the defendants until such time as C was able to refinance the Properties in his name and thereby complete the rescue of the property portfolio;

h. The other members of the Alleged Buy Back Consortium sent their monies either directly to the conveyancing solicitors, Rubric Lois King ("***RLK***"), to be used in the purchase of the Properties by the defendants or to the defendants' own bank account, which monies the defendants then paid on to RLK;

i. The oral agreement between C and the defendants was subsequently recorded and evidenced in a number of written agreements signed by the parties ("***the Disputed Agreements***") including in particular an agreement dated 6 January 2013 ("***the Sale Agreement***"), which at the defendants' request extended the time for completion of the re-purchase of the Properties by C from the defendants to 12 months from the date of that agreement;

j. Following the acquisition of the Properties in the names of the defendants, they double-crossed C. They acted behind C's back to snatch the Properties for themselves and to prevent the sale back to C. As a result, the defendants obtained for themselves and their family a windfall potentially worth millions of pounds and notwithstanding that C and the other members of the Alleged Buy Back Consortium contributed some £650,000 towards the purchase and renovation of the Properties. By the time the extended period for C to complete the re-purchase from the defendants had come to an end, the Properties were worth considerably more than the defendants had paid for them and would have provided ample security to enable C to refinance the Properties into his name whilst also paying off the monies owed to the Original Investors and the members of the Alleged Buy Back Consortium; and

k. C seeks a declaration that the defendants hold the Properties for his benefit on a constructive trust subject to payment of the purchase price or in the alternative an order for specific performance of the Sale Agreement.

5. In summary, it is the defendants' case that:

a. D1 was never an Original Investor, although he did make a short term interest free loan of £200,000 to C to assist him with cash flow problems that C was then experiencing. D1 felt obliged to help C in his time of need since over several years C had without payment assisted D1 and his wife to buy and sell a number of single investment properties;

b. D1 sought repayment of the loan in order to use those monies, together with a credit facility he had obtained of £400,000 (also with NatWest), to invest in a property portfolio for the exclusive benefit of the defendants and their family. C was unable to repay the loan at that time, but rather offered to assist the defendants to purchase a property portfolio (including by negotiating with the Receivers, arranging bank finance, liaising with solicitors and managing the Properties on behalf of the defendants once acquired) as C had done in the past when D1 and his wife had purchased other investment properties albeit on a smaller scale. C explained to the defendants that the property portfolio belonged to a Mr Shiv Sharma, who had got into financial difficulties, and was being sold cheaply by receivers with whom he had contacts. C assured the defendants that the property portfolio represented a good buy notwithstanding that some of the properties were in a poor condition and needed renovating. The defendants trusted C, who was an experienced property developer;

c. C advised the defendants that they would urgently need to exchange contracts for the purchase of the property portfolio before bank finance was in place otherwise they would lose this valuable opportunity. Thereafter, there were delays on the part of C in securing bank finance, which resulted in:

i. Several of the Properties being initially purchased by associates of C on the understanding that the defendants would subsequently purchase those Properties from C's associates once adequate finance had been secured,

ii. The defendants had to take out short term (6 months) bridging finance to complete the purchase/re-purchase of the Properties from the Receivers/C's associates,

iii. Significant additional costs/expenses were incurred by the defendants and which by April 2012 stood at some £470,000 (including the costs of the bridging finance). C accepted that he was responsible for causing these additional costs/expenses, which he agreed should be added to his original debt of £200,000,

iv. C agreed to obtain funds from his associates to cover any shortfalls on completion, and on the basis that C would be responsible for paying back his associates and those payments would go towards reducing C's debt with the defendants,

v. C also agreed that C's debt be partly repaid by some of his associates transferring the Properties that they had purchased from the Receivers to the defendants without any payments being required and again C arranging to pay those associates back himself,

vi. The defendants do not dispute that C’s associates contributed funds totalling £480,000 towards the defendants’ purchase of the Properties, although they were not aware of the full extent of those third party funds until much later. At the time of completion of the purchases of the Properties, the defendants were only aware of third party funds totalling £173,000 because those funds were paid directly into the defendants’ bank account before onward transmission to RLK;

d. Following completion of the purchase of all the Properties by the defendants, they began to lose trust in C as a result of his continuing failure to arrange the bank finance and progress the renovations. As the bridging loans fell in, it became increasingly more difficult to contact C and so the defendants decided to take matters into their own hands by opening discussions directly with Lloyds TSB and without telling C;

e. In October 2012, the defendants discovered via an estate agent that C was in fact the former owner of the Properties. C had misled the defendants by falsely claiming that that the Properties were owned by Shiv Sharma. In addition, RLK, who were acting primarily in the interests of C and whose conduct is clearly questionable, failed to advise the defendants that the Properties were owned by C. Therefore, the defendants decided to take control of the Properties away from C and to dis-instruct RLK;

f. The defendants were only able to prevent the bridging companies placing the Properties into receivership and avoid financial ruin through the support and assistance (including financial) provided to them by associates, family and friends. The defendants spent a total of some £942,000 in connection with the Properties including (i) the costs of purchasing/renovating the Properties and (ii) paying the extra costs/penalties of the bridging finance;

g. The defendants never agreed to act as nominees/representatives for any buy back consortium, which they knew nothing about at the time. Their signatures on the Disputed Agreements are forgeries.

6. The central factual issue in this case is simply stated as whether or not there was an agreement as alleged by C. However, the parties and their witnesses have radically different accounts of what was or was not agreed and for what purpose and for whose benefit various transactions were entered into.

7. There is a dispute as to how much the Properties are currently worth. I am not required to resolve that dispute at this stage, but by way of context it is C’s case that the Properties are now worth in excess of £6 million.

Background in more detail

8. C set up his business as a property developer in 1994. C became well known in the local community for being an experienced, successful and well connected property developer. By 2011, he had acquired multiple properties spread across 5 different portfolios, which were designated by reference to the mortgage company used to finance the purchase of the properties within a particular portfolio – NatWest, NatWest Home Loans, Northern Rock, Lloyds TSB and Mortgage Trust.

9. The Properties fell within the NatWest portfolio, which comprised a total of 29 freehold and leasehold properties situated in the Birmingham and Sandwell areas. The Properties

were purchased between June 2003 and February 2010 for a total sum of approximately £4 million with NatWest providing funds on an 80% loan to value ratio.

10. Harjoot Kaur Nijor ("***HKN***") is the wife of C and the sole director/shareholder of Just Call 4 Care Services Limited ("***JC4C***"), which was incorporated in 2009 and began trading in 2010. The business model was that JC4C would tender for local authority and government contracts for the provision of care homes/supported living accommodation. JC4C did not own any properties but would use C's properties to service the contracts potentially generating for those properties more stable/higher rents and increased market values. However, the properties to be used by JC4C needed first to be renovated/modernised so that they were compliant with the standards required by the Care Quality Commission

11. D1 was in the business of dealing in watches and related goods operating through a company, Ablex International Limited, although he is now retired from the business. He and his wife live in the same house as D2, his wife and their children. D2 is a pharmacist by profession.

12. There is disagreement over the strength of the relationship between C and D1 prior to the events in question. In particular, D1 denies that he was C's surrogate father as claimed by C. However, it is not disputed that:

    a. There was a familial connection;

    b. They had known each other for many years;

    c. C had assisted D1 to buy and sell investment properties over several years with D1 placing significant trust in C to source and negotiate the purchase/sale of those properties;

    d. C was younger than D1, but older than D1's children. C referred to D1 as "*Uncle*" out of a sign of respect and confided in D1 about personal matters.

    There was clearly a substantial degree of mutual trust and affection prior to the events in question.

13. In 2007, D1 paid to C the total sum of £200,000. D1 says that this was a short term loan to assist C with his cash flow problems, whereas C says that this was an investment made in the NatWest portfolio because D1 wished to diversify his property interests.

14. In or around the summer of 2010, D1 and his wife obtained a capital property loan facility for £400,000 with NatWest (who were introduced to D1 by C), which was secured against some of the commercial properties that D1 and his wife owned, and so that they could become more actively involved in the property market.

15. In late 2010, JC4C applied for a Home Office contract to house asylum seekers ("***the Home Office Contract***"), which was a high value and complex contract. Several of the witnesses, including D2, were involved in the bid team for that tender, which ultimately was unsuccessful.

16. On 21 July 2011, the Receivers were appointed to take possession of and sell the Properties.

17. On 15 September 2011, C obtained a without notice interim injunction ("***the Injunction***") to restrain the Receivers from selling the Properties at an auction due to take place later that day.

18. Mr Avtar Hallaith ("***AH***") is a mortgage broker and estate agent, who has been organising C's property finances since 1997. After C obtained the Injunction, AH approached and began discussions with Lloyds TSB and the Bank of India in an attempt to raise the necessary finance to part fund the purchase of the NatWest portfolio from the Receivers.

19. In October 2011, the Receivers agreed to a lock out period to 21 November 2011 subject to payment of a non-refundable deposit of £80,000.

20. On 18 October 2011, D1 transferred £80,000 to RLK, who in turn transferred that sum to the Receivers' solicitors on 19 October 2011. A lock out agreement (the "***Lock Out Agreement***") was drafted by the Receivers' solicitors naming C as the owner of the Properties and D1 as the buyer.

21. RLK's letter of engagement with D1 is dated 15 November 2011.

22. On 21 November 2011, and notwithstanding that AH had not yet been able to arrange the required bank finance to complete, exchange of contracts took place for the sale of the NatWest portfolio (excluding 2 properties at 48 Rawlings Road and 4 Montague Road) at a total price of £2.5 million with completion to take place by 28 November 2011.

23. Contracts for the sale of two of the Properties were exchanged in the names of C's associates as follows:

    a. Flat 4, 369 Gillott Road – £45,000 – to be purchased by Mr Satpal Singh ("***SS***") and his wife, Mrs Sukhdip Johal; and

    b. Flat 5, 136 Portland Road – £55,000 – to be purchased Mr Gagandeep Singh Khurl ("***GSK***");

    It is the defendants' case that they were advised by C to remove these Properties temporarily from the NatWest portfolio to reduce the amount of the bank lending, although the defendants would be given the opportunity subsequently to re-purchase them from C's associates at the same prices that they had paid for them. It is C's case that SS and GSK were members of the Alleged Buy Back Consortium and were buying these properties as his representatives.

24. Contracts for the sale of the remaining Properties were exchanged in the names of the defendants either separately or jointly as follows:

    a. 13 Anderson Road - £110,000;

    b. 23 & 25 Portland Road - £650,000;

    c. 63 St Mary's Road - £100,000;

    d. 584 Stratford Road - £100,000;

    e. 496 City Road - £150,000;

    f. 169 South Road - £90,000;

g. 171 South Road - £90,000;

h. 58 Swindon Road - £85,000;

i. 9 & 11 St Augustine's Road - £400,000;

j. 149 (a) (b) & 151 (a) (b) South Road - £130,000; and

k. 157 (a) (b), 159 (a) (b), 161 (a) (b), 163 (a) (b) and 167 South Road - £245,000

Total price - £2.15 million.[1]

25. On exchange of contracts, the further sum of £170,000 was payable representing the balance of the 10% deposit. That balancing payment was funded by way of:

a. £25,000 transferred to RLK by GSK on 18 October 2011;

b. £25,000 transferred to RLK by C by way of instalments of £10,000 paid on 18 October 2011, £5,000 paid on 19 October and £10,000 paid on 18 November 2011; and

c. £120,000 transferred to RLK on 18 November 2011 by Mr Avtar Singh Gosal ("***ASG***") via his company, Western Heating Limited.

It is the defendants' case that they were not aware of the introduction of these third party funds at the time.

26. Completion did not take place on the contractual due date as a result of a continuing failure to raise bank finance. On 28 November 2011, the Receivers served notices to complete.

27. On 12 December 2011, D1 paid £400,000 to RLK.

28. On 13 December 2011, D2 paid £58,000 to RLK to stop the Receivers from rescinding the contracts of sale.

29. On 14 December 2011, and to provide a degree of comfort to the Receivers, completion took place in relation to some of the Properties, but only then by C's associates without the need for bank finance, which had still not been arranged. Those properties were:

a. Flat 4, 369 Gillott Road purchased for £45,000 by SS and his wife, who between them contributed the total sum of £25,686.34 by way of instalments paid to RLK of £4,000 on 16 November and of £21,686.34 on 8 December 2011;

b. Flat 5, 136 Portland Road purchased for £55,000 by GSK, who contributed the total sum of £50,000 by way of instalments paid to RLK of £25,00 on 18 October, £10,000 on 18 October, £5,000 on 19 October and £10,000 on 18 November 2011;

c. 13 Anderson Road purchased by Mr Davinderjit Singh Mander ("***DSM***") for £110,000 following an assignment of the benefit of the contract by D1 and

[1] In addition, the defendants contracted to purchase 21 Clarendon Road for 250,000, although that property was subsequently purchased by a third party unconnected with the Alleged Buy Back Consortium.

utilising the 10% deposit already paid. DSM transferred to RLK the sum of £112,000 on 13 December 2011; and

d. The South Road properties purchased by Westpoint Holdings Limited ("***Westpoint***") for £550,000 following assignments of the benefit of the contracts by the defendants and utilising the 10% deposits already paid.

It is the defendants' case that, as with Flat 4, 369 Gillott Road and Flat 5, 136 Portland Road, C advised the defendants that they would be given an opportunity subsequently to purchase 13 Anderson Road and the South Road properties from C's associates once the bank finance had been arranged. Although the defendants were told that they would be able to purchase 13 Anderson Road for the price paid for it by DSM, Westpoint insisted that they be paid the sum of £655,500 with the 10% deposit already paid by the defendants being credited to this sum. The defendants say that they were unhappy with the situation generally and in particular at having to pay Westpoint £100,000 more than Westpoint had actually paid the Receivers, but C told them that they had no other option. C appreciated that this additional cost had been incurred as a result of his failure to raise the bank finance in time, and so he told the defendants that he would add the £100,000 to the debt that he already owed them. It is C's case that as the negotiations with the Receivers progressed, it was necessary for some of the Properties to be sold to individual members of the Alleged Buy Back Consortium (SS, GSK and DSM) and others be sold to persons not connected to the Alleged Buy Back Consortium (Westpoint and also Mr Jeetender Singh Sahota in respect of the later sale of 21 Clarendon Road). The defendants did not complain about this because they knew that they were only ever acting as representatives of the Alleged Buy Back Consortium.

30. Also on 14 December 2011, the defendants entered into a contract of sale with Westpoint and by which the defendants agreed to complete the purchase of the South Road properties from Westpoint for the sum of £655,000 on 20 February 2012.

31. Finally on 14 December 2011, RLK transferred £360,143.71 to the Receivers solicitors in anticipation of completing on the purchase of 9 & 11 St Augustine's Road. Completion did not in fact take place, although the Receiver's solicitors retained those monies to RLK's order ("***the Retained Monies***").

32. By letter dated 21 December 2011, RLK advised the defendants that:

a. RLK had successfully negotiated with the Receivers an extension for completion until 30 January 2012, but subject to payment of a further 10% deposit of the aggregate sale price of £1.735 million, which would be paid out of the Retained Monies;

b. If the defendants did not complete on 30 January 2012 the Receivers would serve notices to complete. If completion did not take place within 10 days of such notices, the Receivers would be entitled to terminate the contracts and keep all the deposits paid by the defendants; and

c. "***You must be absolutely sure that you will be in a position to have funding in place to meet these strict deadlines or you will face the risk of losing the further deposit of £173,500 that the seller requires. If you have any doubts as to whether this will be achievable you should not agree to the extension***".

33. The Supplemental Contract of sale was exchanged between the Receivers and the defendants on 16 January 2012 extending the completion date to 30 January 2012 with

the further deposit of £173,500 being paid from the Retained Monies. The balance of the Retained Monies (£185,743.71) was then transferred back to RLK on 18 January 2011.

34. On 3 February 2012, the Receivers served further notices to complete.

35. On 20 February 2012, D1 assigned the benefit of the contract of sale of 21 Clarendon Road to Mr Sahota, who was an associate of C and who completed the purchase the same day by using for his own benefit the deposit already paid on exchange (£50,000) and paying himself the balance of the completion monies (£200,000). It is the defendants' case that they were not pleased about gifting Mr Sahota the deposit of £50,000, but again were advised by C that they had no choice as it would assist in negotiating a further extension for completing on the remaining properties in the NatWest portfolio. C confirmed that he would add the £50,000 to the debt he owed the defendants. This is denied by C.

36. Also on 20 February 2012, the defendants transferred into RLK's bank account the sum of £70,000, which had been transferred into the defendants' bank account on 17 February 2012 by Mrs Swaran Hayer, who is the mother of Mr Malkiat Singh Hayer another of C's associates. It is the Defendants' case that C had told them that, although he was close to securing bank finance, it was unlikely that this would be in place in time to complete by the extended deadline. He was therefore trying to raise independent finance through his contacts to complete on some of the properties including 21 Clarendon Road. C acknowledged that he had caused delays and additional costs for the defendants and that he owed them a lot of money. Therefore, C agreed that any money coming in from his associates to enable the defendants to complete on the purchases would be set off against the debt C owed to the defendants. It is C's case that Mr Hayer was both an Original Investor (£100,000) and a member of the Alleged Buy Back Consortium.

37. On 21 February 2012, RLK paid the Receivers' solicitors the sum of £60,000 to secure a further extension for completing on the remaining properties until 29 March 2012. Again, it is the defendants' case that C agreed that this sum be added to the debt owed to the defendants.

38. On 22 February 2012, the defendants completed the purchase of 58 Swindon Road for £85,000 with RLK transferring the balance of the completion monies (£68,295.23) to the Receivers' solicitors.

39. On 28 February 2012, RLK paid £67,949.51 to the defendants leaving a client account balance of £10,729 CR.

40. The Supplemental Contract of sale was exchanged between the defendants and the Receivers on 29 February 2012 extending the completion date to 29 March 2012.

41. On 5 March 2012, Westpoint served notice to complete.

42. On 20 March 2012, the defendants completed the re-purchase of the South Road properties from Westpoint for £655,000, which was financed by way of:

   a. A secured bridging loan of £442,000 from Capital Bridging Finance Limited ("***Capital***") for a period of 6 months. After deduction of advanced interest, the net amount paid to RLK on 16 March 2012 was £399,110; and

   b. £214,000 paid by D2 to RLK on 20 March 2012. This sum in turn comprised –

i. £95,000 transferred into the defendants' bank accounts by or at the direction of Mr Kulvinder Singh Phull ("***KSP***"), an associate of C;

ii. £8,000 cash paid by C into the defendants' account; and

iii. £111,000 raised by the defendants.

Again, it is the defendants' case that C agreed that these third party funds introduced by C (£103,000) be set off against the debt he owed to the defendants.

43. On 2 April 2012, the Receivers served further notices to complete in relation to the remaining Properties.

44. By April 2012 all of C's 5 property portfolios were in receivership, although C says that the vast majority of his investors were invested in the NatWest portfolio, which explains why he was prioritising saving that portfolio over the others.

45. On 23 April 2012, the defendants completed:

a. The re-purchases of Flat 5, 136 Portland Road for £85,000, 13 Anderson Road for £250,000 and Flat 4, 369 Gillott Road for £60,000 from C's associates. However, the consideration was deferred with no monies being paid by the defendants, and the properties were included in the security to the bridging companies to secure the finance necessary to complete on the other properties. It is the defendants' case that C wanted to make a part payment of his debt and so arranged the transfer of the properties to the defendants without payment and C said that he would arrange payment direct with his associates. It is C's case that the sellers as members of the Alleged Buy Back Consortium agreed to lend the purchase monies until such time as C was able to refinance the Properties back into his name; and

b. The purchases of 496 City Road for £150,000, 23 & 25 Portland Road for £650,000, 63 St Mary's Road for £100,000, 584 Stratford Road for £100,000 and 9 & 11 St Augustine's Road for £400,000, which were financed by way of the following bridging finance -

i. On 5 April 2012, £155,000 from Capital for a period of 6 months secured on 63 St Mary's Road and 584 Stratford Road,

ii. On 12 April 2012, an initial advance of £364,000 against a total facility of £520,000 from Capital for a period of 6 months secured on 9 & 11 St Augustine's Road,

iii. On 23 April 2012, £475,750 from West One Loans Limited ("***WestOne***") for a period of 6 months secured on 23 & 25 Portland Road and 496 City Road,

iv. On 16 April 2012, £295,000 from Capital for a period of 6 months secured on 58 Swindon Road, Flat 5, 136 Portland Road, 13 Anderson Road and Flat 4, 369 Gillott Road.

It is the defendants' case that very considerable extra cost was incurred as a result of having to take out this expensive bridging finance (£137,045 for Capital and £59,646 for WestOne), which C agreed would be added to his debt.

46. On 15 September 2012, the first loan with Capital was due to be redeemed. The defendants paid the sum of £22,100 to secure a 1 month extension.

47. On 18 October 2012 and without informing C, the defendants met with and opened discussions with Lloyds TSB over long term finance secured against the Properties.

48. On 23 October 2012, the loan with WestOne was due to be redeemed. The defendants paid WestOne the sum of £13,321 to secure a 1 month extension.

49. D1 claims that towards the end of October 2012, he met with and was told by an estate agent that C had been the owner of the Properties and not Shiv Sharma.

50. On 6 November 2012, the defendants paid the sum of £15,000 to Capital.

51. On 20 November 2012, the defendants paid the further sum of £10,000 to Capital.

52. On 22 and 27 November 2012, the defendants paid WestOne the total sum of £13,321 to secure a further extension until 20 December 2012.

53. On 23 November 2012, 9 & 11 St Augustine's Road were sold by the defendants for £410,000 with £407,700 of the proceeds of sale being transferred to Capital to redeem the second loan and also in part payment of the first loan. These payments combined with the £10,000 payment made on 20 November 2012 secured a further 1 month extension from Capital for redemption of the remaining loans.

54. On 20 December 2012, Lloyds TSB granted the defendants an overdraft facility of £1.3 million until 20 January 2013 and which was used to redeem in part the outstanding bridging loans totalling £1,397,900.68 with the defendants paying the balance, which they had to borrow from friends, family and associates.

55. On 14 January 2013, the defendants re-mortgaged the Properties with Lloyds TSB.

56. C issued his claim on 5 October 2017 and without engaging in any pre-action correspondence.

General observations upon the evidence of witnesses of fact

<u>Interference with memory</u>

57. It is a striking feature of this case that the witnesses were seeking to recall events and conversations that took place in the context of complex transactions extending over many months and going back almost 10 years, which necessarily gives rise to particular problems. Apart from the fact that, quite understandably, it is often difficult for witnesses to remember accurately what happened or what was said so long ago, witnesses can easily persuade themselves that the accounts they now give are the correct ones.

58. In ***Gestmin SGPS SA v Credit Suisse (UK) Limited*** [2013] EWHC 3560 (Comm), Leggatt J, as he then was, made the following observations about the interference with human memory introduced by the court process itself:

> "[19.] *The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the*

process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

[20.] *Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been "refreshed" by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events."*

59. In the particular circumstances of this case, I consider that there is a very real and substantial risk of interference with the memories of the witnesses and bearing in mind that:

   a. Proceedings were not issued until 5 October 2017 and even then without there having been any pre-action correspondence. It was directed that exchange of witness statements take place by 11 February 2020. Therefore, the witnesses were being asked for the first time to record in writing their recollections of events and conversations that took place some 8 to 9 years beforehand; and

   b. Very few of the witnesses can be regarded as detached or objective observers being either the parties themselves or persons closely connected and loyal to the parties through friendship, family, longstanding business relationships and/or the local Sikh Temple. Indeed, some of C's witnesses have a direct financial interest in the outcome of the proceedings, since in the event of a successful outcome C has promised to repay them monies they are allegedly owed. Therefore, the vast majority of witnesses in this case were subject to significant motivating forces and powerful biases.

60. In addition, C's claims essentially turn upon what was or was not said in discussions between the parties. Those discussions were not directly witnessed by any of the supporting witnesses other than perhaps AH. Indeed, it became clear during cross examination that a number of the supporting witnesses stated in their written evidence matters of fact which in reality were merely recollections of what they had been told by a particular party rather than matters directly within their personal knowledge. I note that the witness statements in this case were prepared prior to the introduction of the new Practice Direction 57AC, which seeks to restrict witness statements to matters of fact of which a witness has personal knowledge.

Indicators of unsatisfactory witness evidence

61. In ***Painter v Hutchinson [2007] EWHC 758 (Ch)*** at [3], Lewison J (as he then was) identified a non-exhaustive list of indicators of unsatisfactory witness evidence including:

a. Evasive and argumentative answers;

b. Tangential speeches avoiding the questions;

c. Blaming legal advisers for documentation (statements of case and witness statements);

d. Disclosure and evidence shortcomings;

e. Self-contradiction;

f. Internal inconsistency;

g. Shifting case;

h. New evidence; and

i. Selective disclosure.

In my assessment, much of the witness evidence in this case was tainted by indicators of unsatisfactory witness evidence. I am unable in the course of this judgment to refer to each and every such indication. Rather, I will by way of illustration give specific examples by reference to the relevant witnesses and in particular by reference to the parties themselves, who were the primary witnesses of fact in this case and who gave their oral evidence over a total of almost 2 weeks.

Lucas direction

62. I remind myself that witnesses can often lie and for different reasons. Lies in themselves do not necessarily mean that the entirety of the evidence of a witness should be rejected. A witness may lie in a stupid attempt to bolster a case, but the actual case nevertheless remains good irrespective of the lie. A witness may lie because the case is a lie.

Assessment of the primary witnesses of fact

Caught in lies

63. C and D2 were each caught in lies, which bore striking similarities.

64. On 15 June 2012 and having been told that the insurance premiums were high because the Properties were unoccupied, C emailed Monaco Insurance to confirm that 584 Stratford Road and 8 of the South Road properties were all tenanted to working professionals under 6 month assured shorthold tenancies that had commenced in April 2012. However, on 11 June 2012 C had sent to D2 spreadsheets that confirmed that none of the Properties were tenanted.

65. D2 confirmed in his evidence that he assisted JC4C in writing tenders, reviewing company policies and attending meetings. In or around February 2001, C asked D2 to update his CV detailing the work that he had done for JC4C so that it could be submitted in support of future tenders. D2 was led to believe that, if the tenders were successful, he

and his wife would be rewarded by way of senior management roles. In that CV D2 stated under "*Work History*" the "*Hiring of required staff such as; dementia and disability care nurses*". After repeatedly avoiding answering the question, D1 finally admitted in cross examination that this statement was not only wrong but dishonest.

66. It was submitted by counsel for the defendants that at least so far as the contents of D2's CV they are irrelevant, but I disagree:

a. Both C and D2 were willing to make false statements for financial gain;

b. Whilst this case may in part be about maintaining reputations in the local community, it is primarily about financial gain through recovering/retaining the Properties;

c. The false statements were made in circumstances were each party was under a heightened duty of candour – C in relation to contracts of insurance and D2 in relation to contracts concerning the safeguarding of highly vulnerable people; and

d. C and D2 in their oral evidence sought to double down on their lies by bizarrely resorting to some sort of metaphysical justification. They sought to explain that whilst their statements were not true at the time that they were made, they might somehow become true in due course when the Properties were subsequently rented out or the supported living contracts were subsequently awarded.

In my assessment, these false statements when combined with the ludicrous attempts in oral evidence at justification seriously undermined the credibility of C and D2.

<u>C</u>

67. With regard to C:

a. Evasive - C was unable or unwilling to give a straight answer to a straight question – For example –

i. whether he ever had in his possession any originals of the Disputed Agreements,

ii. whether his overdraft with Lloyds TSB went to over £900,000 in 2010,

iii. what property was he buying on 20 February 2012 and which he referred to in his email to DSM dated 15 February 2012?

b. Shifting case – For example –

i. Initially C asserted in his statement of case that all the monies provided to him by the Original Investors were by way of unsecured loans, but subsequently in his written/oral evidence he maintained that the majority of the monies were provided by way of investments;

ii. In support of his application for the Injunction, C served a witness statement dated 15 September 2011 in which he explained that he had been unable to collect the rents as he usually did because he suffered a suspected heart attack in February/March 2011 and was bedridden. As a result, the loan repayments were not made, and he was only able to resume collecting the rents in August 2011 when recovered from his illness.

However, in his oral evidence, C said that he was bedridden only for a couple of weeks and in any event his wife and/or son collected the rents in his place. He claimed that although the rents were collected in full he had been unable to make the loan repayments because NatWest failed to advise him which account needed which money;

c. Tangential speeches - C avoided answering questions by giving irrelevant speeches about the financial crash of 2008, although I accept that C genuinely feels with some justification that he was the victim of the banking scandal;

d. Disclosure shortcomings – For example –

   i. in his disclosure questionnaire in response to the question relating to data sources/locations, including email servers, C stated that all relevant emails were stored on C's PC. In response to the question regarding irretrievable documents, C stated that he changed his PC in 2013, and so the original computer was no longer available for inspection because it had been destroyed. C claimed to have printed off hard copies of all relevant emails, which were available for inspection. During the course of his oral evidence, C was taken to an email dated 14 March 2012 sent to him by RLK. C confirmed that, as recorded on the hard copy, he had printed off this email on 12 June 2017. He also confirmed that, notwithstanding what he had stated in his disclosure questionnaire, in fact his emails remained retrievable, since they were saved and stored on the server. When asked why he had not disclosed this fact in his replies to questionnaire and despite having been specifically asked to identify any email server, C sought to blame his solicitor,

   ii. on 30 January 2012, Shaun Kidson of Lloyds TSB sent an email to C seeking highly relevant information including why the portfolio was for sale, who was selling it, why had D1 decided to acquire property on this scale and the source of D1's funds. C said in evidence that he responded, but did not have a copy of that response despite the email being sent to the same email address wordsworthdev@yahoo.co.uk to which RLK's email had been sent on 14 March 2012 and printed off on 12 June 2017,

   iii. by letter dated 16 February 2021, C's solicitor disclosed copies of agreements dated 16 February 2011, 16 March 2012 and 19 April 2012 recording that KSP was making loans respectively of £30,000, £95,000 and £30,000 to D1. The timing of this disclosure a few days before the start of the trial is surprising to say the least. The covering letter from C's solicitors sought to explain the late disclosure on the basis that they had only "*been provided today from*" KSP. However, in his oral evidence KSP denied having provided copies of those agreements to C's solicitors on 16 February 2021;

e. Self-contradiction – C changed his evidence often within minutes of having given it – For example –

   i. how the Disputed Agreements were produced and who retained the originals,

   ii. C claimed that when Lloyds TSB and Bank of India failed to come up with the funding, C agreed, on behalf of all the investors, that the Properties also be put in the name of D2 because he was young and had a professional background, and therefore satisfied the criteria imposed by the bridging companies. However, later in his oral evidence, C accepted that, when D2 signed the contracts for sale on 16 November 2011, Lloyds TSB and Bank of India had not yet indicated that they were not prepared to provide funding such that D2's nomination could not be explained by reference to the lending criteria of any bridging financers. C then suggested that Lloyds TSB may possibly have wanted a further person as the consortium head, although he could not remember.

The defendants

68. At the heart of the defendants' evidence was a glaring internal inconsistency. In short, it was the defendants' evidence that:

a. D2 was very excited by this very large property transaction entered into for the benefit not only of the defendants but also their family and very keen to learn the ropes from C as an experienced property developer; and

b. D1 was supportive of his son but nevertheless cautious and concerned about the high level of borrowing required.

However, the defendants' admitted inaction (e.g. not making a list of the Properties, not viewing internally the vast majority of the Properties, not undertaking any surveys, not reading RLK's property reports and not thinking through where the money for exchange or completion was coming from) was wholly inconsistent with the defendants' stated intentions/motives. In oral evidence they sought to explain this all away by repeatedly adopting the shared mantra that they trusted C, left everything to C to sort out and/or only did whatever C directed them to do. However, whilst I have no doubt that the defendants trusted C at the time, trust alone fails to explain away the defendants' apparent lack of any interest or curiosity in what they were buying and how it was being financed. I will explore this internal inconsistency in more detail later in the judgment, but for now a good example is when D2 was asked why he had not discussed with C the potential rental income to be generated from the Properties, which on the defendants' own case would obviously be vitally important to know as the rental income was required to service the high level of borrowing. There followed the following exchange:

> D2. "*Like I say. I was so – I just hadn't done that kind of thing before so I didn't know to ask the sort of pertinent questions that you're saying I should have asked. I just didn't do it, I just wanted the property*"
> Q. "*You just went round them like some gormless tourist, just looking at them and not engaging in any conversation about them. Is that it*?"
> A. "*Like I said, we went to those three, we drove around, had sort of simple conversations about them. There was so much trust in Ashok, you know, this is good, this is good property, dah dah dah dah, and it was just, I just took it at face value, as did my Dad*."

D2

69. D2 gave evidence first, since D1 in his written evidence adopted D2's written evidence for the period 15 November 2011 to 21 September 2012 because D2 "*was the person who had more involvement in these matters*".

70. With regard to D2:

a. Self-contradiction – D2 initially recalled receiving an email from RLK attaching the property reports but was unable to recall what if any documents were attached to that email. When it became clear that at least one of those reports referred to C as the registered proprietor, D2 changed his evidence and was adamant that he had never received the property reports;

b. Evasive – D2 repeatedly failed to give a straight answer to the straight question whether or not he checked the defendants' email account for receipt of the property reports from RLK; and

c. New evidence – D2 appeared to be making up his evidence as he went along in an attempt to answer questions consistent with the defendants' case. D2 initially said in his oral evidence (consistent with his written evidence) that when conducting a drive by viewing of the majority of the Properties he carried out calculations in his head as to the likely rental income generated by over 30 units. When asked how he had kept a running total in his head as they drove from one property to the next, D1 changed his evidence to say variously:

> "*I did jot something down, but I didn't keep records of my notes*",
>
> "*Yes, I wrote down on paper the number of units. I don't know whether I wrote down the address or anything. I wrote down the number of units rather than the addresses*",
>
> "*I sat down at the end of the day, after the last property…I think I wrote it, that's what I remember doing, writing it down and doing a quick calculation*"

<u>D1</u>

71. D1 admitted in his oral evidence that in preparing his witness statement he first discussed the contents with D2, who then wrote it out in English. When asked if he had relied upon D2 to prepare his written evidence, D1 replied "*Not hundred percent, but I explain statement, he wrote it, when we give it to the lawyer*". Surprisingly, D1 confirmed that he did not look at RLK's files before preparing his written evidence, and so where his witness statement expressly refers to documents from RLK's files then "*I left it to my son…after he show me, then I left it to him.*" In his oral evidence D2 described how "*When the litigation was put to us…my father and I both sat down and discussed the events and wrote down what we recall. Once that was done, that formulated the basis of our whole witness statements. Then I believe that was given to the solicitors and they, from the document that me and my father sort of produced together, then created the two witness statements*".

72. D1 appeared hesitant and at times struggled to answer straightforward questions where the questions required answers that departed from the defendants' shared script. For example:

a. When asked why it mattered in October 2012 if the Properties were previously owned by C rather than Shiv Sharma, D1 said that he was heartbroken because C had lied to him, which lie "*hurt me much more than anything.*" However, in the defence and D1's witness statement, D1 sought to minimise the extent of his relationship with C describing him as "*a long standing acquaintance and family friend*", whom he "*occasionally saw....at common social and religious gatherings at the temple*". When asked, D1 was unable to offer any coherent explanation as to why he had felt heartbroken if there was no real friendship;

b. D1 accepted that he knew at the time that the sum of £170,000 needed to be paid on exchange of contracts for the balance of the deposit. D1 repeatedly avoided answering the question where then did he think this money was coming from if not from him by saying that if C had asked for the money he would have paid it. Ultimately, D1 said that he did not know where the £170,000 was coming from and could not explain it;

c. D1 accepted that there was also a substantial shortfall in the completion monies, which he had not become aware of until after the defendants obtained and considered RLK's files much later. D1 was asked how did he think at the time of completion the shortfall was to be met? D1's incoherent response was that "*I think that what we think of the money, not due until Ashok ask us. So that's all we know….I didn't think. I only think about a great deal for sure when they ask me the money….I thought this is the solicitor's duty to tell us….they have not told us anything….that's why we're fishy about hiding this from us.*"

d. D1 accepted in his oral evidence that it was clear from the conveyancing documents that he signed that C owned the Properties. Initially he said that he did not read the documents before signing them. He claimed that he had a clear memory of not reading them at the time. Later and no doubt reflecting the very large number of conveyancing documents that D1 signed, D1 changed his evidence to say that he couldn't remember reading documents before signing them or did not think he had read them before signing.

<u>Conclusion</u>

73. I did not find C, D1 or D2 to be reliable or at times credible witnesses.

Assessment of the other witnesses of fact

<u>On behalf of C:</u>

<u>*SS*</u>

74. C helped SS and his wife purchase their family home at below market value. As a result, SS had at the relevant time and continues to have absolute trust and confidence in C, who is a friend.

75. SS said that he was a member of the Alleged Buy Back Consortium with he and his wife paying some £25,000 to part fund the purchase of Flat 4, 369 Gillott Road, which was later transferred without payment to the defendants as heads of the Alleged Buy Back Consortium to enable them to complete the buy-back.

76. I did not find SS to be a reliable witness. His oral evidence regarding his involvement with the Alleged Buy Back Consortium was utterly confused and confusing – was he making a loan (if so to whom, C and or the defendants, and for what amount) or was he making an investment whereby SS acquired a beneficial interest in the property (and if so to what extent)?

<u>*DSM*</u>

77. DSM and C are cousins. DSM moved from the UK to Canada when he was a child. DSM gave evidence via video link from Canada where he owns his own security business, although he also has extensive property interests. DSM trusted and continues to trust C implicitly.

78. DSM said that in September 2011 C contacted him and asked for help to buy back his properties from the bank as part of a consortium. DSM agreed to help by providing £112,000 to purchase 13 Anderson Road, which was registered in DSM's name as C was in continuing negotiations with the bank and needed to commit to completing on a number of properties. In February/March 2012, C told DSM that he was arranging to purchase 13 Anderson Road off DSM, but C would not be giving DSM his money back for a further 4 to 6 months as he still required funds to purchase other properties in the portfolio. By the latter part of July 2012, DSM sent C a few sharp emails because C was not communicating and DSM felt that C had already had sufficient time to get him his money back, which was only ever intended to be a short term loan. Eventually, C informed DSM that he would be purchasing the portfolio back from the defendants in January 2013, and so he agreed to allow C more time to pay back the loan.

79. I did not find DSM to be a credible witness in that he appeared willing to say whatever he thought necessary to assist his cousin. It is striking that nowhere in his written evidence does DSM refer expressly to any Disputed Agreement and notwithstanding in particular that the Disputed Agreement dated 22 April 2012 records that (i) DSM had instructed C to sign the document on his behalf and (ii) DSM was agreeing to lend £110,00 to C and the defendants for a period of 9 to 12 months. When this document was put to DSM in cross examination suddenly he could recall both seeing it at the time the agreement was made and also instructing C to sign it on his behalf. He claimed that he had failed to mention it in his written evidence because of a "*mix-up*" or "*error*" or it had been "*overlooked*". However, if that is true and DSM had agreed in April 2012 to lend the money for a further 9 to 12 months, why was DSM sending increasingly desperate emails to C in May, June and July 2012 asking what had happened to his money and culminating in DSM demanding repayment the "*sooner the better*." DSM's explanation was that whilst he could now recall the document, he could not now recall why he had been asking for the money back contrary to the apparently agreed terms recorded in that document.

<u>KSP</u>

80. KSP is a long time close friend and business partner of C. He was part of the bid team for the tender for the Home Office Contract and claims to have been both an Original Investor (£100,000) and a member of the Alleged Buy Back Consortium (£125,000).

81. I did not find KSP to be a credible witness in that KSP also appeared willing to say whatever he thought necessary to support C's case. For example –

   a. in his oral evidence, he struggled to explain how and on what terms his £100,000 had originally been invested in the NatWest portfolio. He sought to explain away this surprising lack of knowledge by claiming that in fact £100,000 was not a lot of money to him. However, that claim stood in stark contrast to his written evidence in which he stated that he was not in a position to lose the £100,000 original investment and he needed to do everything within his capability to safeguard that investment, which is why he then committed a further £125,000 as a member of the Alleged Buy Back Consortium. When that inconsistency was pointed out to KSP he quickly changed his oral evidence to confirm that £100,000 was a lot of money to him after all, and

   b. in his written evidence KSP stated that in April 2012 he dropped off cash totalling £30,000 to C, which was to be collected by D1 and sent to RLK. C informed KSP that he would get D1 when collecting the money to sign a loan agreement. KSP stated that he "*knows and [has] seen that the first defendant has signed this loan agreement.*". In his oral evidence, KSP confirmed that the loan agreement to which he was referring to in his written evidence was the document dated 19 April

2012 and a copy of which was disclosed shortly before the start of the trial. When it was pointed out that D1 was not a signatory to that document, which was only signed by KSP and C, KSP admitted that his written evidence was mistaken in that he had not seen D1 sign the document. He claimed that this error arose as a result of him failing to read his witness statement properly before signing it, although he claimed in his oral evidence for the first time that he had handed the cash directly to D1 at C's office, which, if true, begs the question why D1 was not a signatory to the loan agreement in any event.

HKN

82. In 1991, HKN married C, whom she loves and trusts. She is an accountant by profession, but in 2007 decided to build a business providing care homes/supported living for the elderly or vulnerable children/adults, who would be housed in C's properties. For that purpose, she set up JC4C, which began trading in 2010. HKN claims that she was an Original Investor (£60,000) as was JC4C, which acquired beneficial interests in C's properties as a result of paying (£220,000) for the modernisation and refurbishment of the properties to comply with Care Quality Commission standards.

83. I did not find HKN to be a credible witness in that her evidence was characterised by self-contradiction as she struggled to answer questions consistent with C's case. For example:

a. HKN struggled to explain how JC4C, which at the time was generating very modest turnover and nominal profits, could ever have invested £220,000 into the NatWest portfolio. Initially, she said that the money may have come from a property sale. However, she then admitted that JC4C did not own any property at the time and any property was owned by C. She finally settled on not being able to recall where the money had come from notwithstanding the significant amount allegedly involved and that she was a director of the company; and

b. HKN claimed in her written evidence that "*I had many discussions with both the defendants at my office. On many occasions [D1] would come to the office by himself and other occasions both the defendants would be in the meetings. These meetings were with regards the buy back of the NatWest property portfolio. These conversations were always in front of Ashok.....The dates that I can remember that I saw either or both the defendants are (a) 17 November 2011, (b) 12 December 2011, (c) 20 April 2012, (d) 25 April 2012, (e) 15 September 2012, there are further meetings that I have had with both defendants during the period from October 2011 to November 2012 and up to 2013. I recall that on these occasions that I saw documents being signed by all parties during these meetings*." However, HKN sought in cross examination to distance herself from her written evidence by claiming that in fact she had not been involved in any meetings with the defendants to discuss the buy back and indeed she did not even know that they had agreed to head the Alleged Buy Back Consortium until January 2012. HKN further claimed that, although she was not involved directly in any discussions, she was nevertheless able to recall on specific dates looking across the open plan office and seeing C and the defendants signing some documents. When asked how she could possibly now remember those specific dates, HKN replied "*I can't, I can't recall*." This surprising and frankly bizarre change in evidence no doubt reflected the fact that in an earlier witness statement dated 5 May 2015, which was prepared in support of an application to restrain ASG from presenting a winding up petition against JC4C and which was included in the trial bundles, HKN stated (with my emphasis added) that she "*became aware in or around September 2011 that RBS had exercised its powers…to take [the] properties back…..[and C] was working on arrangements to re-finance and* *potentially purchase back the portfolio. <u>It is very important to emphasise however that I did not know in late 2011 of the details of the arrangements and the specifics of the parties involved</u>.*"

<u>Mr Jagjit Singh Gill ("***JSG***")</u>

84. JSG has been trading as a mortgage broker for some 17 years and has known C since 2002. From 2005, JSG has rented to C an office at 176 Cape Hill. Thereafter, they would regularly discuss property deals and over time developed a friendship. He was part of the bid team for the tender for the Home Office Contract. JSG claims to have been an Original Investor (£195,800).

85. I found JSG to be an honest witness doing his best to assist the court and in doing so was willing to make concessions that did not necessarily support C's case.

<u>Mrs Darshan Kaur ("***DK***")</u>

86. DK is the mother of C and gave her evidence through an interpreter. It was DK's written evidence that she was an Original Investor (£150,000 raised by re-mortgaging her home) and played a central role in raising funds from the other Original Investors, who knew and trusted DK. When D1 was nominated as head of the Alleged Buy Back Consortium, it was DK who pressed upon C the need to put everything in writing. When C was experiencing problems with the bridging companies, DK raised £25,000 in cash and gave this to D1 to make payment to the bridging companies in November 2012.

87. After finishing her evidence and on leaving the witness box, there was an outburst by DK. She has apologised for that momentary lapse of self-control, which no doubt reflected her considerable and understandable frustration at not being properly heard as a result of the incompetence of the interpreter, whom I have to say provided little assistance to DK. However, through no fault of DK, her written evidence was not properly tested in cross examination.

<u>AH</u>

88. AH has organised finance for C's property dealings for many years. AH and C are not merely business acquaintances, they have become very close friends.

89. It was AH's written evidence that on 17 October 2011, and having spoken to the banks, he advised C that D1 was the best person to be nominated as representative of the Alleged Buy Back Consortium. On 18 October 2011, AH met with D1 to explain that he had been nominated as representative of the Alleged Buy Back Consortium. AH reassured D1 that he would not be lumbered with the properties since C would be able to refinance the properties and buy them back from D1 within 12 to 18 months. In the meantime, C would be responsible for managing the properties and meeting all outgoings. D1 said that he was not worried about heading up the Alleged Buy Back Consortium as he had money invested in the NatWest portfolio. On 19 October 2011, C and D1 attended AH's office to discuss questions raised by Lloyds TSB. It was during this meeting that RLK faxed a letter to D1 notifying him that he was representative of the Alleged Buy Back Consortium. D1 signed the letter in front of AH and that signed letter was then re-faxed back to RLK.

90. I did not find AH to be a credible witness in that his evidence was characterised by significant internal inconsistencies. Whilst AH was apparently able to recall in exquisite detail without reference to any notes what was said to D1 at the meeting on 18 October 2011 and what happened during the meeting with D1 on 19 October 2011, he was simply

unable to recall in any detail or at all other crucial events/discussions happening at or around the same times. For example:

a. AH claimed that he was able to recall the details of the alleged meetings on 18 and 19 October 2011 because of the sense of urgency at the time. However, when asked what discussions regarding bank finance had actually taken place at the meeting on 19 October 2011, which AH claimed he had specifically requested in response to further questions raised by Lloyds TSB, AH struggled to recall the details – "*Like I said, that could have been….As far as a I can recall, it could, it may have been that perhaps his accounts weren't up to date, perhaps they needed projections.*";

b. On 4 October 2011, Darren Billinge at Lloyds TSB sent an email to AH thanking him for the introduction to the defendants and requesting further information to enable him to seek formal credit approval. This meeting with Lloyds TSB was before (i) the date of the alleged meeting with D1 on 18 October 2011 when D1 was apparently told by AH and agreed to be the sole representative for the Alleged Buy Back Consortium and (ii) when D2 allegedly agreed to act as co-representative at the insistence of the bridging companies. In his oral evidence AH was simply unable at all to recall this meeting with Darren Billinge. Nevertheless, he said that he must have replied to the email, although he was not sure by what means since "*It may have been by email or I may have hand dropped a document to him.*" If by email, he said he would not have retained a copy; and

c. As a result of AH having failed to arrange bank finance, the defendants exchanged contracts without funding in place. This was clearly a high risk strategy. Indeed, by letter dated 21 December 2011, RLK advised the defendants that the Receivers had agreed an extension for completion to 30 January 2012, subject to payment of a further 10% deposit. RLK warned (with my emphasis added) that "*You must be absolutely sure that you will be in a position to have funding in place to meet these strict deadlines or you will face the risk of losing the further deposit of £173,500 that the seller requires<u>. If you have any doubts as to whether this will be achievable you should not agree to the extension</u>"*. The defendants agreed the extension but were only able to complete by entering into expensive and short term bridging finance. Therefore, the reasons why the banks were ultimately unwilling to lend to the defendants must surely have been at the forefront of AH's mind and a real concern particularly after he had (on his own evidence) spoken to the banks prior to exchange of contracts and assured C and D1 that D1 was best placed to secure such funding. When asked why the banks did not actually lend to the defendants, AH's superficial response was "*I think we just didn't have enough time*." However, that explanation makes no sense bearing in mind that the bridging finance was first arranged in March 2012 some 4 months after exchange of contracts. AH merely commented that "*Banks can be slow at the time*", although earlier in his oral evidence AH was unable to recall whether or not he had even told the banks that the defendants exchanged contracts on 21 November 2011 and so were committed to the deal such that time was of the essence.

<u>On behalf of the defendants:</u>

<u>Mr Gurpreet Singh Bhullar ("***GSB***")</u>

91. GSB is a qualified barrister employed at Kent County Council and the brother-in-law of D2. It was GSB's written evidence that, in around late October to November 2012, D2 told him that the defendants had discovered that C had deceived them by concealing that he was the owner of the Properties. Also, C had failed to arrange first-tier lending and the

bridging loans were now overdue with costs, interest and penalty payments mounting every day. The defendants were distraught, anxious and upset at what had been done to them. In or around October to early November 2013, D2 called GSB again and explained that RLK had provided incomplete and confusing completion statements together with a breakdown of third party funds, which the defendants were not previously aware of. D2 asked for advice and GSB thought there were grounds to look into the matter further and potentially commence legal action against C and/or RLK and also ask the SRA to investigate. GSB recommended that D2 undertake a detailed analysis of the funding and costs, which later showed that there was a considerable amount still owing from C. GSB explained that based upon the outstanding debt, there could be scope to pursue legal action against RLK and/or C, but any such legal action would be complex, costly and time consuming. The defendants decided to put the whole episode down to a bad experience and wanted to move on from the whole thing.

92. I have no reason to doubt that GSB was an honest witness doing his best to assist the court. He did not seek to embellish his evidence but readily accepted that he did not write anything down at the time and so was unable now after this length of time to go into great detail of what had been discussed. Further, the advice he gave to D2 was in any event "*very high level and.....very generic and that was the level of conversation that we had.*" Ultimately, and as readily accepted by GSB, his evidence and the advice he gave was based upon what he was told by D2 and without sight of any documents.

<u>Mr Amrik Chote ("***AC***")</u>

93. AC is co-director of Monaco Insurance, which is a firm of insurance brokers. It was AC's written evidence that he arranged insurance for the Properties from February 2012 and through dealing with C, whom he believed was the managing agent for the defendants as owners of the Properties. After the insurance was put in place C soon started defaulting on payments and became evasive by rarely answering the phone.

94. I have no reason to doubt that AC was an honest witness doing his best to assist the court.

<u>ASG</u>

95. ASG considers HKN to be his niece and C to be his nephew-in-law. ASG has known the defendants and their family for over 40 years. D1's father and ASG's father-in-law were in the Indian army together, and their families have remained extremely close ever since.

96. ASG gave his evidence assisted by an interpreter. In his written evidence ASG stated that in November 2011 C asked if JC4C could borrow £120,000 for around 10 to 14 days for the purposes of a tender and to show the council that they had cash reserves. ASG trusted C and it is normal practice in their community to lend each other money to assist with business dealings. On 18 November 2011, HKN emailed ASG's son asking that the money be transferred to RLK. Before ASG transferred the money C telephoned and instructed ASG to record the payment reference as "*Property*". Despite ASG's son chasing for payment the money was not repaid and eventually ASG instructed solicitors to recover the money, although legal proceedings were then stopped because ASG's wife did not want him to carry on down this route against her niece.

97. In cross examination ASG's evidence was challenged as not being credible since he had recorded the payment reference as "*Property*", but in his oral evidence C accepted that he had instructed ASG to do so. I have no reason to doubt that ASG was an honest witness doing his best to assist the court.

Mr Saghwat Hussain ("***SH***")

98. SH owns the estate agency Vanguard Direct Limited ("***Vanguard***"), which he set up in 2011 with his former business partner, Mr Mike McGowan, who left the business in 2015. He has known C since around 2000 from being involved in the same line of business.

99. In his written evidence SH stated that:

a. prior to meeting the defendants for the first time Mike McGowan briefed SH that he had spoken to D1, who was very upset that C had lied to him about owning the Properties. At the meeting in or around October 2012, it was discussed that the defendants were faced with having to arrange and pay for significant works that had to be completed within a very short period of time in order to secure bank funding. It was agreed that Vanguard would get as many teams together as possible to do the works as quickly as possible with the cost being split. The defendants would pay the labour costs and Vanguard agreed to pay for the materials. This was on the proviso that once the works had been completed and the Properties refinanced, Vanguard would get the entire portfolio to manage; and

b. The extent of the works was huge, and they had to go back to brick in a number of the Properties. Some of the Properties did not even have ceilings with 9 & 11 St Augustine's Road being in the worst condition. Whilst waiting for the bank to agree to lend, the defendants were under pressure from the bridging companies to pay some monies towards penalties and interest being incurred. Therefore, Vanguard advised the defendants to sell 9 & 11 St Augustine's Road, which they duly did for £410,000, to raise funds to pay to the bridging companies.

100. It was striking that by the time that SH came to give his oral evidence, which was the week after the defendants had finished giving their evidence including as to why they had decided not call Mike McGowan as a witness, SH claimed for the first time that in fact he had actually participated in a conversation that took place between him, Mike McGowan and the defendants when C's ownership of the Properties was first revealed not just to D1, but apparently to both defendants, which left the defendants "*stunned*". By contrast, D2 in his written evidence refers to the defendants meeting with Mike McGowan and SH to explain that they were now taking full control of the Properties after discovering C's deception days earlier and it was Mike McGowan and SH "*who were shocked about the situation*".

101. Vanguard have been managing the Properties since December 2012. SH has a financial interest in the defendants succeeding in their case. SH was evasive in his oral evidence as to what continuing to manage the Properties was worth to Vanguard. He claimed initially that he did not know the amount in money terms because the Properties only represented a small part of the total number of properties under management. He then suggested figures of £10,000, £12,000 or £15,000 per annum. Finally, he accepted that he was being paid management fees of between £44,000 and £76,000 per annum by reference to the rent accounts. Also, during his oral evidence and after much procrastination, SH revealed for the first time that he also has a financial interest in the business renting the Properties from the defendants to service supported living contracts, although he either refused to confirm how much money he was making from that partnership or claimed not to know.

102. I did not find SH to be a credible witness.

Mr Jaisheel Najran ("***JN***")

103. JN is a property lawyer, who worked at Challinors Solicitors from 2007 until 2013. He grew up with D2, and in October 2012 the defendants instructed JN to assist with refinancing the properties with Lloyds TSB to pay off the bridging finance. It was JN's evidence that D2 was panicked since the defendants were at risk of losing everything if the bridging finance was not paid off urgently. It was basically do or die.

104. I have no reason to doubt that JN was an honest witness doing his best to assist the court.

GSK

105. It was GSK's written evidence that he was born in India and came to England as a student in 2004 to study at Birmingham City University before moving to London in 2005. His student visa was sponsored by ASG, who is a family friend and who first introduced GSK to C. In around 2010, ASG saw C at a wedding and asked him for his assistance in investing £50,000 in a property. GSK knew nothing about any buy back consortium, but rather he was led to believe by C that he was investing his £50,000 to part fund the purchase of Flat 5, 136 Portland Road, which was to be sold a few months later at a profit (in which GSK was to share) and as part of the sale of a larger group of properties. C later told GSK that the property was being purchased by a Mr Jhutti for £85,000, although the purchase price would have to be loaned to Mr Jhutti until he was able to secure the required mortgage. Once the mortgage was in place GSK would receive his original investment together with a share of the profit. So far as this evidence goes, I have no reason to doubt that GSK was a truthful witness. [2]

Mr Jaswant Singh ("***JS***")

106. JS is a Senior Partner of Express Financial Services and works as a commercial finance broker. It was his written evidence that:

a. He was contacted in January 2012 to assist with financing of the Properties, which were not habitable and not mortgageable via normal bank funding. He considered that specialist finance was required to enable the Properties to be refurbished so that they could be let and become income producing before being refinanced via a term mortgage. JS therefore arranged the bridging loans with Capital and WestOne so that C, as the defendants' property manager, could complete the refurbishment works;

b. However, JS found it difficult to contact C as to the progress of the refurbishment works. When JS did manage to speak to C he just came up with excuses for the continuing delays. During this time the bridging companies were becoming very concerned about the works not being completed and the Properties not being capable of refinance or sale. Around the time the loans were reaching maturity, JS met with D1, who said that C had lied to him and he now needed to take control of the Properties away from C. The defendants then arranged to get all the works completed themselves whilst JS negotiated extensions with the bridging companies. The bridging loans were ultimately redeemed on 21 December 2012 through a loan with Lloyds Bank, although JS was not involved with arranging that particular loan.

[2] It was also GSK's evidence that he saw C forge D1's signature on a letter prepared by C to prove that GSK had lent the money to D1. That allegation of forgery was not put to C in cross examination. In the circumstances, I consider that it would be unfair and decline to make any finding in relation to that particular allegation. I have not attached any weight to GSK's evidence in that regard.

107. I have no reason to doubt that JS was an honest witness doing his best to assist the court.

Mr Baljit Takhar ("***BT***")

108. BT works as an accountant. He is distantly related to D1, whom he knows from the local temple. In his written evidence BT stated that:

a. In September/October 2012, D1 met with BT to discuss the bridging finance. BT advised that there was a significant risk of the Properties going into receivership, since the defendants had extended the finance beyond the term and the penalties/interest were adding up daily running into thousands of pounds. BT further advised that there needed to be some refinancing, ideally with a first tier lender rather than with bridging finance. BT had worked previously with Paul Atkinson at Lloyds TSB and arranged for him to meet with the defendants. BT brokered a refinancing deal between the defendants and Lloyds TSB. Initially, Lloyds TSB refused to lend because the valuations had identified a number of repairing issues, but after some further negotiations the bank agreed to a reduced lend provided that the Properties were renovated and re-valued; and

b. In late October or early November 2012, BT received a telephone call from D2, who said that the defendants had discovered that C had previously owned the Properties, which made them realise that C had been dishonest in his dealings with them. However, BT did not see this as relevant and stressed the importance of securing the refinance with Lloyds TSB.

109. In his oral evidence, BT readily conceded that it was difficult to recall accurately conversations that had taken place so long ago. I found BT to be an honest witness doing his best to assist the court.

Overall treatment of the evidence of the witnesses of fact

110. In light of the risks identified above of interference with memories, I have approached the reliability of all the factual witnesses even those I found to be honest witnesses with a very substantial degree of caution.

111. In making my findings of disputed facts, I have in mind the very well-known passage from the judgment of Robert Goff LJ in ***The Ocean Frost*** [1985] 1 Lloyd's Rep 1 (which was described as "salutary" by Lord Mance in ***Central bank of Ecuador v Conticorp SA*** [215] UKPC 11 at [164]):

> [57] "*Speaking from my own experience, 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 facts 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. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth.*"

Failure to call a witness of fact to give evidence

112. The court may draw an adverse inference from the failure of a party to call as a witness at trial a person who might be expected to give important evidence. The leading authority on

this point is ***Wisniewski v Central Manchester Health Authority*** [1998] PIQR P323 at P340 where Brooke LJ said:

> "*From this line of authority I derive the following principles……*
>
> *(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.*
>
> *(2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.*
>
> *(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.*
>
> (4) *If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified*."

Burden and standard of proof

113. The burden of proof rests upon the party making a disputed allegation. The standard of proof is the balance of probabilities. In other words, the party making the disputed allegation must establish that more likely than not it is true.

114. It is submitted on behalf of C that:

a. The allegation of forgery against C is a very serious allegation to make – it is an allegation of dishonesty and of a criminal offence. [Although, I also note that C makes allegations of dishonesty against the defendants and in particular in relation to their evidence that they were misled into believing that the Properties belonged to Shiv Sharma.];

b. Relying upon the speech of Lord Nicholls in ***Re: H and Others (Minors)*** [1996] AC 563, the more serious the allegation the less likely it is to be true, and so the stronger/more cogent evidence required to establish that allegation on the balance of probabilities; and

c. The Court has to be very sure that an allegation of forgery is made out.

115. The speech of Lord Nicholls has been discussed in a number of relatively recent family law cases: see ***Re B (Children)*** [2009] AC 11 at [5]-[15] and at [62]-[73], ***Re S-B (Children)*** [2010] 1 AC 678 at [10]-[13] and ***Re J (Children)*** [2013] 1 AC 680 at [35]-[36]. In particular, in ***Re B (Children)*** Lady Hale of Richmond said this:

> "*64. Lord Nicholls' nuanced explanation left room for the nostrum, "the more serious the allegation, the more cogent the evidence needed to prove it", to take hold and be repeated time and time again in fact-finding hearings in care proceedings…………..*
>
> ……………..

70. My Lords, for that reason I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies……

………………

72. As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability. Some seriously harmful behaviour, such as murder, is sufficiently rare to be inherently improbable in most circumstances. Even then there are circumstances, such as a body with its throat cut and no weapon to hand, where it is not at all improbable. Other seriously harmful behaviour, such as alcohol or drug abuse, is regrettably all too common and not at all improbable. Nor are serious allegations made in a vacuum. Consider the famous example of the animal seen in Regent's Park. If it is seen outside the zoo on a stretch of greensward regularly used for walking dogs, then of course it is more likely to be a dog than a lion. If it is seen in the zoo next to the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog."

116. In ***Bank St Petersburg PJSC & Anor v Arkhangelsky*** [2020] EWCA Civ 408, the Chancellor of the High Court observed that, although the above quoted passages from Lady Hale's judgment in ***Re B (Children)*** were stated to be applicable to care proceedings, they are of more general application in civil proceedings. It was held that the trial judge was wrong to have applied what appeared to be a heightened standard of proof in relation to allegations of fraud and where the trial judge variously said in his judgment:

"*the more serious the allegation the more assiduous must be the exploration of alternative explanations, and the more cogent must be the evidence of a malign rather than a more benign rationale*"

"*given the gravity of what is alleged, and its consequences, and the need for cogent proof*"

"*Again, I take into account that the more serious the allegation and the more improbable the event sought to be established*"

"*the stronger must be the evidence that it did occur before, on the balance of probabilities, its occurrence will be established*"

117. Therefore, I consider that the correct position in relation to the standard of proof is that, while it is right to consider the inherent probability of an allegation in light of the particular circumstances of the case in determining whether it has been proved on the balance of probabilities, there is no legal requirement that the more serious the allegation, the more cogent the evidence needed to prove it. The civil standard of proof (balance of probabilities) does not vary with the gravity of the alleged misconduct. As Lord Justice Males said in ***Bank St Petersburg PJSC & Anor v Arkhangelsky***:

[117] *In general it is legitimate and conventional, and a fair starting point, that fraud and dishonesty are inherently improbable, such that cogent evidence is*

required for their proof. But that is because, other things being equal, people do not usually act dishonestly, and it can be no more than a starting point. Ultimately, the only question is whether it has been proved that the occurrence of the fact in issue, in this case dishonesty…, was more probable than not."

118. Dishonesty is often a matter of inference from circumstantial evidence, although the court should generally take great care when assessing whether or not inferences can properly be drawn in any particular circumstances. The court should necessarily avoid a piecemeal consideration of circumstantial evidence – per Rix LJ in ***JSC BTA Bank v Mukhtar Ablyazov & Others*** [2012] EWCA Civ 1411 at [52], albeit there dealing with a committal application to which the criminal standard of proof applied.

Expert evidence

119. Each side was given permission to rely upon the evidence of a handwriting expert. However, only the defendants served any such evidence being from Mr Michael Handy, who is a Forensic Examiner of Handwriting and Questioned Documents with over 30 years' experience. His formal training in the scientific examination and comparison of handwriting was undertaken at the Metropolitan Police Forensic Science Laboratory.

120. Mr Handy produced 3 reports dated 11 May 2018, 29 January 2020 and 16 March 2020 reflecting the piecemeal disclosure by C of copies of the Disputed Agreements. Mr Handy also attended trial to give oral evidence. I will address Mr Handy's evidence in more detail later in this judgment.

Evidence and argument

121. Counsels' written skeleton arguments and closing submissions ran to a total of 185 pages together with numerous appendixes. The trial bundle extended to a total of 33 lever arch files of statements of case/witness statements/documents. I am unable in the course of this already long judgment to refer to all the evidence and argument relied upon by the parties, but I have taken it all into account in reaching my decisions.

Was D1 an Original Investor?

122. There is no dispute that D1 paid to C the sum of £200,000 by way of two tranches of £100,000 each on 20 July 2007 and 9 October 2007. However, there is a dispute over the nature of those payments – were they investments as claimed by C or loans as claimed by D1?

123. It was submitted on behalf of each side that this is an important finding for the court to make, since it is C's case that D1's primary motivation for agreeing to act as representative for the Alleged Buy Back Consortium was to protect his original investment in the Properties, which would otherwise be lost if the Properties were ultimately sold by the Receivers at auction.

<u>C's evidence</u>

124. C built up his property portfolios in part using funds from family, friends and associates, who had approached him to invest on their behalf. There were three types of investor:

a. An investor would provide C with money and C would then select the property or properties in which that money was to be invested by way of purchase, renovation and/or mortgage payments ("***Category 1 Investor***");

b. An investor would pay a specific sum of money to C for C to invest generally in the property market and for a specific return mostly within a specific time period ("***Category 2 Investor***"); and

c. An investor would pay money for the purchase/renovation of properties to be used by JC4C in the care home/ supported living sector. The investors would receive returns on their investments in various ways, but the returns were always linked to the underlying investments in the properties rather than giving rise to any interest in JC4C itself ("***Category 3 Investor***").

Although the properties were registered in C's name, he considered that Category 1 Investors and Category 3 Investors acquired beneficial interests in the particular properties (by way of a share of the rent and/or a share of the proceeds of sale) that they had invested in and calculated by reference to the amount of their investments.

125. D1 was initially a Category 2 Investor whereby it was agreed that after two years D1 would be repaid his £200,000 together with a guaranteed return of £50,000. After the expiry of the two year period, C met with D1 in December 2009 at his office and handed him a cheque in the sum of £250,000. However, D1 refused to accept the cheque and tore it up because he wanted to reinvest the £250,000 in C's properties having just enjoyed a return of 12.5% per annum on his original investment. After discussing the matter with his family, C agreed a week later to accept D1 as a Category 3 Investor whereby D1's monies were reinvested such that he would receive a portion of the rental income from certain of C's properties being used by JC4C as care homes or to service supported living contracts.

126. The other Original Investors were:

a. DK – £100,000 - Category 1 Investor;

b. Mr Nirmal Singh - £200,000 – Category 1 Investor;

c. Mr Jujhar Singh Dhaliwal – £70,000 – Category 1 Investor;

d. Mr Gurnaik Singh Purewal and Mrs Balvir Kaur - £47,000 – Category 2 Investor;

e. Mr Pardeep Singh Purewal - £150,000 – Category 1 Investor;

f. Mr Mohan Singh Kandola - £400,000 – Category 1 Investor;

g. Mr JSG - £250,000 – Category 1 Investor;

h. Mr Malkait Singh Hayer - £100,000 – Category 3 Investor;

i. KSP - £100,000 – Category 3 Investor; and

j. HKN - £60,000 – Category 1 investor.

<u>D1's evidence</u>

127. In or around 1995 to 1998, C told D1 that he could source properties for D1 at below market value, which D1 could then sell at a profit or retain as an investment. D1 agreed and between approximately 1998 and 2007 C assisted (without payment) D1 in buying and selling one or two properties a year generating profits of some £10,000 to £12,000 per property. The properties were purchased in the names of D1 and his wife. Most of the

properties were then renovated and sold, although a couple of the properties were retained as long term investments and rented out. D1 also purchased without C's assistance a couple of commercial units as long term investments.

128. In 2007, C came to see D1 at his office and asked for a loan of £200,000 as he was experiencing some cash flow problems because his money was tied up in other projects. As C had helped D1 purchase properties in the past and because of the relationship that they had developed over the years D1 felt obliged to help C in his time of need. The money was an interest free loan, which C told D1 would be repaid in a few years or when D1 requested.

129. D1 would not have agreed to invest in properties that C was purchasing, since at the time D1 and his wife were buying and selling their own properties for the benefit of their family. If D1 had intended to use the £200,000 to make an investment he would have bought a property in the joint names of him and his wife as they had done over the previous years.

<u>Conclusion</u>

130. On balance, I preferred D1's version of events on this issue for the following primary reasons:

a. In his evidence, C stated that the majority of the Original Investors (including D1 from at least December 2009) were either Category 1 Investors or Category 3 Investors, who had thereby acquired beneficial interests in particular properties. However, in his Response to the Defendants' Part 18 Request for Further Information dated 20 April 2018 ("***the RRFI***") and signed by C with a statement of truth, C stated that:

> [Under Paragraph 3 – Response (2)b)] "…*it was more usual for the Claimant to receive investments by way of unsecured loans (and that was the basis on which all Original Investors provided sum[s] of money to the Claimant), on occasion, an investor would invest in a company of which the Claimant was a shareholder and director and through which the Claimant would then invest in property.*"
>
> [Under Paragraph 6 – Response (3)c. and having listed the Original Investors including D1] "*There may have been other individuals who loaned sums which the Claimant cannot now recall. The above sums are stated to the best of the Claimant's knowledge or recollection. They were loaned to the Claimant between in or about 2002 and in or about 2009/2010. The Claimant cannot now recall the precise dates of each loan made by each Original Investor.*"
>
> [Under Paragraph 6 – Response (3)e.] "*The Original Investors had neither interests in the entirety of the Original Portfolio, nor in specific properties therein. They had an interest in the payment by the Claimant, on an agreed future date, of an agreed sum representing a profit on the sums that they had loaned to the Claimant*".

b. C relies upon a letter he says he wrote to the Receivers dated 30 September 2011. In that letter, C states that "*Mr Parminder Singh Jhutti and his wife Mrs Nirmal Kaur Jhutti loaned me £200,000…..If they were to lose £200,000 this would be devastating for them especially at their age…….I have loaned approximately £1.5m from private individuals for my……property portfolio.*";

c. The above quoted extracts from the RRFI and the letter to the Receivers, which expressly record that the sums paid by the Original Investors were loans that did not give rise to any beneficial interests in particular properties, are diametrically opposed to C's evidence, but consistent with D1's evidence.

d. In his written evidence, C claimed that the terms on which D1, Nirmal Singh, Jujhar Singh Dhaliwal and Pardeep Singh Purewal made their investments were recorded in writing, although copies of those investment agreements were no longer in C's possession or control and despite having claimed in his oral evidence that it was his practice to retain copies of important documents. Further, by the time C came to give his oral evidence, he claimed that in fact over 50% of the Original Investors had been provided with written investment agreements. However, none of these alleged written agreements were included in C's disclosure. Indeed, in the RRFI, C stated that:

> "*The loans and investments….were typically agreed orally. This reflected the informal nature of the arrangements and the fact that they were made between the Claimant and friends of his, including the First Defendant, and were based on mutual trust and confidence. On some occasions, normally at the request of the relevant investor, the Claimant entered into written agreements.*"

e. The RRFI lists the identities of the Original Investors to the best of C's knowledge and recollection. There are, however, significant inconsistencies between the Original Investors listed in the RRFI and those listed in C's written evidence. For example, the RRFI lists JC4C as having invested £220,000, but C's written evidence refers to JC4C as having invested £60,000. In C's written evidence, he lists DK as being an Original Investor (£100,000), but there is no reference in the RRFI to DK being an Original Investor.

f. When asked to clarify the investments made by D1, C's evidence was inconsistent and ultimately made absolutely no commercial sense -

   i. in his written evidence, C stated that in 2007 he was an established property developer, and he did not need D1's investment. Nevertheless, D1 insisted on C accepting the £200,000 as D1 wanted to diversify by making money in property, but without actually buying property,

   ii. however, it is not disputed that D1 had by then already for several years been making money from buying and selling properties. In his oral evidence, C sought to explain away this inconsistency by claiming that D1 no longer wanted the "*headache*" of dealing with his own properties. It is difficult to understand why D1 would have considered this to be a "*headache*" when, on C's own evidence, he "*free of charge.… on behalf of* [D1] *drove all the purchases and managed everything from sourcing the properties to renovating them and eventually selling them on.*" C also sought to explain D1's investment on the basis that he wished to maximise his returns by moving away from investing in single properties, which begs the question why, on C's evidence, did D1 then in 2009 wish for "*his money to be rolled up in a specific property*" in the NatWest portfolio being 23 Portland Road,

   iii. when asked in his oral evidence why C was initially willing to borrow £200,000 from D1 (apparently at D1's insistence without C even needing the money) at such a high rate of interest (12.5% per annum), C said that he could afford to do it and he knew that the properties would benefit from a substantial uplift once the borrowed monies were used to renovate the Properties. When asked why C had not sought to borrow the money from elsewhere at a lower rate of interest, C said that it was just going to be for a 2 year period. When asked how he intended to pay D1 the sum of £250,000 at the expiry of the 2 year period, C admitted that at that time he only had £130,000 of cleared funds in his account (notwithstanding that he allegedly presented D1 with a cheque for the full amount). Initially, he said in evidence that he would have increased his overdraft facility, but later said that he would have refinanced the properties (which allegedly had a couple of million pounds' worth of equity in them) to release the balance of the funds needed to repay D1. C was unable to explain why he had not simply refinanced the properties in the first place at a much lower rate of interest in order to raise the monies, if needed,

iv. C claimed that in 2009, D1 agreed to roll over the original £200,000 investment plus the £50,000 interest earned thereon into 23 Portland Road in return for D1 receiving "*a portion of the rental income"* but only "*once JC4C had received a supporting living contract on the property*". It makes absolutely no commercial sense for D1 to have agreed to invest such a significant amount of money without acquiring any interest in 23 Portland Road other than an entitlement to receive an unspecified portion of the rental income, but only if and when JC4C secured a supported living contract on the property, which it never did. This is all the more inexplicable by reference to C's written evidence that, so far as the £200,000 initial investment, D1 "*wanted his capital assured*". In his oral evidence, C admitted that, pending JC4C securing any supported living contract, 23 Portland Road was otherwise tenanted. Even then it does not appear that D1's alleged £250,000 investment was sufficient to entitle D1 to receive any share of that interim rental income;

g. C was unable to provide any convincing explanation as to what he actually did with the £200,000 received from D1. C stated in his written evidence that he "*invested [D1's] money to buy and develop properties as per our agreement*". However, in his oral evidence on the first day of the trial, C admitted that the £200,000 was not used to buy any properties. Rather he said that the whole of the £250,000 was spent on either paying consultants to assist with the tender for the Home Office Contract (which would be consistent with D1's evidence that C needed the money because of cash flow problems, although the tender was not submitted until 2010) or renovations to 23 Portland Road for supported living, 496 City Road for a children's care home and 584 Stratford Road for a children's care home. On the second day of the trial, C's evidence was that only the initial £200,000 had been used by C because the balance of £50,000 was interest. C described the renovation works to 23 Portland Road as including taking the plaster back to the bare brick, skimming the walls, changing all the pipes, changing the door frames and doors, decorating throughout, installing new kitchens/bathrooms, installing new electrical wiring and installing a new gas boiler after taking the gas mains out to the road because otherwise there was no gas, it was all electric. However, the valuation reports contained within the trial bundle are not consistent with C having spent substantial monies on renovations to any of these properties and indeed are more consistent with C having allowed at least some of the properties to fall into disrepair –

i. The valuation of 23 Portland Road prepared by Silk Plant & Associates dated 13 November 2012 (following an inspection on 7 November 2012) noted that the property required refurbishment and in particular to four of the bathrooms and notwithstanding C's evidence that he had installed new bathrooms. The report further noted that "*no gas is provided to any of the flats and that the gas is not connected to the property…..[with] no gas installations to any of the flats*" and again notwithstanding C's evidence that he had connected the flats to the gas mains and installed a new gas boiler. Finally, the report noted that "*The whole of the suspended floor to the rear right side ground floor flat within the main building including the entrance, main lounge, kitchen area, bedroom and bathroom had all been affected significantly by dry rot with the timber joist having rotted and decayed.*" It was recommended that "*the dry rot…needs to be eradicated totally from the building or it will continue to spread, causing decay across the whole building*.",

ii. The valuation report for 584 Stratford Road prepared by Silk Plant & Associates dated 12 November 2012 (following an inspection on 8 November 2012) described the property as being "*in an extremely poor state of repair and condition*" and noted that "*very little work had been done*" to the property. It was further noted that "*the main roof covering had not been repaired and in particular…..was open to the elements for the vast majority of the roof area with slates completely missing allowing water to cascade into the property and the central core of the building around the bathroom, hallway and down into the main ground floor hallway area and kitchen……The property is in effect in a shell condition and requires completely refurbishing and overhauling*",

iii. The valuation report for 496 City Road prepared by Silk Plant & Associates dated 15 November 2012 (following an inspection on 8 November 2012) expressed the view that works needed to be completed "*prior to the property being capable of beneficial occupation*." It was "*estimated that the total cost for undertaking the work including cost of works and supervision will be around £13,500 exclusive of VAT*" and would "*take up to two months to complete*",

I remind myself that the stated investment model for Category 3 Investors was that C's properties would be refurbished to enable JC4C to secure care/supported living contracts on those properties, but it is not disputed that prior to the appointment of the Receivers no contracts had been secured on any of the Properties;

h. When C was asked to clarify the nature of the investments of the other Original Investors, his oral evidence was confused and confusing. Indeed, that confusion was shared by C's own witnesses. For example –

i. In his written evidence, C stated that in 2007 Mr Nirmal Singh, his wife and mother-in-law viewed 9 St Augustine's Road, which C was looking to buy. Nirmal and his wife agreed to invest £200,000 into the property with the majority of the funds being received by C on 11 January 2008. They raised these funds by re-mortgaging their own home. The terms of the investment were that Nirmal would be entitled on the sale of the property to receive his £200,000 plus 50% of the equity. Nirmal was not called to give oral evidence, but in his written statement relied upon by C, Nirmal stated that his investment was used to renovate the property so that it could be turned into a care home to be operated by JC4C. When that statement was put to C during his oral evidence, C said that Nirmal was not correct, and the monies had been used to purchase the property in late 2007. When it was then pointed out to C that 9 St Augustine's Road was in fact purchased by C in November 2006 so that Nirmal's investment could not have been used to purchase the property, C struggled to explain what he had actually done with Nirmal's money other than paying it into his bank account and using some of it to begin to renovate 9 St Augustine's Road. However, the valuation report for 9 St Augustine's Road prepared by Silk Plant & Associates dated 19 November 2012 described the property as "*semi-derelict…in extremely poor condition*." C sought to explain this away on the basis that he only started the renovation works some time in December 2010/January 2011 shortly before the Receivers were appointed. Whilst the valuation report did note that "*some refurbish[ment] work had been carried out*" albeit "*in a confusing and ad hoc manner*", the author of the report also expressed the opinion that "*it does not appear that any work has been undertaken to the properties for some considerable time*." In addition, it makes no sense that, having received the bulk of the money from Nirmal in January 2008, the money would simply rest in C's bank account for some 3 years until C finally began the renovation works, which were supposedly cut short by the appointment of the Receivers;

ii. In his written evidence C described how KSP approached him and asked whether he could invest some money into property. Given that it was 2010 and only two years after the financial crash, C explained that it was difficult to renovate and sell properties at a profit as the market was depressed. C explained that the best way to add value was to purchase a property linked to JC4C that would increase in value by virtue of having a care contract. KSP agreed to make an investment of £100,000 by transferring the monies to JC4C in February/March 2011 in return for which KSP acquired "*an interest in the properties*". However, in his oral evidence, C was forced to admit that KSP's money had not been used to purchase any property, since by the time JC4C received the money all the properties in the NatWest portfolio had already been purchased. C was again unable to explain what he had done with this money other than using some of it to pay towards the costs of the tender for the Home Office Contract. In his evidence KSP stated that he ran his own welding company and wished to diversify into another sector of business. In late 2009, he met with C and HKN to look into how he could join their new business in the care sector. After a couple of meetings, KSP decided to invest in JC4C by transferring £100,000 to the company in tranches from late 2009 onwards and by assisting with the submission of the tender for the Home Office Contract. It was agreed that, if the tender was successful, KSP and his wife would receive a shareholding in JC4C, which in turn would enjoy 20% of the profits with the remaining 80% of the profits being shared between other members of the bid team. However, HKN states in her written evidence that she "*made it very clear…in my conversations with the original investors (especially those that paid sums into JC4C) that their financial interests were solely confined to the equity in properties that were registered in Ashok's name and not in my company*." Indeed, HKN specifically refers to receiving funds from KSP on the basis that he was "*purchasing a beneficial interest in properties legally owned by Ashok…which were in the process of/had already been made care home compliant*". Therefore, in summary, KSP believed he was investing in JC4C, C believed KSP was investing for C to purchase properties and

HKN believed that KSP was investing to renovate properties already owned by C;

iii. It was KSP's further written evidence that when it was announced that the tender for the Home Office Contract had been unsuccessful in June 2011 his £100,000 was then distributed by JC4C into C's NatWest portfolio. However, in their oral evidence, KSP and HKN (being the sole signatory for JC4C's bank account) were unable to explain what actually happened to this money when it was supposedly distributed into the NatWest portfolio. That apparent lack of interest on the part of KSP was surprising to say the least when considered in the context of his written evidence regarding his subsequent £125,000 investment in the Alleged Buy Back Consortium. He stated in his written evidence that "*I told Asok that I wanted to hook my £125,000 onto a particular set of properties….I wanted to have the satisfaction of knowing that my funds were on a particular set of properties*."

iv. In his evidence, JSG explained that he invested in properties to be used by JC4C in servicing care contracts. JSG was aware that the properties would need to be renovated and various contracts would need to be won by JC4C before the properties could be rented out. In July 2008, JSG paid £100,000 to acquire a 50% beneficial interest in 63 St Mary's Road. In November 2009, JSG paid £85,800 to acquire a 50% beneficial interest in 584 Stratford Road, which was then mortgaged a few months later to raise £100,000. The mortgage monies were paid directly to C, who confirmed that he would be using at least part of the monies to pay for renovations. However, no renovations were carried out, and JSG did not receive any share of any rents from either property. JSG does not know what C did with the £100,000 taken out of 584 Stratford Road, which sum broadly equated to the amount of JSG's original investment. He said that he felt that C had let him down. In his written evidence, C confirms that he received the monies from JSG to purchase the properties but fails to explain upon what terms JSG was making those payments. In her written evidence, HKN stated that the monies from JSG were paid to JC4C to purchase a beneficial interest in properties already owned by C, which "*were in the process of/already been made care home compliant*". However, earlier in her written evidence, HKN states that JC4C started trading in 2010 and that it was only in "*late 2010 Ashok and I started the process of making Ashok's properties care home compliant*." That would have been over 12 months after JSG had paid over his monies to JC4C;

v. HKN claimed that by early 2000 her equitable interest in the NatWest portfolio was worth £60,000, but she was unable to explain how that could have been bearing in mind that the first property in the NatWest portfolio was not purchased by C until 18 June 2003;

vi. HKN claimed that JC4C invested £220,000 in the NatWest Portfolio to acquire a beneficial interest in the properties. However, she was unable in her oral evidence to recall any details claiming that she "*was not privy to it*" as C "*was actually dealing with all that side of stuff*". That oral evidence was in stark contrast to HKN's written evidence where she stated that "*JC4C not only directed and advised Ashok what work had to be done, but also paid for the works to these properties to have them adapted*." In any event, it difficult to see how JC4C could ever have invested such a substantial sum, since earlier in her oral evidence HKN confirmed that, in each of the financial year endings May 2011 and May 2012, JC4C generated profits of some £16,000 against turnover of some £60,000. In her oral evidence, HKN bizarrely sought to explain this financial dichotomy by claiming that the investment monies might have emanated from the sale of a property, before quickly acknowledging that JC4C did not in fact own any properties;

i. C claims that his primary motivation in arranging the Alleged Buy Back Consortium was to save the investments made by the Original Investors. His stated plan was that once C had recovered the Properties then the Original Investors would be given the options of either recovering the amounts they had originally invested or retaining their investments in the property portfolio. At the conclusion of his oral evidence, C was asked to clarify in general terms (i) what it was that the Original Investors had actually invested in and (ii) how and when were investment returns to be determined? C's attempt at clarification raised more questions than it answered. For example, in relation to Category 3 Investors he said that if they "*wanted a dividend, they could have had a dividend*" or "*a monthly income from that property, they could have got that*". At one point in his evidence C was forced to concede that investment arrangements were "*quite fluid*." It is difficult to understand how the Original Investors could have been given the option of retaining their investments in the property portfolio once rescued if they did not know or understand what actually those investments comprised.

Summary of the written evidence of the parties regarding the purchase/finance of the Properties

C's evidence

131. It was C's evidence that he first became aware of the appointment of the Receivers in early September 2011 and thereafter entered into negotiations with the Receivers to buy back the NatWest portfolio. He immediately approached family and friends in order to raise monies to fund the buy back and primarily with the aim of saving the investments made by the Original Investors. C is unable now to recall each and every conversation he had with the members of the Alleged Buy Back Consortium, but in general terms he would have explained that the properties had been repossessed and enquired whether any funds were available to help get the properties back from the Receivers. C further explained to the members of the Alleged Buy Back Consortium that they would effectively be providing loans that would be repaid once C had the opportunity to re-mortgage the property portfolio. D1 confirmed to C that he had £400,000 available to lend to C.

132. The purchase price was £2.5 million, and by 11 September 2011 C had been able to raise £935,000 through the Alleged Buy Back Consortium with the balance of the funding to be raised by way of a secured loan from either Lloyds TSB or the Bank of India and which was to be arranged by AH. C instructed RLK, who on 15 September 2011 obtained the Injunction, although by that time the Receivers had already sold one of the properties in the NatWest portfolio.

133. Whilst some members of the Alleged Buy Back Consortium were also Original Investors (and so had a financial interest in saving the NatWest portfolio) others were not. Those members who had no direct financial interest in saving the NatWest portfolio were nevertheless close family and friends motivated by a desire to help C in his time of need.

134. On 17 October 2011, RLK telephoned C and were pressing for a name to include in the Lock Out Agreement. C then went to see AH to discuss which member of the Alleged Buy Back Consortium the banks would fund. AH advised that Lloyds TSB and Bank of India would fund D1, and so C wrote to RLK that day to confirm that D1 "*is happy to head the consortium as my representative for the buy back*." Later that day C went to see D1 at his offices to notify him that he had been chosen as the representative for the Alleged Buy Back Consortium. D1 said that he was ok with that subject to C providing the following information/clarification:

a. The purchase price was £2.5 million;

b. The identities of all the other members of the Alleged Buy Back Consortium;

c. C would be using AH to arrange the balance of the funding with Lloyds TSB and/or Bank of India;

d. C would negotiate the purchase of the properties from the Receivers using RLK;

e. C would buy back the properties from D1 within 12 to 18 months;

f. In the meantime, C would pay the costs of renovations, and JC4C would pay the property insurance premiums and collect the rents;

g. The identities of and amounts of money committed by the Original Investors; and

h. There would be sufficient funds in the properties to pay back both the Original Investors and the members of the Alleged Buy Back Consortium once C had re-mortgaged the properties in his name.

At the conclusion of the meeting, C wrote down these discussion points and gave D1 the document.

135. On 18 October 2011, D1 visited C's office to discuss the document that C had given him. D1 said that his family was happy for him to be the representative of the Alleged Buy Back Consortium as this would enable not only the Original Investors' money to be protected, but also D1's original investment would be protected. D1 requested a typed copy of the handwritten document, and so JC4C's admin lady, Zoita Williams, typed it out whilst C and D talked further about the purchase of the properties.

136. At a further meeting on 18 October 2011, which took place at D1's office, C and D1 agreed the final aspects of D1 being the representative of the Alleged Buy Back Consortium. This included GSK loaning the sum of £55,000 for a period of 3 to 4 months to enable exchange to take place and which loan was recorded in a typed document signed by both C and D1, although C has only been able to locate an unsigned copy of that document.

137. Later on 18 October 2011, C wrote to the Receivers and called RLK to confirm that D1 had been nominated as representative of the Alleged Buy Back Consortium. C then took D1 to AH's offices so that AH could notify D1 that he had been appointed as representative for the Alleged Buy Back Consortium. AH explained that D1's name would be on the legal title of the Properties, but only as the representative. AH further explained that C had raised £935,000 of which £400,000 was to be provided by D1 and with the balance of the purchase price to be funded through finance obtained in D1's name from either Lloyd's TSB or the Bank of India.

138. At the request of AH, C and D1 attended a further meeting at AH's office on 19 October 2011 to discuss the financing with representatives of the banks. It was during this meeting that Ian Sheppard of RLK telephoned C to ask C to get D1 to sign a letter from RLK confirming that D1 was the representative of the Alleged Buy Back Consortium. RLK faxed the letter to AH's office and D1 signed the letter before C faxed it back to RLK. However, D1 signed the letter in the wrong place where Mr Sheppard's signature ought to have appeared. Mr Sheppard called C to say that he was going to re-fax the letter, but this time he would sign the letter so that D1 could sign next to Mr Sheppard's signature. When this was done C re-faxed the second signed letter back to Mr Sheppard. That letter (the "***19 October Letter***") stated:

> "*I write further to instructions provided by Mr Ashok Singh in respect to the proposed sale of his property portfolio.*
>
> *Mr Singh has instructed me that you are agreeable to be put forward as a representative of a number of proposed purchases of the aforementioned portfolio.*
>
> *I therefore enclose herewith a Lock Out Contract which identifies you as the "buyer" of a number of properties set out in appendix one of the Contract. I draw your attention to paragraph 3 which sets out your obligations as "buyer".*
>
> *I must also make it clear that despite the Contract indicating that I am your solicitor i.e. the buyer's solicitor I have not provided you with any advice on the contents of the Contract and if you do agree to sign and enter into the Contract you do so at your own risk.*
>
> *I trust that I have made my position clear and look forward to hearing from you as a matter of urgency."*

139. The situation was moving very quickly in October/November 2011, and C met with D1 a number of times to discuss what their agreement was. However, the core understanding between C and D1 was that (i) C would contribute a certain level of funds raised from friends/family, (ii) D1 would contribute £400,000, (iii) the properties would be purchased in D1's name and (iv) C would arrange the required bank finance. Although they did not use the word, they understood that D1 would be holding the properties on trust for C. It was agreed that C would then develop/renovate some of the properties so that he could re-mortgage the portfolio in his name to pay off the members of the Alleged Buy Back Consortium, including D1, and any of the Original Investors, who wanted their investments back. Thereafter, C continued to meet regularly with D1 and/or D2 to discuss and agree the plan for rescuing the properties. The agreements reached during this time were genuinely reflected in the Disputed Agreements. These documents clearly and consistently demonstrate that the defendants agreed that they would be representatives for the Alleged Buy Back Consortium, and they would hold the Properties as C's nominees.

140. On 25 October 2011, C and D1 signed Disputed Agreements recording that D1 was purchasing the properties for £2.5 million as C's representative and that C would re-purchase the Properties in 12 to 18 months' time at the price paid for them by D1 and at which time the Original Investors, including D1, would get their money back.

141. On 17 November 2011, C and D1 signed a Disputed Agreement recording that C would contribute between £400,000 and £700,000, and D1 would contribute £400,000, towards the purchase of the Properties, which would then be sold back to C in 12 to 18 months' time. At that time D1 would get back his £400,000, his original investment of £250,000 and any other nominal disbursements he had paid.

142. On 18 November 2011 ASG, as a member of the Alleged Buy Back Consortium, transferred £120,00 to RLK to part fund the deposit required to exchange contracts and with D1 already having provided the sum of £80,000. C and D1 signed Disputed Agreements dated 18 November 2011 (x 2) recording that ASG had loaned this money to D1 for a period of 3 to 4 months after which time ASG required his money back to complete on a land deal in India.

143. Negotiations progressed and in order to meet the concerns of the Receivers other members of the Alleged Buy Back Consortium, who had access to their own funds, purchased some of the Properties:

a. DSM purchased 13 Anderson Road for £110,000;

b. SS and his wife purchased Flat 4, 369 Gillott Road for £45,000 by providing £25,000 and the balance of the purchase price being met from funds provided by other members of the Alleged Buy Back Consortium;

c. GSK purchased Flat 5, 136 Portland Road for £55,000 providing £50,000 and the balance of the purchase price being met from funds provided by other members of the Alleged Buy Back Consortium.

D1 did not complain about any of those purchases by third parties because he knew that he was only ever acting as representatives for the Buy Back Consortium. Indeed, C and D1 signed Disputed Agreements dated 3 December 2011 (x 3) confirming that DSM, SS and GSK were agreeing to purchase these properties as C's representatives on the understanding that they would be selling them back to C within a couple of months.

144. C agreed, on behalf of all of the investors, that the properties be put in the names of D1 and D2 because D2 was young and therefore satisfied the lending criteria imposed by the bridging companies. C and the defendants signed the Disputed Agreement dated 12 December 2011 confirming that the defendants would purchase the properties and then sell them back to C within 12 to 18 months.

145. Other members of the Alleged Buy Back Consortium provided funds for the purchase of the Properties by paying their monies either to RLK direct or to the defendants. They included:

a. KSP, who agreed to loan the sum of £125,000 as recorded in the Disputed Agreement dated 3 March 2012;

b. Mr Hayer, who agreed to loan the sum of £85,000 as recorded in the Disputed Agreement also dated 3 March 2012; and

c. JC4C, who paid £67,923 into the defendants' bank account.

146. As a result of the bridging companies offering lower loans to values than would otherwise be available from the banks, C arranged for DSM, SS and GSK to transfer the properties they had acquired in their names to the defendants for deferred consideration with those members of the Alleged Buy Back Consortium agreeing to lend the purchase monies to enable the defendants to use these properties as security to complete on the remaining Properties. The loans would be paid back when C re-purchased the Properties from the defendants. Those arrangements were recorded in Disputed Agreements dated 22 April 2012 (x2) and 23 April 2012 (x3).

147. After all the Properties were transferred into the defendants' names, C continued to renovate them whilst renting out those Properties that had already been renovated. JC4C contributed the total sum of £52,300 towards the renovation costs with the balance being funded from the rental income.

148. C manged the Properties until December 2012 at which point D1 told C that he had arranged refinancing with Lloyds TSB, which appeared to be at a lower cost than the refinancing that C had been trying to arrange. The refinancing was a considerable relief, since it was required to pay off the bridging loans, which were extremely expensive and difficult to extend. The bridging companies were themselves threatening to repossess the Properties. Indeed, in November 2012 C's mother gave £25,000 (having herself borrowed £23,000) to D1 to make a payment to the bridging companies.

149. Once the refinancing was completed and at D1's request, C met with the defendants at D1's office on 6 January 2013 to discuss the timescales for C to get his finance in place to secure the transfer of the Properties back into C's name. It was agreed that the Properties would be purchased by C within a further period of 12 to 18 months. That agreement was recorded in the Sale Agreement.

150. The defendants failed to honour their agreement with C, who went to see D1 many times from 2014 onwards and pleaded for the Properties to be returned, but D1 would not listen. C did not pursue a legal case earlier because of his religious beliefs. He wanted the defendants to reach their own conclusions that what they had done was wrong and dishonest, but it became clear to C that they were simply not going to change their minds.

Defendants' evidence

151. In or around 2011, D2, who was then about 30 years of age and working a couple of days a week as a locum chemist, was keen to get more involved in the property market. D2 wanted to take the lead on this and thought that the £200,000 owed by C together with the NatWest loan facility of £400,000 would allow the defendants to purchase a good chunk of properties.

152. In or around September or October 2011 and at D1's request, C came to see the defendants at D1' office when they discussed what D2 planned to do. D1 told C that it had been 4 years since the £200,000 had been loaned, but C said that he was still not in a position to pay back the loan. However, C said that, if he was given further time, he could introduce them to a property portfolio that was coming on the market for about £2.4/£2.5 million and which would be a good buy, since the properties were in a good state of repair and would make a good long term investment as rental properties. C also offered to assist the defendants in obtaining first tier lending to finance the remainder of the purchase price. C said that the properties had previously belonged to a Mr Shiv Sharma, who had lost them to receivers and with whom C had a good working relationship. D1 was keen for D2 to learn the ropes and become more actively involved in property development as D1 neared retirement. D2 was also keen to do this. Therefore, the defendants agreed to C's proposal.

153. D1 did warn C at the time not to get him involved unless C was sure he could get the finance, as it involved such a big borrowing. As a trustee at the Temple and on the board of a school, D1 did not want bad finances affecting his reputation. C arranged meetings between the defendants and his financial adviser, AH, who had assisted D1 with obtaining finance before. AH arranged meetings for the defendants with his contacts at Lloyds TSB and Bank of India.

154. C told the defendants that they needed to move quickly to secure the favourable deal with the Receivers, and so there was no time to obtain valuations. C said that the Properties were potentially worth maybe £5 or £6 million, but the Receivers needed a quick sale. Between September and October 2011, C took the defendants to view the Properties. C drove them around and they viewed most of the Properties from the outside. C showed them the inside of 13 Anderson Road, 9 & 11 St Augustine's Road and 21 Clarendon Road. 13 Anderson Road needed some work but was almost complete, whilst 9 & 11 St Augustine's Road and 21 Clarendon Road were not habitable. C explained that he would arrange lending so that there would be enough surplus to get these properties fully renovated, but the other properties were in a good state and just needed some touching up. With very rough calculations and after only seeing the majority of the Properties from the outside, D2 believed that there was rental income of at least £250,000 per year to be made.

155. C told D1 that he had to make a lock out payment of £80,000, which was to be used as deposit monies spread across all the Properties. The remainder of the deposit monies would be taken when they exchanged on the Properties by 21 November 2011 and with a completion date of 28 November 2011. C reassured D1 that although the timescale was tight, C would be able to get funding in place to complete. C also suggested that the defendants instruct RLK as he knew the owner. On 18 October D1 paid £80,000 to RLK, although he had not met with RLK at that time. D1 never saw the 19 October Letter before it was disclosed by C in these proceedings. He can say with confidence that he did not sign this letter.

156. In or around October/November 2011, C told D1 that both Lloyds TSB and the Bank of India were concerned about D1 taking out long term lending in his sole name due to his age, and so D2 should be added as a purchaser of the Properties. In addition, C said that the lenders may not lend as much as needed, and so he suggested that 2 of the Properties (Flat 5, 136 Portland Road and Flat 4, 369 Gillott Road) be removed from the portfolio. He said that each property was worth £50,000, which would have the effect of reducing the purchase price of the portfolio from £2.5 million to £2.4 million. C proposed that these properties be purchased temporarily by C's associates before being sold on to the defendants at the same prices and when C was able to secure adequate finance. C said that potentially the same thing might need to be done with 13 Anderson Road.

157. D1 signed the Memoranda of sale when attending with C at RLK's office on 15 November 2011. This was the first time he had met with RLK. D1 can recall discussing stamp duty and legal fees, but otherwise recalls just signing where told to sign and without reading the Memoranda of sale. D1 had complete trust in C and RLK.

158. D2 signed the Memoranda of sale when attending with C at RLK's office on 16 November 2011. D2 also did not read them, although he did scan the first part and noted that the seller was recorded as "*Ashok Singh care of the Receivers*". D2 asked C what this meant, and C explained that as he was acting as an intermediary then on some of the documents his name would appear alongside the Receivers, which was normal practice. This was all said in front of the solicitor, Mr Bhogal, who did not contradict C's explanation.

159. At no point during these meetings was it mentioned that C had previously owned the Properties or that RLK were acting for C or had previously acted for C in obtaining the Injunction. Nor was there any mention of the acquisition being part of a consortium or that funds had or were going to come in from third parties. However, C asked the defendants to note their address on the land registry forms as JC4C's registered office address, since this would make it easier for him to answer any questions raised by the Receivers.

160. C introduced the defendants to Mr Chris Brown, who was commercial director at Central Finance. On 7 December 2011, the defendants signed an engagement letter with Central Finance to assist in raising finance or a credit facility of up to £1 million.

161. In late November or early December, C met with the defendants and confirmed that the proposed funding from Lloyds TSB and Bank of India had fallen through. He also told the defendants that he had received notices to complete and D1 was at risk of losing the lock out payment of £80,000. However, C said that the deal could still be saved by him negotiating an extension with the Receivers and arranging for some further properties to be purchased temporarily by his associates. In the meantime, C would continue working with AH and Mr Brown to raise the required finance. The defendants felt that they had no other option and remained confident that C would come through.

162. Soon after, C told the defendants that negotiations were going well with the Receivers, but they required some of the completions to take place by 12 December 2011. C said that he had found a buyer, Westpoint, which was willing to purchase the South Road properties for £500,000 and sell them back to the defendants in 2 to 3 months' time for £600,000. The defendants were unhappy with having to pay Westpoint £100,000 more than Westpoint had actually paid the Receivers, but C told them that they had no other option and the South Road properties were worth considerably more than £600,000 in any event. C reiterated that he would raise the funds in time to buy these properties back. In addition, he appreciated that this additional cost had been incurred as a result of his failure to raise the bank finance in time, and so he told the defendants that he would add the £100,000 to the debt that he already owed them. With the benefit of hindsight, this might appear strange, but C proposed it and the defendants had no objection to it.

163. At the same time, C said 13 Anderson Road (£110,000) would also need to be temporarily purchased by another associate of C, who would subsequently sell it to the defendants for the same price paid to the Receivers.

164. On 12 December 2011 and at C's request, D2 paid £400,000 into RLK's account. However, at a further meeting, C told the defendants that further money was required to stop the Receivers rescinding the contract. The defendants were not happy about this, but C reassured the defendants that any additional costs that were incurred as a result of C's delay in obtaining finance for them would be added to the debt already owed to D1. On 13 December 2011, D2 paid the further sum to RLK of £58,000 to stop the Receivers rescinding the contract.

165. It was then agreed with the Receivers that the defendants purchase the remaining properties for a new purchase price of £1,735,000 and with a new completion date set to 30 January 2012. At this point, the defendants had paid RLK a total of £538,000, which they believed covered in full the deposit and associated costs.

166. In mid to late January 2012, C arranged a meeting between the defendants and JS at AH's office to discuss potential funding options. At the request of JS, the defendants paid £4,200 to obtain valuations.

167. In early February 2012 and after the Receivers had served second notices to complete, JS advised that it was unlikely that the defendants would be able to raise first tier lending because some of the properties were not in a habitable condition. JS recommended arranging short term (6 month) bridging finance of £1,214,500, which would allow time for the renovations to be completed.

168. Between 9 and 17 February 2012, C spoke to D2 and said that he was negotiating a further extension with the Receivers whilst at the same time trying to raise independent finance to complete on 21 Clarendon Road, 584 Stratford Road, 58 Swindon Road and 63

St Mary's Road. C said that he was conscious that he had caused delays and additional costs and he owed the defendants a lot of money. He therefore proposed raising the required funds from his associates so that the defendants could complete on as many of the properties as possible. C made it clear that any such funds raised from C's associates would go against the debt that C owed the defendants.

169. On or around 17 February 2012, C advised D2 that one of his associates, Mr Sahota, would only purchase 21 Clarendon Road outright for £250,000 and subject to him being gifted the deposit of £50,000. In addition, the Receivers had agreed an extension to the completion date in principle, but subject to a penalty payment of £60,000. C confirmed that the £50,000 and the £60,000 would be added to his debt owed to the defendants. D2 was convinced by C that the defendants had no choice but to allow Mr Sahota to purchase the property using the defendants' deposit, since otherwise the defendants would lose all of the properties and the money they had spent so far. In addition, selling 21 Clarendon Road would make raising finance easier and save on renovation costs. The defendants still trusted that C would honour his commitments and achieve what he had promised.

170. In late February 2012, C arranged for the payment of £70,000 by an associate into the defendants' bank account and which sum was then transferred to RLK to complete on the purchase of 58 Swindon Road. C told D2 that C's associate had no interest in the property, and it was simply a loan to C to enable C to pay back in part the money he owed the defendants. C also told D2 that the Receivers had agreed a further extension until 29 March 2012.

171. Between 24 and 29 February 2012, C told the defendants that Mr Brown had been unable to raise funding through Lloyds TSB and so to concentrate on working with JS to secure the bridging finance. It was stressed by the defendants that that any additional costs they incurred as a result of needing bridging loans and any shortfall in funds to complete on the purchases needed to be covered by C as part of his repayment to the defendants. C agreed to this.

172. On 2 March 2012, the defendants entered into a 6 month loan for £442,000 with Capital to part fund completion of the re-purchase of the South Road properties from Westpoint on 20 March 2012. However, the defendants were still £214,000 short. C told D2 that he had arranged for finance from his associates to meet the shortfall and they would be paying money directly into the defendants' bank account. This was again on the understanding that the money received was part repayment of C's debt and should be treated as coming from C. This money did not need to be repaid to C or his associates, who would have no interest in the properties. The defendants received from C and his associates £103,000, but there remained a shortfall and D1 could not get hold of C. Therefore, the defendants were required to raise themselves the rest of the required funds. The defendants transferred £214,000 to RLK to complete on the re-purchase.

173. In April 2012, the defendants entered into further short term (6 month) loans with Capital (£155,000, £520,000 and £295,000) and WestOne (£475,750). The defendants were pleased that short term finance had finally been arranged and that the full portfolio could now be transferred into their names. This did reaffirm their confidence in C. It was further agreed with C that all the extra resulting costs would be added to C's debt. These costs were £137,045 for Capital and £59,646.30 for WestOne, although the defendants were aware that there would be further costs incurred when the loans were redeemed and that these costs would also be added to C's debt.

174. At around this time, C spoke to D1 about the 3 properties that had been purchased by his associates. C said that he wanted to make a part payment towards his debt, and so he said he would arrange for these associates to transfer the properties to the defendants without

the need for the defendants to pay the purchase monies. C said that he would sort out paying his associates back direct, which would account for part of his debt. C told the defendants that the 3 properties still needed to form part of the security for the overall lend from Capital.

175. Completion on the remainder of the Properties took place on 23 April 2012. There was a shortfall of £25,858.19 in respect of additional costs. C told D1 that he was unable to raise these funds, and so D1 paid them.

176. Following completion, the defendants were keen to secure long term lending through C as had been agreed. C advised that more valuations would be required and that it might help to do some redecoration of the Properties in advance of the valuations, particularly the South Road properties. D2 was happy to help and visited some of the South Road properties one weekend, but was shocked by the condition of them, since it was clear that they all required work to become habitable. The defendants did not want to risk the long term lending falling through when the bridging loans were due, and so D1 gave C £8,5000 to get the works done, since C said he did not have the funds available himself. C advised the defendants that he could also start renting out some of the Properties, which would help with securing long term lending.

177. In May/June 2012, the defendants met with C when D1 expressed concerns over the delay in obtaining long term lending. C confirmed that he was working on it and was confident that such lending would be secured in time. D2 asked that C email a full list of all the Properties with a description of the condition they were in and detailing those which had been renovated and those which still required renovations. D1 told C that should any of the Properties require further work, it was C's responsibility to sort that out as he had previously told the defendants that the Properties were in a decent state of repair. C agreed to this. When C sent an email on 11 June 2012 attaching 3 spreadsheets confirming that none of the Properties had been rented out and the extent of the works still needed, D2 was concerned, but D1 still trusted that C would get done what needed to be done.

178. The first bridging loan was due to be redeemed on 15 September 2012, but as the defendants got into September it became more difficult to get hold of C and D2's concerns rose. JS also began copying the defendants into chaser emails he was sending to C. The defendants were concerned that JS could not get hold of C either and about what would happen if they were not able to pay back the bridging finance on time.

179. On 10 September 2012, C telephoned D2 and discussed two options for raising funds to redeem the first loan. Option 1 was for C to borrow £350,000 from a close relative living in Canada, and option 2 was for some of the South Road properties to be sold. On 17 September 2012, C emailed JS requesting an extension of 2 to 4 weeks to raise the required funds. On 21 September JS spoke to D1 and confirmed that Capital had agreed not to repossess the properties and to grant a 1 month extension to pay back the loan, but conditional upon a penalty payment of £22,100. D1 did not have the money available to pay this and could not get hold of C. D1 had to borrow £30,000 from a close friend in order to make the penalty payment. At this point the defendants were extremely concerned and C was becoming even harder to get hold of.

180. On 1 October 2012, JS emailed the defendants to advise that he had had a positive meeting with Aldermore Bank, but they still needed further information. Around this time, D2 finally spoke to C on the telephone. D2 was extremely angry because C had failed on his commitment to the defendants and left their family in a dangerous situation with the bridging loans. C apologised and said he would add the £22,100 penalty and any other penalties to the debt owed to the defendants. C said that he would work with JS to

secure the Aldermore loan, and any shortfall in the required funds would be met from the potential sales and the money raised from his relative in Canada. D2 told C that he was not happy, and he was losing trust in C.

181. D2 discussed matters with D1, who was also upset and extremely concerned with what was happening. D1 decided to speak to a trusted friend from the temple, BT, who advised that the defendants were in a very dangerous position and they could lose out substantially if the bridging companies were not paid back. BT further advised that the defendants needed to act quickly, and so he introduced D1 to Mr Paul Atkinson at Lloyds TSB.

182. The defendants met with Mr Atkinson on 18 October 2012, and the next day Mr Atkinson emailed the defendants outlining a total lend of £1.95 million split £1.7 million to be paid to the bridging companies and £250,000 for the cost of refurbishment. C was not made aware of these discussions as the defendants had begun to lose faith in C and they realised they needed to take a more active role. The fact that the defendants were able to secure this proposal so quickly made D1 distrust C even more, and he could not understand why C had failed to achieve this for the defendants despite months of trying. In any event, it was still very difficult to make contact with C during this time.

183. On 17 October 2012, WestOne demanded a penalty payment of £13,321 to secure a 1 month extension to redeem the loan. The defendants could not get hold of C. In the end, D1 and his wife went to C's home to try to sort the situation out. C promised, but failed, to send the money to pay the latest penalty, which D1 paid on 23 October 2012 after again having to borrow money from a close friend.

184. At around this time, D1 visited the South Road properties where he bumped into Mr Mike McGowan, whom he had met through C many years previously. Mr McGowan explained that he owned a property letting agency (Vanguard) and a maintenance company (Three Maintenance). D1 told Mr McGowan that he had another property (not connected to the Properties) that he needed help letting, and Mr McGowan suggested they meet at his offices to discuss this further. That meeting took place a few days later and during which D1 provided the addresses of some of the Properties that he said that he had purchased from the receivers of Shiv Sharma with C's help in raising the finance. Mr McGowan was very confused about this and told D1 that these properties were owned by C, who had got into trouble with the bank and lost them to the Receivers. D1 was shocked and upset by this. He could not believe that C had lied to him and had been lying to him from the beginning of the deal. Mr McGowan was surprised to hear this and offered his help.

185. On returning home D1 told D2 and the rest of the family what he had just learned. They were all shocked and deeply upset that C had lied to them. They realised that C did not have their interests at heart and must have a hidden agenda. They thought that C may have deliberately tried to sabotage the deal so he could somehow regain the Properties back, whilst at the same time financially crippling them. They then made the decision to take full control of the Properties from C. They were worried C may try to sabotage any lending opportunity, and so the defendants felt it important not to tell C what they had discovered and what they were now doing to obtain long term lending.

186. On 22 October 2012 and 24 October 2012, JS emailed to the defendants and C offers from Aldermore of a loan of £1.1 million, subject to valuations, and from Capital to roll over the existing loan secured against 9 & 11 St Augustine's Road. The defendants rejected these proposals as they would not clear the bridging loans. They decided with the help of BT to pursue fully the Lloyds TSB offer of lending.

187. The defendants had also lost trust in RLK, whom they dis-instructed in late October 2012.

188. In November 2012, the defendants had to pay penalties of £25,000 to Capital and of £13,321 to WestOne to persuade them not to call in receivers. In addition, Mr Atkinson advised the defendants that they had to pay £18,600 in respect of the cost of valuations required by the bank. The defendants paid these amounts from monies borrowed from associates of D1 or transferred from D2's business account.

189. Whilst further extensions had been granted by the bridging companies, Capital was still due around £300,000 in December 2012, and so it was decided to sell 9 & 11 St Augustine's Road, which although had good potential required around £400,000 worth of works. Mr McGowan and SH were asked to find a buyer, which they quickly did. The property was sold on 23 November 2012 for £410,000 with the sum of £407,700 being paid to Capital.

190. Once the valuations had been undertaken in late November 2012, Mr Atkinson telephoned D2 to confirm that Lloyds TSB had refused to lend even following the sale of 9 & 11 St Augustine's Road. The defendants were devastated, and they asked Mr Atkinson to do what he could to help. Between 30 November 2012 and 4 December 2012, Mr Atkinson confirmed that he could arrange lending but only to a maximum amount of £1.3 million with any shortfall being met by the defendants. In addition, before any funds were released further valuations would be required to confirm that those properties identified as being in poor repair had been renovated.

191. The defendants found themselves in a situation whereby their finances had been depleted but they somehow had to fund renovation works that needed to be completed within the space of 20 days to secure bank finance before the remaining bridging finance fell in and then to pay any shortfall in paying off the bridging finance. The defendants again approached Mr McGowan and SH, who agreed to assist by arranging the renovation works and paying for the materials, but subject to them subsequently managing the property portfolio on behalf of the defendants. They would then take a monthly fee from the rents to repay them the costs of materials (subsequently confirmed at £41,458.03).

192. Teams of contractors working night and day, assisted by D2 and his family at weekends and evenings, were able to complete extensive renovations in the short time available. The re-valuations of the Properties took place on 18 and 19 December 2012 following which Lloyds TSB authorised a temporary overdraft facility of £1.3 million pending the official lend being arranged after Christmas and to enable the bridging loans to be paid off on 21 December 2012. In December 2012, the defendants paid out the total amount of £148,994 to meet the shortfall in paying off the bridging finance (£99,095.88), the labour costs for the renovations and other expenses including legal fees. The majority of this money had to be raised by way of loans from friends and family, who were willing to help the defendants out in their time of need. The new loan was put in place on 18 January 2013.

193. In September 2013 after the dust was beginning to settle and most of the Properties were rented out, the defendants spent time looking through RLK's files to try to understand what had happened during the early parts of the transaction. It was only then that they became aware of the payments that had been made direct to RLK by C and his associates. D2 carried out calculations that showed:

a. Total funds input by the defendants and their associates - £942,265;

b. Total penalties caused by C = £1,095,993.39;

c. Total funds input by C and his associates = £491,286.34 and

d. Total still owed by C = £604,707.05.

194. The defendants took informal legal advice from GSB, who said that the defendants did seem to have grounds to pursue a legal claim against C and/or RLK, but any such claim would be expensive and very time consuming. The defendants did not have the money or the time to pursue any legal action, and so they took the decision to move on from this bad experience.

195. The remaining Properties were re-mortgaged in 2014 and again in 2017. The funds raised from those refinances were in part used to repay the loans received from friends and family.

Inherent probabilities and commercial common sense

196. It is submitted on behalf of C that:

a. C's intention was to save the investments made by the Original Investors including his mother;

b. C took action to rescue the Properties from the Receivers. He instructed RLK and brought proceedings against the Receivers to obtain the Injunction. He wrote to and attended meetings with the Receivers and NatWest in an attempt to stop the Properties being sold off and in which he made clear the existence of the Alleged Buy Back Consortium;

c. Having expended time and money in obtaining the Injunction, it is not disputed that C then paid or arranged payment of substantial sums of money[3] towards the cost of purchase/re-purchase of the Properties by the defendants. The defendants have been forced to accept that they knew at the time of at least some of these payments from third parties, since the payments were made direct into their bank account:

d. None of that makes any sense at all unless, as C says, the Properties were being purchased by the defendants as C's representatives, so that C could use the real values of the Properties (as opposed to the lower prices sought by the Receivers) to save the investments made by the Original Investors through the defendants selling them back to C at the same price as they had bought them for;

e. D1 had very good reasons to agree to buy the Properties as representative for the Alleged Buy Back Consortium and thereafter sell them back to C -

i. It was the best way for D1 to secure C's ability to repay him the £200,000 that he had lent D1 along with the £50,000 interest payment that they had agreed;

ii. D1 was keen for JC4C to provide D2 with a role and financial reward from successful tenders, which required servicing from the Properties;

f. To explain the payments made by third parties, the defendants have had to advance their ridiculous case that C kept telling them that the costs incurred during the course of raising funding should be added to the debt that C owed them. That incredible story requires the court to believe that -

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[3] £455,000 as per Appendix 3 to C's Skeleton Argument and updated in opening.

i. C was doing all that he did to secure more time to pay back £200,000 for a loan,

ii. C provided extensive time, effort and his services in relation to management of the Properties for no form of reward,

iii. C agreed to take personal responsibility for all additional costs and expenses incurred in connection with the purchase by the defendants of the Properties for their own benefit. D2 has calculated those “penalties” in the total sum of £1.095 million of which C continues to owe £607,707.

The defendants’ motive for making up the Shiv Sharma story must necessarily have been to try to disprove C’s case that they knew that they were purchasing the Properties in a representative capacity; and

g. C’s case is consistent with the contemporaneous documents and makes perfect sense whereas the defendants’ case does none of those things.

197. It is submitted on behalf of the defendants that:

a. The court can and should readily accept that the defendants put almost blind faith in C, not only because this was their evidence, but also because this was the evidence of every other witness who had given C money. This trust explains why the defendants may (with the benefit of hindsight) have acted irrationally at times in the course of events from September 2011 onwards;

b. It is important that C had been heavily involved in previous property deals for D1, which were done without any payment to C and on at least 2 occasions without D1 viewing the properties prior to purchase;

c. The defendants’ actions were consistent with them buying the Properties in their own right and not for others –

i. they made direct net payments to RLK of £607,051 towards the purchase costs,

ii. they committed themselves to expensive bridging finance,

iii. when the bridging loans fell in, they incurred penalties and default interest and were threatened with enforcement action and receivership. As a result, they were forced to sell 9 & 11 St Augustine’s Road to meet an impending bridging payment,

iv. they had to borrow from friends and family to pay for repairs required by Lloyds TSB to bring the remaining Properties up to a mortgageable condition and to fund the balance needed to redeem the bridging finance.

It is nonsensical that the defendants would do all of this and take such huge risks simply to be under an obligation to transfer the Properties back to C for the price they paid and only in return for the supposed £250,000 D1 originally invested;

d. It makes sense that C would agree to add the ever-increasing costs and expenses to the debt that was owed D1. It is entirely believable that C would have given such an assurance even if he did not mean to honour it. Once the court accepts that C perpetuated a deception on the defendants by not telling them about any buy back consortium, the court can and should accept that C continued that deception by telling the defendants to add the costs and expenses to his debt; and

e. The defendants' version of events is inherently more probable and credible than C's and fits with the theory that C did not inform them of any buy back consortium or obtain their agreement to head it but rather used and manipulated the defendants.

198. Each side submits that their version of events is inherently more probable and credible. However, I disagree and in my judgment:

a. It makes no commercial sense on C's case that the defendants would (i) put at risk some £600,000 and (ii) agree to take out very substantial additional borrowing to purchase the Properties for C simply to secure repayment of a loan of £200,000 (which is the amount I have found was due) and secure for D2 a role in JC4C, which at that time had not been successful in any tenders; and

b. It makes no commercial sense on the defendants' case that C would promise to pay very substantial additional costs and expenses (some £480,000[4]) arising in connection with the purchase of the Properties by the defendants for their own benefit simply to secure more time to pay back an original loan of £200,000.

Disputed Agreements

199. C relies upon copies of a total of 23 Disputed Agreements variously dated from 22 October 2011 to 6 January 2013 (with 14 of the Disputed Agreements purportedly signed by D1 and the remaining Disputed Agreements purportedly signed by D1 and D2).

200. It is submitted on behalf of C that it is the defendants' case that they kept no records at all of the various meetings/arrangements made between the parties concerning these complex and evolving transactions relating to dozens of properties. The truth of course is that they did not need to keep any other notes because what had been agreed was recorded in the Disputed Agreements.

201. Later in this judgment, I find that the defendants' claim that they were misled by C that Shiv Sharma owned the Properties lacks credibility. It is submitted on behalf of C that the finding about the truth or otherwise regarding Shiv Sharma lies at the heart of the decision about which party is spinning a false narrative. However, I disagree that this later finding constitutes a fatal blow in that it does not automatically follow that because I have rejected one aspect of a party's case that I must reject their whole case, particularly where overall I did not find C to be a credible witness. However, in light of the later finding regarding Shiv Sharma, I am unable to accept without a significant degree of corroboration the defendants' evidence that they did not sign the Disputed Agreements.

202. On balance, and for the following reasons, I find that the defendants did not sign the Disputed Agreements and their signatures were forged by C.

<u>Expert evidence</u>

Written evidence of Mr Handy

203. Mr Handy compared copies of the Disputed Agreements against copies of 6 reference documents for each of the defendants. The reference documents extended over the

[4] Calculated at £477,766.27 as at June 2012 as per Table 1, Schedule D, to the defendants' Skeleton Argument.

periods from 1989 to 2017 in respect of D1 and from 2011 to 2015 in respect of D2. All of the available documents were copies, although a number of reference documents were scanned images of originals and as such relatively good quality reductions. Nevertheless, examination was limited as not all salient features could be determined with certainty. Mr Handy concluded that:

a. The available copy documents provided strong evidence to support the proposition that D1 did not sign any of the Disputed Agreements. Although he could not exclude the possibility that D1 was responsible, Mr Handy considered this unlikely; and

b. There was evidence, albeit weak, that D2 did not sign any of the Disputed Agreements. Based on the available copy documents, the support for the proposition that D2 was not responsible was greater than the support for the proposition that D2 was responsible.

C's submissions

204. It is submitted on behalf of C that I ought not to attach any weight to the conclusions expressed by Mr Handy for the following reasons:

a. Whilst there is no challenge to those conclusions based upon the 6 representative signatures of each of the defendants, the reality is that Mr Handy's reports are extremely limited. He was given an extremely small sample of signatures, which were all selected because they were consistent with each other and different from the disputed signatures. A feature of this case is that those representative signatures were not "agreed" representative signatures;

b. The only contemporaneous signature provided to Mr Handy on behalf of D1 is that of a passport signature, which Mr Handy admitted was "not ideal". It beggars belief that this would be the only signature provided from 2012, when the defendants had access to dozens of signatures from that time including those contained in the conveyancing documents. The only conclusion that can be drawn is that these documents were not provided because they demonstrate a variation in the signature of D1, which the defendants wanted to keep from the handwriting expert. It has to be remembered that the defendants had taken all the files back from RLK in October 2012 – so they knew precisely what documents would come out on disclosure. They did not even show Mr Handy the Sale Agreement until they were satisfied with his conclusion in his first report, and that he was happy to base it on the representatives signatures they had provided;

c. In cross examination, Mr Handy was shown contemporaneous documents in the trial bundles, which contained undisputed signatures of D1. Those signatures were very different from the carefully selected and miniscule sample of signatures that Mr Handy was given. By way of example:

    i. in his written evidence, Mr Handy identified as a key differential the length of the cross bar on the "tt", which was shown in the disputed signatures to extend far beyond the second "t". In contradistinction to the 6 reference signatures, Mr Handy was taken to contemporaneous undisputed signatures where the length of the cross bar on the "tt" also extended far beyond the second "t",

    ii. in his written evidence, Mr Handy identified another key differential as the "Jh", which was shown in the disputed signatures to extend well above the height of the preceding "P" and "S". Again, in contradistinction to the 6 reference signatures, Mr Handy was taken to contemporaneous undisputed signatures where the "Jh" extended well above the height of the preceding "P" and "S";

d. Mr Handy's conclusions, based on four major differences in the sample signatures to the questioned documents, are inevitably weakened by the fact that D1's signature can be shown to have significant variations outside the scope of the small batch of sample signatures that he was shown;

e. Whilst Mr Handy said that he would have to go away before reconsidering his conclusions in the light of the signatures he had been shown, he could not rule out that the reference signatures were selected to be consistent with each other but different from those on the Disputed Agreements; and

f. Furthermore "strong evidence" is only halfway up the scale, and "weak evidence" is less than halfway up it so the weight of the handwriting expert's opinion (based on copies and no use of a microscope which he confirmed to the court meant that he was using his eyes, just as the judge could use his own eyes) is one for the court to assess against all of the relevant testimony, and in particular the defendants' narrative as opposed to that of C. In this case the court obtains little assistance from the handwriting evidence due to the limitations that arise (a) from the fact that the expert had only copy documents and (b) from the self-serving limited selection of signatures provided to him.

Conclusion

205. For the following reasons, I do not consider that there is any proper basis for rejecting Mr Handy's evidence:

a. C does not challenge Mr Handy's opinions based upon the 6 representative signatures of each of the defendants;

b. Mr Handy, whom I found to be an impressive and careful witness, said that the reference documents he had been provided with were sufficient to enable him to undertake a proper comparison since "*they are very consistent over a fairly long period of time.*";

c. In his oral evidence, Mr Handy conceded that the contemporaneous signatures he had now been shown might possibly alter his conclusions, although he would first have to study them and reconsider their significance. He could not say without undertaking a proper detailed analysis whether or not they would affect his conclusions. There were other differentials that he had relied upon in coming to those conclusions;

d. Mr Handy said that he had not very often been questioned in the witness box for the first time to form a view based upon documents seen for the first time about the suitability or otherwise of reference documents;

e. Paragraph 17 of the case management order dated 17 April 2019 provides that the "*time for service of any question addressed to an expert instructed jointly or by another party is not later than 14 days after service of that expert's report….Any such question shall be answered within 14 days of service*." If Mr Handy was to be questioned by reference to other signature documents then those documents could and should have been put to Mr Handy long before the trial so that he could have undertaken a proper analysis. As Mr Handy said he "*cannot just look at them briefly and say "yes" or "no" my conclusion would alter*"; and

f. I agree with the submissions made on behalf of the defendants that the court should not simply assume in C's favour that Mr Handy's conclusions would be any different if he had been given the appropriate time in which to consider the other signature documents, particularly when C had every opportunity to put his own expert evidence before the court and/or put written questions to Mr Handy in advance of the trial.

206. Whilst Mr Handy's evidence supports a finding of forgery, that evidence is not by and of itself determinative of the issue. Where primary facts are in issue, they are determined by the judge, not by the expert. Mr Handy's evidence is merely a piece of the evidence that I must weigh in the balance in determining this particular issue.

How and why the Disputed Agreements were allegedly produced

207. In his oral evidence, C began by claiming that all of the Disputed Agreements were typed by either D1 or C using D1's laptop. He then changed his evidence by claiming that some of the Disputed Agreements were typed by C using the computer at his office. Later he said that some of the Disputed Agreements may also have been typed by D2 using D1's computer.

208. C explained that once the document had been typed, it was printed off and the contents agreed. Any amendments would be made with the final agreed version printed off and signed. A copy was then taken with either C or D1 retaining the original document and the other party retaining the copy document. However, C changed his evidence to say that D1 retained all the original documents before again changing his evidence to say that "*We never checked who has the original and who has not*" since it "*did not really matter to both of us who had the original and who had the photocopy*". C then claimed that he did not know if he had kept any of the original documents that he would have received and notwithstanding his written evidence that he tended to keep important documents having run his own property business since 1997. He repeatedly said that he did not know if it was right (which it plainly was) that he had only ever produced copies of the Disputed Agreements. It was of course highlighted in Mr Handy's written evidence that his analysis had been restricted by the absence of original documents.

209. C said that the Disputed Agreements were in fact produced at the request of D1, who wanted a record of what was going on and in particular so that D1 had a clear understanding of who they were taking money from and on what terms. If that was true then it is difficult to understand why the Disputed Agreements needed to be typed up at face to face meetings held for that purpose at the offices of either C or D1, the contents agreed, and the documents then signed. Surely, it would have been much easier and efficient simply for C to email D1 and/or D2 with a progress report/update particularly as on C's own evidence he was at the time working night and day to try to save his property portfolios. Many of the Disputed Agreements even record multiple meetings taking place on the same day - 17 November 2011 (x 2), 18 November 2011 (x 3), 3 December 2011 (x 3), 3 March 2012 (x 2), 22 April 2012 (x 2) and 23 April 2012 (x 3). Indeed, the Disputed Agreements dated 17 November 2011 record that the meetings took place at different locations. The first records the meeting as having taken place at D1's office in Hockley (B18) and the second records the meeting as having taken place at C's office in Smethwick (B66);

210. This all makes even less sense when considering C's evidence that none of the Disputed Agreements typed by him were ever saved to his computer. As a result, C has been unable

to disclose soft copies of any of the Disputed Agreements so that the meta-data can be examined to determine the dates that the documents were created. He claimed that it was his usual practice not to save soft copy documents when he had already printed off hard copies. Therefore, on each subsequent occasion the document had to be typed out from scratch, and notwithstanding that a number of the Disputed Agreements contain much the same information and on C's own evidence there was significant pressure of time when he was not the quickest with his "*two-fingered typing*". For example, the Disputed Agreements dated 17 November 2011 (2nd) and 12 December 2012, which record that the meetings took place at C's office, are each 2 pages long and are almost identical in terms of their content save that D2's name has been added. It was C's evidence that he typed out the later document from scratch simply so that D2 could sign it, which is of course inconsistent with C's earlier claim that the Disputed Agreements had been prepared at the request of D1 simply as a record so that he knew what was going on. C then changed his evidence to suggest that he might have had the earlier hard copy available when typing the later document, but that does not explain why C was apparently so careful to make sure that the documents were identical not only as to their content, but also design, layout, font (size/style) and underlining. Coincidentally, C claimed that the computer he was using at the time to type these documents was subsequently destroyed in 2013 and was therefore no longer available to be interrogated in any event.

211. I agree with the submission made on behalf of the defendants that C's evolving and ever changing oral evidence regarding the provenance of the Disputed Agreements was absurd and counter intuitive.

Curious features

212. Matters become even more elaborate when considering the Disputed Agreements dated 25 October 2011, 18 November 2011 (3rd), and the Sale Agreement dated 6 January 2013, which all record that the meetings took place at D1's office. It was C's evidence that these documents were typed by D1 (or possibly D2 in relation to the Sale Agreement) using D1's computer. However, it is remarkable that all these documents have exactly the same design, layout and font (size/style) as the Disputed Agreements dated 17 November 2011 (2nd) and 12 December 2012, which were allegedly typed by C at his office. That is an incredible coincidence, if true.

213. However, matters do not end there. The penultimate paragraph of the second Disputed Agreement dated 17 November 2011 states (with my emphasis) added):

> "*Ashok will repay Parminder a total of £650,000 and any other nominal costs that Parminder might have occurred during the process of purchasing the RBS portfolio. This payment will be the full monies that Parminder will receive from the RBS property portfolio. This payment will be the full monies that Parminder will receive from the RBS portfolio. Parminder accepts that he will retain no interest in the RBS property portfolio apart from his £650,000 contribution and or other disbursements that Parminder and Ashok have occurred.*"

Clearly there is a typographical error in that the word "occurred" is used (2x) rather than the word "incurred".

214. The penultimate paragraph of the Disputed Agreement dated 12 December 2011 states (with my emphasis added):

> "*Ashok will repay Parminder and Harmale a total of £650,000 and any other nominal costs that Parminder and Harmale might have occurred during the process of purchasing the RBS portfolio. This payment will be the full monies that*

Parminder and Harmale will receive from the RBS portfolio. This payment will be the full monies that Parminder and Harmale will receive from the RBS property portfolio. <u>Parminder and Harmale accepts</u> that they will retain no interest in the RBS property portfolio apart from their £650,000 contribution and or other disbursements that Parminder, Harmale and Ashok have <u>occurred</u>."

This paragraph is in almost identical terms as the penultimate paragraph in the second Disputed Agreement dated 17 November 2011 and repeats the same typographical error by including the word "occurred" (2x) rather than the word "incurred". The only change is by adding D2's name alongside D1's name and where necessary amending the singular to the plural with one exception being the word "accepts", which ought to have read "accept".

215. Towards the end of the Sale Agreement, it states (with my emphasis added):

> "*Ashok will repay Parminder and Harmale a total of £650,000 and any other nominal costs that Parminder and Harmale might have <u>occurred</u> during the process of purchasing the RBS portfolio.*
>
> *The £650,000 payment will be the full monies that Parminder and Harmale will receive from the RBS property portfolio purchase. <u>Parminder and Harmale accepts</u> that they will retain no other interest in the RBS property portfolio apart from their £650,000 contribution that they have made*."

These paragraphs are in substantially the same form as the penultimate paragraph of the Disputed Agreement dated 12 December 2011, and importantly carry forward the same typographical mistakes by including the words "occurred" and "accepts". I remind myself that the Disputed Agreement dated 12 December 2011 and the Sale Agreement were allegedly typed from scratch, but respectively by C and either D1 or most likely D2. It is simply unbelievable that exactly the same typographical mistakes were made months apart by different people when apparently typing up these documents from scratch. The more plausible explanation is that these documents have been replicated from a soft copy.

<u>Monies allegedly owed by C to the defendants</u>

216. It is submitted on behalf of C that D1 insisted upon a written record being maintained to ensure that (1) he was going to get back all the money he was putting in together with his original investment and (2) he was not going to get stuck with the properties.

217. As evidenced by RLK's ledger, the following sums were received by RLK:

a. £80,000 from D1 on 18 October 2011;

b. £400,000 from D1 on 12 December 2011;

c. £58,000 from D2 on 13 December 2011;

d. £214,000 from D2 on 20 March 2012; and

e. £26,000 from the defendants on 18 April 2012

The defendants accept that the payment of £214,000 on 20 March 2012 included the sum of £103,000 paid to them by C's associates. In addition, on 28 February 2012, RLK paid the defendants the sum of £67,949.51 from retained funds. Therefore, the total net sum paid to RLK by the defendants for the purchase of the Properties was £607,051.[5]

218. On C's own case, by 13 December 2011 the defendants were owed the sum of £538,000 together with D1's original investment of £250,000 making a total amount due of £788,000. However, the Disputed Agreement dated 12 December 2011 states that upon the subsequent refinance C would repay the defendants a total sum of £650,000. C sought to explain his mistake when typing the document on the pressure at the time of having to deal with exchange/completion.

219. On C's own case, by the time of the Sale Agreement the defendants were owed the total sum £857,051. However, the Sale Agreement again states that the defendants will be repaid the total sum of £650,000. C accepted in his oral evidence that at the time of the Sale Agreement the pressure was off as the defendants had by then been able to secure bank finance to pay off the bridging companies. On this occasion C sought to blame D2 for the error when typing up the Sale Agreement. When it was put to C that he had signed the Sale Agreement, C bizarrely claimed that he had done so without even checking the figures.

220. If, as claimed by C, a primary purpose of the Disputed Agreements was to ensure that the defendants were repaid the monies they were owed, it is difficult to understand how, if genuine, the Disputed Agreements failed so fundamentally to record these figures accurately, particularly having regard to the tortuous process of preparation described by C with the documents being typed out from scratch during the course of a meeting, printed, checked, agreed, amended, reprinted, signed and copied.

<u>Monies allegedly provided by members of the Alleged Buy Back Consortium not for profit</u>

221. It is not disputed that:

a. SS and his wife provided £25,000 to part fund the purchase of Flat 4, 369 Gillott Road for £45,000; and

b. DSM provided £112,000 to fund the purchase of 13 Anderson Road for £110,000.

Completion of these purchases took place on 14 December 2014. It is also not disputed that these properties were then transferred to the defendants on 23 April 2012 without any purchase monies being paid.

222. It was C's evidence that those members of the Alleged Buy Back Consortium, who were not Original Investors, were close friends and family motivated by a desire to lend him money in his time of need. He expressed how fortunate he had been to have people like this in his life. The members of the Alleged Buy Back Consortium would be repaid the monies loaned once C had been able to refinance the Properties back into his name. C confirmed that SS and DSM were willing members of the Alleged Buy Back Consortium. He said that they had loaned him these monies for no commercial gain (other than receiving a proportion of the relatively modest rental income). However:

a. A Disputed Agreement dated 22 April 2012, which expressly states that C had been instructed to sign it on behalf of SS and his wife, records that on the sale of Flat 4, 369 Gillott Road to the defendants, SS and his wife would loan the proceeds of sale to C and the defendants for a period of 9 to 12 months after

[5] Schedule C to the defendants' Skeleton Argument

which time SS and his wife would receive £45,000. If, however, payment was made after 12 months, SS and his wife would receive £60,000. In other words, SS and his wife were to receive either £45,000 or £60,000 on their original loan of £25,000, which would clearly have represented a very generous rate of return;

b. C claimed in his oral evidence that notwithstanding what was stated in the Disputed Agreement dated 22 April 2012, there was a separate understanding with SS and his wife that they would only ever get back their original £25,000. Whilst another Disputed Agreement dated 23 April 2012 does indeed refer to SS and his wife only receiving back £25,000, that was not apparently something that had ever been agreed by SS or his wife. SS said in his oral evidence that he was owed £45,000 by the defendants because he had not received any money for the property at the time it was sold to the defendants (and notwithstanding that the stated sale price was £60,000). SS's wife emailed the conveyancing solicitors on 18 April 2012 requesting that the net proceeds of sale be paid into SS's account. To add to the confusion, the Particulars of Claim assert that the effect of the Sale Agreement was that part of the £2.2 million to be paid by C to the defendants was to be applied to discharge an unsecured loan of £60,000 made by SS and his wife to C; and

c. Another Disputed Agreement dated 22 April 2012 records that DSM would loan the money from the proceeds of sale of 13 Anderson Road to C and the defendants for a period of 9 months. If the loan was paid off within 12 months then DSM would receive £110,000, but if paid off after 12 months DSM would receive £250,000. C claimed in his oral evidence that this figure of £250,000 was simply "a typo" and the stated figure ought to have been £112,000. However, the Particulars of Claim allege that the effect of the Sale Agreement was that part of the £2.2 million to be paid by C to the defendants would be applied to discharge an unsecured loan made by DSM to C of £250,000.

When it was put to C in evidence that these particular agreements made no sense by reference to his own case (which they clearly do not), he merely said that in hindsight it would probably have been better to get them drawn up by solicitors, which was a surprising concession bearing in mind that RLK were instructed throughout the period when the Disputed Agreements (save for the Sale Agreement) were allegedly drafted.

<u>Other members of the Alleged Buy Back Consortium being unaware of the Disputed Agreements</u>

223. It is evident, and I find, that other members of the Alleged Buy Back Consortium were not aware of the existence of Disputed Agreements or even the terms contained therein despite those Disputed Agreements directly concerning them.

GSK

224. The Disputed Agreement dated 30 November 2011 records that GSK was lending £50,000 "*for the exchange on the RBS property portfolio.*" When asked in cross examination why this agreement had purportedly been signed by the defendants, C confirmed that the loan had in fact been made by GSK to the defendants and not to C.

225. The Disputed Agreement dated 23 April 2012 records that, on the sale of Flat 5, 136 Portland Road to the defendants, GSK would loan £50,000 to C and the defendants for a further period of 6 to 12 months after which time he would be repaid the original loan.

226. It was GSK's evidence that he knew nothing about any buy back consortium, but rather he was led to believe by C that he was investing £50,000 to part fund the purchase of Flat 5, 136 Portland Road, which was to be sold a few months later at a profit (in which GSK was to share) and as part of the sale of a larger group of properties. C later told GSK that the property was being purchased by a Mr Jhutti for £85,000, although the purchase price would have to be loaned to Mr Jhutti until he was able to secure the required mortgage. Once the mortgage was in place GSK would receive his original investment together with a share of the profit.

227. It was a key pillar of C's case that members of the Buy Back Consortium were close friends and family whom he approached in his time of need to lend money to rescue the Properties from the Receivers. However, in his oral evidence C accepted that GSK was not a close friend or relative. He also accepted that GSK had in fact approached him through ASG for assistance in applying his life savings of £50,000 to invest in a property. Therefore, it makes absolutely no sense that GSK, as recorded in the Disputed Agreements, would have agreed to lend his life savings (potentially for a period of up to 17 months) to people he did not know at all or did not know well for absolutely no return. Indeed, the Particulars of Claim assert that the effect of the Sale Agreement was that the £2.2 million to be paid by C to the defendants would be applied to discharge an unsecured loan made by GSK to C in the sum of £85,000. Therefore, it would appear that when signing the Particulars of Claim with a statement of truth on 2 February 2018 C himself was not even aware of the terms of the Disputed Agreements dated 30 November 2011 and 23 April 2012.

DSM

228. The Disputed Agreements dated 22 April 2012 and 23 April 2012 refer to DSM making a loan of £110,000 to C and the defendants for a period of 12 months. Indeed, the Disputed Agreement dated 22 April 2012 records that "*Mr Davinder Mander has instructed Mr Ashok Singh to sign this agreement on his behalf.*"

229. However, it is clear from the following contemporaneous emails sent by DSM to C that he had no idea about the terms of these Disputed Agreements:

> 28 May 2012
> *"I am a little in the dark about my funds and need some answers. On April 20 I loaned Parminder/Harmale Jhutti £185,000 based on your instructions. I was under the impression my funds were going to be moved into another property which was going to be used for care work?*"
>
> 12 June 2012
> "*Last but not least --- can you explain what happened with my Anderson Road funds? I have asked you numerous times but no answer?"*
>
> 21 July 2012
> *"When we completed the Anderson Road sale you basically gave me 2 minutes to make a decision about moving my money to another deal. I was under the impression the money was being moved into another property on City Road. Instead it was loaned out under your direction. Until you and I are ready to move it into a property I would like to have my money returned and deposited into my HSBC UK account. Let me know when this is done – sooner the better.*"

If the Disputed Agreements were genuine, then surely C could and would have responded to DSM with copies of or by reference to the terms of those documents rather than simply failing to provide any explanation to DSM, particularly as the Disputed Agreement dated 22 April 2012 was allegedly signed by C on DSM's instructions.

ASG

230. The second Disputed Agreement dated 18 November 2011 records that ASG has loaned the sum of £120,000 for a period of 3 to 4 months so that exchange could take place on 21 November 2011.

231. However, it was ASG's evidence that he transferred the £120,000 to RLK at C's request because C said that he needed to show to the council that the money was available in support of a tender submitted by JC4C. C also told ASG that the money was only needed for around 10 to 14 days. ASG's version of events is corroborated by the following contemporaneous exchanges between HKN and ASG's son regarding the monies:

a. On 18 November 2011, HKN emailed ASG's son –

> "*Can you ask…to transfer it asap, as we will be at our meeting with the council at 2pm and the solicitor is going to send an email to the council to confirm that he is holding the money.*
>
> *The account details for the money transfer is as follows*
>
> [RLK's account details]
>
> *Sorry about the delay but just needed to talk to my husband if the money was to go into Just Call 4 care or the Solicitors*"

b. Thereafter, ASG's son and HKN exchanged text messages including –

> 16 February 2012
> ASG's son to HKN *"….need the money urgently. We told* [C] *that this money is off our business overdraft and all other money is tied up right now so we needed it back quickly*."
>
> HKN to ASG's son *"….think there has been a bit of misunderstanding with regards to this money…we are having some problems if u could please bear with us and will get this sorted as soon as possible.*"
>
> ASG's son to HKN "*That's fine but you needed to tell us when….At the time* [C] *said he only needed it for a few weeks*"
>
> HKN to ASG's son "*I know really sorry as I didn't know he borrowed from yourselves until a couple of weeks ago. He did need it for a few weeks but had some major problems so he is stuck but he is trying to get it sorted*"
>
> 23 April 2012
> ASG's son to HKN *"…And my dad….only got your dad involved because for almost 4 months after taking the money nobody called to explain why money we lent for 10 days still hadn't been paid and he didn't call to let us know why. One phone call is all it would of taken to explain if something has gone wrong and if he needed more time. The start of the year is always the most tough for us and with all our overdraft gone you have no idea how difficult past few months have been for us.*"

232. The third Disputed Agreement dated 18 November 2011 (headed "Loan Agreement") records that D1 was lending £120,000 from ASG to rescue the Properties from NatWest and C was signing that agreement on behalf of ASG. Not only are the contents of that document also inconsistent with the above quoted contemporaneous email/text messages, it makes no sense that D1 would agree to enter into a loan agreement for such a substantial amount of money for the ultimate benefit of C, who was apparently only signing the agreement as representative for the lender. In addition, there was no need for D1 need to lend this money when he was able to draw down on his capital property loan facility with NatWest and which he duly did on 12 December 2011 when he transferred £400,000 to RLK.

233. On 11 March 2015, solicitors instructed on behalf of ASG wrote to JC4C demanding repayment of the £120,000 loan plus interest by 19 March 2015 failing which a winding up petition would be presented. On 18 March 2015, JC4C instructed Mr Foley at Shakespeares Solicitors in connection with making an application to restrain the presentation of a winding up petition. On 20 March 2015, Mr Foley emailed HKN requesting copies of relevant documents. On 24 March 2015, HKN responded to confirm that C was "*in the process of gathering all the relevant information.*" On 30 March 2015, Mr Foley sent an email chaser warning that (i) a failure to "*set out your position in advance….could work against you..on the prospects of successfully opposing the petition"* and (ii) "*if a petition is issued it can have serious implications as regards the ongoing ability of your company to trade.*" On 1 May 2015, C emailed copy documents to Mr Foley, which included a copy of the Loan Agreement dated 18 November 2011. Mr Foley responded that the copy Loan Agreement was "*extremely helpful. Has it only just come to light?*"

234. C was asked in cross examination why the copy Loan Agreement and other documents then relied upon had had not been produced immediately when requested, but rather some 1 ½ months after Mr Foley had first been instructed. Unconvincingly C sought to explain the delay on the ground that the documents were in a storage facility, which was variously described as being JC4C's storage facility, one of several storage facilities used by C or a storage facility shared by JC4C and C. However, as submitted on behalf of the defendants that does not explain why, if genuine, these documents would not have at least been mentioned to Mr Foley at the outset even if copies were not immediately available. In his email dated 20 March 2015, as well as requesting copies of relevant documents, Mr Foley stated that "*I do now need a much more detailed statement of the history*". In his letter dated 1 April 2015 to ASG's solicitors, Mr Foley stated that:

> "*It is strenuously denied that Just Call 4 Care is indebted to Mr Goal in the sum alleged.*
>
> *We understand that a payment of £120,000 was made by Mr Gosal to RLK Solicitors Limited on 18 November 201.*
>
> *It is understood that RLK Solicitors were acting on behalf of P S Jhutti and H S Jhutti. The money was we understand loaned to those parties and is due for repayment by them."*

There is no reference in that letter to any documents relied upon by JC4C and in particular any loan agreement purportedly signed by C on behalf of ASG. Another surprising feature is that, when copies of the documents were finally retrieved from storage and exhibited to C's witness statement dated 5 May 2015, C stated that he "*was concerned to record the position in writing and so I prepared a loan document dated 18 November 2011.*" It is of course now C's case that the Disputed Agreements were prepared at D1's insistence. In addition, C fails in his 2015 witness statement to mention or disclose a copy of the second Disputed Agreement dated 18 November 2011, which he now relies upon in these proceedings, and which records that ASG was loaning the sum of £120,000 for a period of 3 to 4 months so exchange could take place.

Timing of the Sale Agreement

235. The Sale Agreement is dated 6 January 2013. It is not disputed that by October 2012, the defendants had decided to take control of the Properties away from C. Therefore, it makes no sense that:

a. Having decided to take control of the Properties away from C, the defendants would then sign a document agreeing to relinquish control back to C; and

b. Recorded in that same document, which was allegedly typed by one or other of the defendants, are a series of errors that seriously adversely affect the defendants' interests even on C's own case – not just understating the amount of the monies that they were owed, but also agreeing expressly to sell 9 & 11 St Augustine's Road to C notwithstanding that that those properties were sold back in November 2012 to part pay down the bridging finance.

236. It is submitted on behalf of C that, by entering into the Sale Agreement, the defendants were seeking to conceal their deception from C and to find a way to manage C, who after all had successfully applied for the Injunction and was unlikely to stand idly by whilst the defendants helped themselves to all that C had worked towards. Therefore, what the defendants did was to ask C for more time to sell the Properties back to C. In my judgment, the problem with this particular narrative is that on C's evidence the Disputed Agreements, including the Sale Agreement, were prepared at the insistence of D1. Indeed, C claimed to have signed some of the Disputed Agreements without even checking that the stated figures were correct. Therefore, why would the defendants simply not ask for more time rather than also insisting upon drafting and signing the very contractual document now being sued upon by C in the litigation that the defendants were so anxious to avoid in the first place.

237. In any event, and for the reasons given later in this judgment, I find that C knew by November 2012 that the defendants had taken control of the Properties away from him, and so there was no reason for the defendants to seek to conceal that fact from C by entering into the Sale Agreement.

Was the 19 October Letter signed by D1?

238. There is no doubt that the 19 October Letter is genuine since a copy is contained within RLK's disclosed files. It is addressed to D1, but at C's offices, and refers to being sent by both fax and email to AH's contact details.

239. Although not mentioned in the written evidence of C or AH, RLK's disclosed files include a second letter dated 19 October 2011 ("***the Second Letter)***, which is also addressed to D1 at C's offices and refers to being sent by fax/email to AH's contact details. This letter warns D1 that the Properties are being sold subject to any encumbrances, and given the timescales RLK had not had the opportunity to carry out any enquiries or searches in respect to any encumbrances such as mortgages.

240. C has disclosed copies of the following documents:

a. The 19 October Letter and the Second Letter, in basic format without RLK's header, and purportedly signed by D1 in the empty space above Mr Sheppard's printed name; and

b. Faxes of the 19 October Letter and the Second Letter purportedly signed by D1 alongside the signature of Mr Sheppard.

241. It was the written/oral evidence of C and AH that RLK faxed over the letters so that D1 could sign and fax them back. However, initially D1 signed in the wrong places in the blank space above Mr Sheppard's printed name. Therefore, Mr Sheppard signed the letters above his printed name and refaxed them so that D1 could sign in the correct places alongside Mr Sheppard's signatures and fax them back. On balance I find that D1 did not sign these documents as alleged and for the following reasons:

a. Mr Handy was of the opinion that there is strong evidence to support the proposition that D1 did not sign these documents;

b. It is submitted on behalf of C that it is obvious why Mr Sheppard had taken the trouble to ensure that the warnings contained within the letters were acknowledged by D1 by way of signatures in the correct places and before the £80,000 was transferred to the Receivers' solicitors in respect of the Lock Out Agreement. However, if Mr Sheppard had gone to so much trouble to obtain D1's signatures on the letters, it is inexplicable why the letters do not (i) expressly request that D1 sign and return them and/or (ii) contain any signature blocks to receive D1's signatures;

c. It was the evidence of C and AH that D1 signed in the wrong places the first letters faxed over by RLK. However, the copy signed documents disclosed by C are in basic format and there is no evidence of any fax transmissions. C was unable to explain how the 19 October Letter in basic format would have come into his possession for D1 to sign it in the first place. AH said for the first time in his oral evidence that it may have been emailed over rather than faxed, although he could not now recall despite claiming at the same time to remember the events very well. C has disclosed a copy of an email sent to him (at AH's email address) on 19 October 2011 attaching a copy of the Second Letter in basic format for D1's urgent attention. However, that email also makes no mention of D1 signing and returning a copy of the letter. Rather it asks that "*either* [D1] *or* [C] *contact me on receipt*."

d. The letters disclosed by C and containing the signatures of Mr Sheppard confirm that they were sent by fax by RLK at 16:59 (the 19 October Letter) and 17:42 (the Second Letter). The email sent by RLK attaching the Second Letter in basic format is timed at 17:44. Those timings must mean on C's case that:

   i. the email timed at 17:44 attaching the Second Letter in basic format was sent <u>after</u> Mr Sheppard had apparently already sent an unsigned version of the Second Letter in basic format, received a fax back but signed by D1 in the wrong place, signed the Second Letter and faxed that signed version to AH's office for D1 to countersign. If that is true then what useful purpose was served by Mr Sheppard then emailing the Second Letter in basic format again at 17:44?

   ii. having signed the 19 October Letter in the wrong place, D1 made exactly the same mistake by then signing the Second Letter in the wrong place. C's only explanation for this was to blame the pressure of time.

None of this makes any sense. The more likely explanation is that, as stated on the letters themselves, in respect of each letter RLK only sent by fax a signed copy whilst at the same time sending by way of an email attachment a copy in basic format. That version of events is entirely consistent with the fact that on 19 October 2011 and timed at 6:24 pm Mr Sheppard forwarded a copy of his earlier email to AH timed at 17:44 stating that he looked forward to hearing from D1 that evening. There was no need for Mr Sheppard to speak to D1 later that evening if he had already been able to secure D1's signatures on the letters and bearing in mind that D1 was not at that time a client of RLK, who were not instructed by the defendants until 15 November 2011.

e. It was C's evidence that following the meeting at AH's offices he dropped the original signed versions of the letters to RLK because Mr Sheppard wanted to retain them on his file. However, despite the alleged importance to RLK of obtaining and retaining letters (both faxed copies and originals) with D1's signature upon them, none are to be found on RLK's disclosed files. The letters appear in RLK's disclosure only once and in one format with both signed by Mr Sheppard only; and

f. It was the evidence of C and AH that (after AH had spoken to Lloyd's TSB and Bank of India earlier that day) they met on 17 October 2011 to discuss and agree that D1 be nominated as head of the Alleged Buy Back Consortium. C and D1 further stated that it was only on 17 October 2011 and again on 18 October 2011 that D1 was first notified that he had been appointed as representative of the Alleged Buy Back Consortium as he was best placed to secure in his name the required bank finance to complete the purchase from the Receivers. C and AH say that at AH's request they then met with D1 at AH's offices on 19 October 2011 to discuss further the bank finance – C says the purpose of the meeting was to meet with representatives of the banks, whilst AH says the purpose of the meeting was to discuss how best to respond to queries raised by Lloyds TSB. It was during this meeting they say that D1 countersigned the letters from RLK. C and AH each claimed that that they could recall these meetings very well because of their importance. However, the undisputed contemporaneous documents include an email sent on 4 October 2011 by Lloyds TSB to AH in the following terms:

> "*Avtar, it was very good to see you again and thanks for the introduction to Mr Jhutti.*
>
> *Both Mike and myself could see some positives in the proposal, but in order to get to a stage where formal credit approval is sought, I will need the following information;*
>
> - *Details of the proposed company structure………..*
> - *Assets/Liabilities, Income & Expenditure from each Director……..*
> - *Details of Mr Jhutti senior's existing property portfolio in his name. (I've attached an electronic version of a property schedule that can be used)…….*
> - *Brief details on the background and property experience of the main parties.*

- *Copies of latest 6 months personal and business bank statements for each of the main parties.*

- *Copies of latest 3 years accounts for any business one of te main parties run.*

…………..

- *Accountants confirmation that all of the tax affairs of the main parties are up to date.*

………….

I look forward to hearing from you and the Jhutti's soon."

This email was forwarded by AH to D2 later the same day. It confirms that both defendants were already in discussions with Lloyds TSB by 4 October 2011 and makes a complete nonsense of the elaborate and convoluted story told by C and AH about how and why the alleged meeting with D1 on 19 October 2011 came about.

The parties' intentions

<u>C</u>

242. It is submitted on behalf of C that the contemporaneous documents make clear from the outset as to the existence of and the reasons for the Buy Back Consortium. By way of example:

a. C wrote letters dated 9 September 2011 in identical terms to Gagen Sharma, an insolvency practitioner, and AH confirming that he had so far raised £935,000 with the help of family, friends and some of his original investors to buy the Properties back;

b. C wrote a letter dated 13 September 2011 to the Receivers confirming that he had raised a total of £935,000 from a consortium of family, friends and original investors. He emphasised the importance of him buying back the Properties so that he could pay back the many individuals who had originally loaned him money to buy and renovate the Properties;

c. C wrote a letter dated 30 September 2011 to RLK confirming the identity of the members of the Buy Back Consortium, which included D1, and the amounts that they had pledged making total available funds of £1.025 million; and

d. C wrote a letter dated 10 October 2011 to NatWest confirming that he had raised £935,000 by way of loans from various individuals so that he could purchase the Properties back. He also detailed those individuals who had loaned him money to purchase the Properties in the first place.

243. The defendants' counsel urged me to treat these letters allegedly hand-delivered to third parties with considerable caution, which I do particularly in light of my finding that C fabricated other documents.

244. Further, in the RRFI, C stated that the defendants had been nominated as representatives of the Buy Back Consortium because:

> "*It was a requirement of* [NatWest] *(as secured lender on the Properties) communicated to the Claimant on or around 10 October 2011 that there had to be a single nominated purchaser of the Properties (although they were in the event content to accept there being two named purchasers).*"

However, in their letter dated 21 September 2011 the Receivers' solicitors requested:

> "*The names and addresses of the intended purchasers…*
>
> *Details of the structure of the proposed purchase, for example will the properties be purchased as a portfolio or in single lots? If the properties are to be purchased in more than one lot, please provide the name of the intended purchaser(s) for each lot.*
>
> *………………*
>
> *Confirmation of whether the purchasers will agree to pay a non-refundable deposit to obtain a period of exclusivity to exchange of contracts*."

It is clear from the contents of this letter that the Receivers were not insisting upon there being a single nominated purchaser. C was simply unable or unwilling in his oral evidence to give a straight answer to the repeated question of whether or not in fact NatWest had ever insisted upon there being a single nominated purchaser. In addition, if that was true, why did the Receivers ultimately agree to sell the majority of the Properties jointly to the defendants, rather than to D1 alone.

245. That all said, on balance, I do find that from the outset it was C's intention that the Properties be rescued through purchase from the Receivers by representatives acting on C's behalf. In addition, by at least the time of the Lock Out Agreement, it was C's intention that D1 be nominated to act as his representative, and that intention had been communicated to and was known by RLK. I make those particular findings for the following primary reasons and by reference to contemporaneous third party documents:

a. There is no other good reason why C would have taken the time, trouble and expense of applying for and obtaining the Injunction to prevent the proposed sale by the Receivers at the auction on 15 September 2011;

b. On 3 October 2011, the Receivers wrote to RLK stating (with my emphasis added) that "*the properties will be sold at auction on 20 October 2011, unless <u>your client's nominated purchaser</u> is able to proceed to exchange of contracts, at the price previously discussed, before that date.*";

c. RLK's attendance note dated 12 October 2011 records a telephone conversation in which C confirmed that for the meeting later that day with the Receivers "*he should have ID documents for the five purchasers of the properties that were going to be exchanged next week for a combined sale price of £470,000*";

d. By email dated 13 October 2011, the Receivers advised NatWest upon the "*outcome of the meeting we have had with Mr Singh and his solicitor Ian Shepherd yesterday afternoon….In summary Mr Singh informed us that he has spent the last three weeks endeavouring to arrange the funding to back up his purchase proposal for parties connected to him to acquire the properties. He has advised he is working with five individuals, some of which are based overseas, to purchase the properties*";

e. On 19 October 2011, RLK (Mr Sheppard) wrote confirming that C had instructed RLK that D1 was "*agreeable to be put forward as a representative*"; and

f. The Lock Out Agreement, which was drafted by the Receivers' solicitors at around this time, named D1 as the buyer of the Properties.

246. Further, by the time of exchange of contracts of sale, I find on balance that C also intended that D2 be nominated as co-representative as evidenced by the contents of the following contemporaneous third party documents:

a. On 15 November 2011, the Receivers' solicitors emailed RLK refusing an extension of time, insisting upon exchange by 21 November 2011 and requesting "*by tomorrow…details of the buyers*";

b. Later on 15 November 2011, RLK (Mr Bhogal) emailed the Receivers' solicitors and attached (with my emphasis added) "*a list of <u>the nominated buyer's</u> for each lot as required under the terms of the lock-out agreement…..I shall confirm the identity of the <u>nominated buyer</u> of 63 St Mary's Road by close of business tomorrow.*" The attachment named the defendants as the nominated buyers of the Properties other than of 63 St Mary's Road, which was left "*TBC*".

247. Whilst C may have had an established intention that the Properties be purchased by the defendants as his representatives, the question still remains whether or not that intention was ever communicated to and agreed by the defendants? As submitted on behalf of the defendants, the court cannot simply assume RLK informed the defendants they were acting as a head of the Alleged Buy Back Consortium. Apart from the 19 October Letter, there is not a single letter or email from RLK to the defendants which refers to any buy back consortium, let alone one that confirms the defendants were acting as representatives and had agreed to sell the Properties back to C. Nor is there any attendance note to this effect.

248. In addition, whilst I have found that C did inform RLK, the Receivers and NatWest about the Alleged Buy Back Consortium, I also find that C faced with losing his extensive property portfolios built up over many years was prepared to mislead others over much needed funds. By way of examples:

a. I have already referred to C misleading ASG that the £120,000 was needed as a short term loan in support of a tender by JC4C;

b. On 24 January 2012, C sent DSM a long email encouraging him to visit the UK in late January/early February in which case C would be able to secure a total loan facility of £8 million for DSM as part of a consortium of 5 people to purchase property. In his oral evidence, C confirmed that he was trying through this email to put together another buy back consortium to save the Lloyds TSB and possibly the Mortgage Express portfolios and with C purchasing the properties from the consortium members after 6 months. However, there is absolutely no reference anywhere in the email to DSM to the properties being purchased from C's receivers and then being sold back to C a short time thereafter. Rather C refers to the "*big advantage"* for DSM *"is you could probably pull most if not all your money out of the investment…….within a year or so after you invested the money to purchase that property. This is always a good option and the one that I always take.*" In response, DSM makes clear that he is not interested in this option since "*my cash situation is not as liquid as I would like. This will reduce my investments* *funds for the UK*." The tone of C's emails then becomes terse giving the impression that he is trying to help DSM, rather than the other way around –

> Email dated 1 February 2012
> "*Do not forget we are only doing the property purchases for logistic reason for you. I have already promised these properties to other people. They are only giving them to us for your loan purposes*"
>
> Email dated 15 February 2012
> "*I've done a lot of work here dave to get you the best possible deal for you with the banks, and it's a really good deal, but you need to tell me what you want to do as the facility amounts are so vast. There will also be a lot more questions about you if you are by yourself*."

c. In a letter dated 17 April 2012 sent to C, RLK confirmed the "*Current position*" regarding 44 Croftdown Road, which fell within the Lloyds TSB portfolio, as being "*Agents are still awaiting confirmation that the sum of £400,000 is being raised by Messrs Jhutti*". In his oral evidence, and after much obfuscation, C finally confirmed that D1 had agreed to raise £400,000 in order to save the Lloyds TSB portfolio by mortgaging his family home. It is clearly absurd to suggest that, having already committed £538,000 to saving the NatWest portfolio, D1 would ever have agreed to putting his own home at risk to raise a further £400,000 to save another property portfolio in which it is not disputed he had no financial interest in whatsoever.

<u>The defendants</u>

249. It was the defendants' evidence that D2 was the driving force behind their investment in the Properties. Whilst acknowledging that D1 was much more cautious but nevertheless supportive of his son, D2 in his oral evidence described the opportunity allegedly offered by C to buy a "*whole chunk of properties in one go*" whilst acting under C's guidance variously as:

> "*I was excited at the prospect*";
>
> "*Gosh, this is great, we should do this, jump in*";
>
> "*Once I'd sort of heard the figure of, you know, 2.5 [million pounds] I was sort of thinking: well this is great, this is wonderful…this is exactly what I'd looked at*";
>
> "*This is a great opportunity, we should grab it with both hands*";
>
> "*It was a very exciting prospect to me*";
>
> "*It was Ashok that was going to guide me through [the] process*"; and
>
> "*I wanted to learn the process*".

The conduct of the parties

<u>C</u>

250. I find that the conduct of C was consistent with his established intention:

a. C instructed RLK and obtained the Injunction to prevent the Receivers from selling the Properties at auction. C arranged payment of RLK's fees (£7,800) for doing so. Thereafter, C negotiated with the Receivers and NatWest for the sale of the Properties to his nominated buyer(s);

b. By reference to RLK's ledger sheets and correspondence, it is evident that C paid or arranged payment of the following sums towards the cost of purchase/re-purchase of the Properties by the defendants -

    i. £33,000 from C,

    ii. £14,200 from JC4C

    iii. £25,000 from SS

    iv. £120,000 from ASG,

    v. £112,000 from DSM,

    vi. £50,000 from GSK,

    vii. £70,0000 from Mrs Hayer,

    viii. £95,000 from KSP,

    Total = £519,200; and

c. C agreed to be responsible for managing the Properties including undertaking renovations and paying the insurance premiums.

251. It is submitted on behalf of the defendants that it is entirely believable that C would have given an assurance that funds introduced by C be set off against C's ever increasing debt attributable to the additional expenses and costs being incurred. However, even on the defendants' case, the first additional expense did not arise until 14 December 2011 when Westpoint insisted upon payment of a premium of £100,000 in the event that the defendants re-purchased the South Road properties. By my calculation, the funds introduced by C between 14 October 2011 and 22 November 2011 already totalled £176,600 being almost equivalent in amount to the debt then owed to the defendants of £200,000.

<u>The defendants</u>

252. It is submitted on behalf of C that the defendants themselves have done absolutely nothing that was consistent with them buying the Properties for themselves. Nobody would have made an investment of this size with so little interest unless they were relying on the fact that C owned the Properties and was going to repurchase them.

253. It is accepted on behalf of the defendants that there may be some elements of the defendants' core narrative that do not add up or make sense. However, to the extent that there is any merit in these criticisms, they are explicable on the basis that the defendants simply trusted C and did not go behind what he had told them.

254. I find that the defendants' admitted conduct before, during and following the purchase of the Properties was wholly inconsistent with their stated intentions (D2 seizing the exciting/wonderful opportunity whilst learning the ropes under C's guidance and with the

cautious support of D1 in light of the substantial borrowing required) as evidenced by the following:

a. C disputes that the defendants visited any of the Properties prior to exchange of contracts. However, even on their own case, the defendants only viewed internally 3 of the Properties being 13 Anderson Road, 9 & 11 St Augustine's Road and 21 Clarendon Road with the latter 2 Properties observed to be in poor condition. The defendants say that they saw the remaining Properties from the outside whilst being driven round by C. Even then D2 said in his oral evidence that they did not get out of the car, but "*stopped for a moment and had a conversation about* [the particular property]*……which wasn't a very sort of long conversation*". D2 said that he did not discuss the rentals with C, but "*he had a thought in his own head of what the rentals would be*", which is consistent with what he stated in his written evidence. However, he then changed his evidence by claiming that in fact at each property he jotted down on a piece of paper the number of units and then at the end of the day carried out a calculation by multiplying the number of units by either £500 or £600, which figures were based upon the rent payable on his father's two investment properties, to get a total rental income of at least £250,000 per annum. He said that his calculation was based upon "*35 units or something. Between 30 and 35 units….35 units. I think I had a figure of 30.*". It is utterly preposterous that D2 would have calculated, if true, the potential rental income in this haphazard way before making a multi-million pound investment on behalf of his family and by taking on substantial debt, which would need to be serviced through the rental income. Also, for someone who had no knowledge of property development/management but was keen to learn from C, why would he not even have discussed this vitally important and obvious issue with C? D2's explanation was "*I was just excited at the prospect of having them, and then you glaze over everything*", which is no rational explanation at all;

b. In his oral evidence, D2 denied that C provided the defendants with a list of the Properties prior to the Lock Out Agreement. Therefore, on the defendants' own case D1 committed £80,000 without even having a record of the addresses of the Properties that he was committed to buying;

c. After payment by D1 on 18 October of the £80,000 due under the Lock Out Agreement, the balance of the deposit payable on exchange of contracts on 21 November 2011 was £170,000. The payment of the balance as evidenced by RLK's ledger was funded not by the defendants, but by C or his associates –

    i. £120,000 loaned by C from ASG and paid direct to RLK on 18 November 2011,

    ii. £25,000 paid by C to RLK by instalments on 18 October 2011 and 19 November 2011,

    iii. £25,000 paid by GSK to RLK on 18 October 2011.

    In his oral evidence, D1, who attended RLK's offices on 15 November 2011 to sign the contracts, accepted that he had known that the balance of the deposit was payable on exchange. Indeed, on 17 November 2011, RLK (Mr Bhogal) had emailed the defendants to confirm (with my emphasis added) that "*<u>As discussed</u>, I shall need deposit monies equal to 10% of each property being purchased in our client account by no later than mid-day on Friday 18 November 2011…For the avoidance of doubt our bank details are as follows…*". However, D1 was unable to explain in his oral evidence how he thought this very substantial deposit was to be fully funded, if not by him. He simply stated that he was unable to answer that question. That response is even more surprising when considered in the context of D2's oral evidence that "*My father certainly was nervous about the prospect of [buying almost 30 properties] and clearly he hadn't, like you say, done anything like that before*". If that was true, no doubt D1 would have been very careful to ensure how the deposit was to be paid or at the very least discuss further with RLK how it was going to be paid;

d. D2 was similarly at a loss to understand or explain the shortfall in completion monies (£318,000 on C's case or £120,000 on the defendants' case);

e. The defendants did not read the reports (x 12) for the Properties prepared by RLK and sent to them by way of attachments to an email dated 17 November 2011 and marked "<u>IMPORTANT</u>". The reports stated that the defendants would be

> "*buying the property in its actual state and condition and you are deemed to have checked its condition before exchanging contracts. The Receivers will provide no warranty or assurances as to the conditions of the property or what services are connected.*
>
> *You must therefore be satisfied about the states and condition of the Property from your own inspection of the Property. You may wish to instruct a surveyor to carry out a structural survey prior to exchange of contracts.*";

f. The defendants did not obtain structural surveys despite being advised to do so by RLK. The defendants said that there was simply not the time available because C was repeatedly advising them of the need to act quickly otherwise they would lose out on this valuable opportunity. That evidence is perhaps consistent with what is stated by DSM in his email to C dated 21 July 2012 when he complains about being given only 2 minutes to decide about moving his funds to another deal. However, if the defendants did not have the time to obtain structural surveys then surely that was even more reason for them to at least view the inside of the Properties prior to exchange of contracts. The defendants said that they simply trusted C that this was a good buy, but that does not explain why the defendants, or at the very least D2, would not have been at least curious at this supposedly exciting and monumental time to see the inside of the Properties that they were buying. D1 suggested that C had previously purchased individual properties without D1 seeing them beforehand, but this was of course a very different proposition in that the defendants were allegedly committing themselves to purchase for the long term financial wellbeing of their family a large portfolio of properties funded by way of very substantial borrowing; and

g. The defendants did not read any of numerous conveyancing documents that they signed including:

    i. The Memoranda of sale (x 12) signed at RLK's offices by D1 on 15 November 2011 and by D2 on 16 November 2011;

    ii. The Supplemental Contract of sale dated 16 January 2012 ;

    iii. The Further Supplemental Contract of sale dated 29 February 2012;

    iv. The Incentive Agreement dated 29 February 2012; and

v. The TR1s.

It is extraordinary that both D1 (who was an experienced business man supposedly very concerned about the substantial level of personal borrowing required), and D2 (who was professionally qualified, had been involved in the drafting of tenders and was supposedly keen to learn more generally about the property business) chose not to read any of these important legal documents before signing them and in particular the TR1s, which were sent by post to the defendants, who presumably could have read them at their leisure. The defendants sought, unsuccessfully in my view, to explain their distinct lack of interest in the documents that they were signing by reverting to their repeated mantra that they simply trusted C, although of course C was not a lawyer and himself had previously asked D2 (with his superior grasp of written English) to assist with the drafting of legal documents in the form of tenders;

h. One of the few contemporaneous emails between C and the defendants disclosed in these proceedings is the one dated 11 June 2012 sent by C to D2 and attaching the spreadsheets confirming the current position in relation to each of the Properties. It was D2's evidence that they were prepared by C at D2's specific request. The 3rd spreadsheet records that –

i. 58 Swindon Road would "*be going on the market for £120,000 in 2 weeks*",

ii. 63 St Mary's Road would "*be going on the market for £127,000 in 1 week*",

iii. 584 Stratford Road would "*go on the market for about £175,000*" once £8000 had been spent on renovations.

Earlier in his written evidence D2 stated that "*I told Ashok I was displeased with the sale of 21 Clarendon Road to someone else, as we are now losing properties rather than gaining properties*". The sale of 21 Clarendon Road to Mr Sahota completed on 20 February 2012. It was submitted on behalf of the defendants in closing that "*It is common ground that there would have been a shortfall on the Aldermore offer, which meant that properties would have to be sold (which was plainly unattractive given the cost and emotional pain used to retain them up to that point)*". Yet some 4 months after the sale of 21 Clarendon Road and some 4 months before the Aldermore offer, the defendants were being told by C that 3 of the Properties with a combined value of £422,000 were shortly to be sold off. Surely the defendants would have been very upset to hear that news and in light of their wish to secure a large property portfolio for the long term benefit of their family. However, D2 stated in his written evidence that when he got the email from C "*I was concerned about the condition of the properties. However, my father still trusted that Ashok would get done what needed to be done. We took the decision that Ashok was handling it and did not feel like we needed to view the remainder of the properties or take any action*." Again, the defendants' complete inaction in response to being told of the imminent sales of 3 of the Properties cannot be explained away simply on the basis that they trusted C. This inaction is again entirely consistent with C's case that they were merely acting in representative capacities.

Shiv Sharma

Submissions

255. It is submitted on behalf of C that:

a. The defendants decided in October 2012 to deceive C by seeking funding from Lloyds TSB without his knowledge so that they could grab the Properties for themselves. That is why they had to dis-instruct RLK, who knew the basis on which the defendants had purchased the Properties. The picture of a family in financial crisis and why they say they went to Lloyds TSB behind C's back is merely a mask to cover the brutal truth of what they were really up to. The extraordinary story about C deceiving them by saying the Properties belonged to someone called Shiv Sharma is the best the defendants could come up with in an attempt to explain why they say they excluded C;

b. It is unfathomable why, if C was wanting to perpetrate such a deceit, that he would have recommended that the defendants instruct as their conveyancers RLK, who had already acted on C's behalf in obtaining the Injunction against the Receivers and who were advised by C's letter dated 18 October 2011 that there was no need to raise any pre-contract enquiries as he owned the properties and already knew all the answers;

c. The name Shiv Sharma appears nowhere in the contemporaneous documents and indeed the first mention of that name is only in the defence served on 18 May 2018. By stark contrast the conveyancing documents signed by the defendants and disclosed by RLK make plain beyond doubt that the defendants are lying when they say they thought the seller was Shiv Sharma; and

d. The best that D2 can do to explain away the conveyancing documents that they signed naming C as the seller is to implicate by inference, Mr Bhogal, the conveyancing solicitor at RLK, in a conspiracy to mislead the defendants about the true identity of the seller. D2 has deliberately fabricated this account to overcome the obvious flaw in his story. To get away with it he has to ask the court to believe that RLK were at best grossly negligent and at worst dishonest and in collusion with C – without of course ever putting that case to RLK for them to respond. How the defendants think the court can make findings of serious misconduct/negligence/dishonesty against RLK when they have not even brought them to court to give evidence (waiving privilege) is a mystery.

256. It is submitted on behalf of the defendants that:

a. It is accepted that the Shiv Sharma account does not fit with the conveyancing documents. However, had the defendants really been acting in the Machiavellian manner alleged, they would surely have come up with a better story that fitted the conveyancing documents;

b. It is entirely common for clients to sign conveyancing documents without reading or understanding them. They trusted C and were not concerned with the legal niceties;

c. The defendants' evidence is corroborated by GSB, SH and BT, who all thought that the defendants genuinely believed that someone other than C was the seller;

d. The defendants regard RLK's conduct as "fishy" and with some justification as was evidenced by RLK's email to C on 18 January 2012, which dealt with C's contribution of £2,557.75 to the Receivers costs agreed on 4 October 2011, and deliberately not copied to the defendants. However, it is not necessary for the court to find that there was any collusion between C and RLK in order for the claim to be dismissed. This is not a trial of whether RLK acted dishonestly or negligently. What the court is being asked to find is that the defendants were not told about the Alleged Buy Back Consortium and did not agree to act as its head. What is clear from the documents is that RLK took instructions from C on matters on which they were instructed by others; and

e. C's reason for not calling anyone from RLK on the ground that RLK acted for the defendants and so would be divulging privileged information is not a good one. RLK were not instructed by the defendants until 15 November 2011. Most of the crucial discussions and key events had (on C's case) already occurred by that date. In any event, C could have at least requested that the defendants waive privilege, but no such request was made.

<u>Analysis and conclusion</u>

257. Even if the defendants did not read the very large number of conveyancing documents that they signed, it would have been clear and obvious even from a cursory glance of those documents that C was the owner of the Properties in that:

a. The Memoranda of sale state at the top of the opening page that the "*Seller*" is "*Ashok Singh care of the Receivers*";

b. The Supplemental Contract, the Further Supplemental Contract and the Incentive Agreement all state at the top of the page under the heading "*PARTICUALARS*" that "*The Seller*" is "*Ashok Singh (acting by direction of the Receivers)*";

c. The TR1s state (i) on the opening page that the "*Transferor*" is "*Ashok Singh (acting by Joint Law of Property Act receivers)*" and (ii) on the execution pages that the document was being "*Signed as a deed by Ashok Singh acting by Simon Hunt his joint fixed charge receiver*".

Whilst I accept that it is common for clients to sign conveyancing documents without reading or understanding all the legal niceties, it is not at all common for clients to sign conveyancing documents without at least checking or taking an interest in the basic particulars i.e. the names of the buyer/seller, the property details and the price.

258. In light of the contents of the conveyancing documents, it is perhaps unsurprising that D2 accepted in his evidence that he had at least noted the express reference to C in the Memoranda of sale when signing those documents on 16 November 2011 at RLK's offices. However, I did not find credible D2's evidence that (i) he then raised this with C, but was told that C was acting merely as an intermediary and (ii) this was all said in front of Mr Bhogal, who did not contradict C. I make that finding for the following primary reasons:

a. I accept the submission made by counsel for C that no honest conveyancing solicitor would have allowed C to say all that uncorrected if it had been said. Counsel for the defendants appeared to accept the force of that argument by submitting in closing that perhaps Mr Bhogal had not heard the conversation, but this possibility was never suggested by D2 in his oral evidence;

b. It is submitted on behalf of the defendants that this is not a trial of whether RLK acted dishonestly. However, in his written evidence D2 stated (in the context of funds provided by third parties towards the purchase of the Properties) "*This raised serious questions to me about RLK and their involvement, and whether they had colluded with Ashok*". Indeed, in opening it was submitted on behalf of the defendants that "*It is now in fact clear that RLK were acting primarily in the interests of the Claimant and actively concealed information from the Defendants.*" During D2's oral evidence, and whilst acknowledging what a serious allegation he was making against Mr Bhogal, D2 was asked if "*Mr Bhogal sat back and let his own client be deceived*" to which D2 replied "*That's correct, that's what happened*." If I accept as true D2's evidence regarding the alleged conversation then by implication I must also find that Mr Bhogal remained silent and was guilty of serious misconduct by way of dishonest concealment;

c. Although I was not referred to the case in submissions, in ***MRH Solicitors -v- The County Court sitting at Manchester*** [2015] EWHC 1795 (Admin) it was held that the court below was wrong to have made findings that solicitors had been dishonest when they had no opportunity to give evidence to rebut the allegation of dishonesty. In giving the judgement of the court, Nicol J held:

> "[34] *We well understand how the Recorder's suspicions were aroused. However, in the absence of good reason a Judge ought to be extremely cautious before making conclusive findings of fraud unless the person concerned has at least had the opportunity to give evidence to rebut the allegations. This is a matter of elementary fairness. In* ***Vogon International Ltd v the Serious Fraud Office*** *[2004] EWCA Civ 104 at [29] May LJ (with whom Lord Phillips MR and Jonathan Parker LJ agreed) said,*
>
> > *"It is, I regret to say, elementary common fairness that neither parties to the litigation, their counsel nor judges should make serious imputations or findings in any litigation when the person concerned against whom such imputations or findings are made have not been given a proper opportunity of dealing with the imputations and defending themselves."*
>
> [35] *This is not only required because of fairness to the party affected but also to avoid the Court falling into error – see for instance* ***Co-operative Group (CWS) Ltd v International Computers*** *[2003] EWCA Civ 1955 at [38]. As Megarry J memorably said in* ***John v Rees*** *[1970] CH 345, 402,*
>
> > *"As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were answered; of inexplicable conduct, which was fully explained…Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events"*."

d. It is accepted that the defendants have at no time put any allegations directly to RLK. In my judgment it is simply unfair to raise very serious allegations against RLK generally, and Mr Bhogal in particular, indirectly in the course of these proceedings without giving them the opportunity to respond. At the time the conversation allegedly took place in front of Mr Bhogal, RLK were retained by the defendants. Having raised an allegation against Mr Bhogal that required to be answered, the defendants ought to have called Mr Bhogal to give evidence (waiving privilege);

e. If Mr Bhogal had been called to give evidence it is almost inevitable that he would have denied the allegation made against him. On 24 December 2019, the defendants' current solicitors wrote to RLK requesting further information whilst stating that "*having kept our clients' monies in an account together with third party monies cannot be a proper justification for your failure to provide this information."* RLK responded by way of letter dated 10 January 2020 in which they stated that "*we do not accept that your clients were unaware that other parties, along with your clients, were involved in the property transactions with…Receivers for properties in the name of Ashok Singh*." Even if Mr Bhogal had been called as a witness, it would still have been necessary for me to consider his evidence and assess its credibility in the light of the contemporaneous documents and the inherent probabilities of the case. However, a finding of dishonesty against a solicitor (and an officer of the court) should not be made without the most careful consideration of what the solicitor says in their own defence, and especially when (as in this case) no motive for such dishonesty has ever been suggested – ***Clydesdale Bank PLC v Workman and others*** [2016] EWCA Civ 73. In conclusion, I draw an adverse inference against the defendants by reason of the fact that they chose not to call Mr Bhogal as a witness because they knew that he would very likely contradict D2's evidence about the alleged crucial conversation that took place between C and D2 in front of Mr Bhogal;

f. It was D2's evidence that as a result of the defendants purchasing the Properties they incurred net losses of over £600,000. Whilst I can understand that the defendants may not have had the funds or indeed the stomach to pursue legal proceedings against RLK, it is simply incredible that they did not even consider it worthwhile submitting any complaint to RLK and/or the Solicitors Regulation Authority, if they genuinely believed their allegations of collusion/deliberate concealment to be true;

g. On 17 November 2011, the day after the conversation with C allegedly took place, RLK sent to the defendants the email marked "IMPORTANT" and referring to the attached property reports. Immediately after being asked in evidence if he was sure that he had never been told by RLK that C was the owner of the Properties, D2 was taken to this email and there then followed a lengthy period of questions and answers -

   i. Initially, D2 said that he could remember seeing the email at the time, but he did not know what was attached to it and could not remember being given copies of the property reports,

   ii. When asked, if the property reports were not attached to the email, why did he not ask RLK to re-send them, D2 responded "*Because our relationship with RLK really wasn't so much a relationship with them as with Ashok. So if RLK asked for this or asked for that, we only ever tended to do something when Ashok said. So if they would have said something, that it was something of importance, we would have expected Ashok to pre-told us or told us something about it.*",

   iii. D2 accepted that RLK clearly wanted the defendants to read the property reports before agreeing to exchange of contracts,

iv. D2 was taken through the first part of the property report for the South Road properties before saying that he did not think that this report "*was seen*" by the defendants,

v. D2 was then taken to the next section of the property report, which stated that "*You will buy subject to these [local land] charges and you will become liable for any amounts secured (unless you can agree with the registered proprietor of the property, Mr Ashok Singh, to pay these on or before completion)*." When it was put to D2 that this report clearly showed that C, not Shiv Sharma, owned the properties D2 said "*This letter has no letterhead to it, it has not been signed and I didn't get to see this letter….Again, I didn't get this document…All I'm saying is I didn't receive these at the time, did not see these at the time, not on those letterheads, not been signed, so I don't know of their existence*."

vi. Therefore, having initially claimed that he could not recall what, if any, documents were attached to RLK's email, D2 changed his evidence to suggest that the property reports may not be genuine, and the defendants had definitely not received them. On being asked what checks had been made to ascertain whether or not the property reports had been emailed before making serious allegations of collusion against RLK there then followed an extraordinary exchange between counsel for C and D2 -

Q. *What checks have you made of your emails and the Ablex emails to see what was received*?
A. *We did all the checks, checked every email, checked every in and out, every date, everything we could have*.
Q. *So if you checked this email for 17 November and it did not have the attachments to it - is that what you are saying you did?*
A. Say I did what, sorry?
Q. *Are you saying you checked this email and it did not have any attachments to it*?
A. *I'm saying what we had was this email and that's all we've got, and that's all*
Q. *No. Are you saying you checked and you did not have any of these reports*?
A. *So this email address, ablexuk, ablex.com, is no longer in existence*.
Q. *So you did not check it*?
A. *So we checked, we checked everything that we could have and everything we had saved on the computer, whatever we could have, and declared - disclosed everything*.
Q. *So you did not check the mailbox for info@ablexuk.com because it does not exist anymore*?
A. *We checked everything that was on our computer, anything that we stored on the computer, and we disclosed every document that we had*.
Q. *I am going to try once more. Did you check the emails for the address info@ablexuk.com*?
A. *Again, we checked the computer for every document we had, and these are the documents - the documents I disclosed are the documents that I had in my possession, and everything else was disclosed*.
Q. *This is my last attempt. Did you check the email account info@ablexuk.com*?

A. *What I checked was what was on our computer and what had been stored on our computer, any emails or whatever else they were, and that email isn't in existence* anymore so whatever was stored on our - *on my Dad's computer at the time, we downloaded, got it and we've submitted it*.
Q. *So can I just say: is it a yes or no? Can I make it easy for you? Did you check the email account for info@ablexuk.com? Yes or no*?
A. *No, the account isn't in existence*.

It was clear to me that D2 was making up his evidence as he went along in an unsuccessful attempt to answer questions consistent with the defendants' case that, notwithstanding what was stated in the property report, RLK had nevertheless sought to conceal the identity of C as the true owner of the Properties, which the defendants only became aware of in October 2012, and despite the property report being referred to as an attachment to an email marked "IMPORTANT" and sent to the defendants for them to read prior to exchange of contracts.

259. It was the evidence of D1 that he was first told that C was the owner of the Properties in October 2012 by Mike McGowan. This was on the defendants' case another crucial conversation and about which it might be expected that Mike McGowan would have been able to provide very material evidence. However, the defendants also failed to call Mike McGowan as a witness. In their oral evidence, the defendants sought to explain this omission on the basis that Mike McGowan no longer worked at Vanguard, and so they decided to call SH as a witness instead. However, that explanation made absolutely no sense bearing in mind in his written evidence SH stated that he had only been told about the conversation with D1 by Mike McGowan after the event.[6] I draw another adverse inference against the defendants that Mike McGowan was not called as a witness because they knew he would not support D1's version of events.

260. The defendants' lack of interest in the Properties that they were buying is entirely consistent with the defendants being fully aware that C knew everything there was to know about the Properties because he owned them. It is stretching the bounds of credulity that the defendants suddenly decided to purchase a large property portfolio without any previous experience of doing so and then requested a meeting with C to discuss repayment of his loan made some 4 years beforehand at precisely the same time that C was (according to the Receivers) "*endeavouring to arrange the funding to back up his purchase proposal for parties connected to him to acquire the properties*".

261. Whilst C may have at times misled others when persuading them to hand over significant monies, what did C actually have to gain by deceiving the defendants that he did not own the Properties they were purchasing? When asked why it mattered in October 2012 if C had previously owned the Properties, D1 said in evidence that it did not actually matter who had previously owned the Properties only that C had allegedly lied to him. The defendants speculated that C's plan was to cause the Properties to be put back into receivership, but that makes absolutely no sense, since, if true, C would simply be back in the position that he had been several months earlier trying to buy the Properties back from receivers but having thrown away in the meantime several hundreds of thousands of pounds of third party funds he had introduced to enable the defendants to purchase the Properties in the first place.

[6] SH did claim for the first time in his oral evidence that he actually participated in the conversation during which the defendants were told for the first time that C owned the Properties, but for the reasons given earlier I did not find SH to be a credible witness.

262. On balance, I find that the defendants knew that the Properties they were purchasing were owned by C.

The defendants taking control of the Properties in October 2012

263. On 19 October 2012, Paul Atkinson of Lloyds TSB emailed the defendants:

> "*Thank you very much for your time yesterday, and for the extensive pack that you put together for me, which I have read this morning.*
>
> *As I advised this afternoon, I have spoken with my underwriters today, to gauge their thoughts around the proposed deal, and a number of possible issues have been highlighted, and detailed below, however I think having spoken to Mr Jhutti these can be easily overcome.*
>
> *…………..*
>
> *The headlines for the proposed finance is as follows;*
>
> *Total lend £1.95m – split £1.7 to the bridging company and 250k for refurbishment.*"

264. It is not disputed that the defendants did not disclose to C that they were in discussions with Lloyds TSB. Therefore, it is clear from the above email that by mid-October 2012, and even before allegedly being told by Mike McGowan that C was the previous owner of the Properties, the defendants had decided to take control of the Properties.

265. It is C's evidence that the defendants concealed this decision from him whilst maintaining the pretence that they were still intending to abide by the terms of the agreement and return the Properties to C. Indeed, D1 took £25,000 in cash from C's mother in November 2012 by way of a contribution towards payment of the penalties/fees imposed by the bridging companies. It was only in 2014 that C became aware of the fact that he had been double crossed when he pleaded unsuccessfully with D1 to return the Properties.

266. It is the defendants' evidence that they opened discussions with Lloyds TSB because they had by then lost trust and faith in C over his failure to renovate the Properties and arrange the bank lending. The defendants were coming under significant financial pressure from the bridging companies and at the same time C was becoming increasingly more difficult to get hold of. Indeed, C ceased to have any involvement whatsoever with the Properties from November 2012.

<u>Cash payment of £25,000</u>

267. It was DK's written evidence that she recalls the problems that C was having in 2012 with the bridging companies. Therefore, DK raised £25,000 in cash by going to friends and asking them for loans. DK then gave D1 this cash at JC4C's offices with HKN present to help the defendants pay the bridging payment due in November 2012. D1 denies receiving this money.

268. The defendants have disclosed bank statements confirming that they made the following payments to the bridging companies in November 2012:

a. 6 November – £15,000 to Capital;

b. 20 November - £10,000 to Capital;

c. 22 November – £6660.50 to WestOne; and

d. 27 November - £6660.50 to WestOne.

e. Total payments - £38,321.

269. I am unable to find that DK paid £25,000 in cash to D1 as alleged and for the following reasons:

a. It might be expected that collecting and handing over such a substantial amount of cash would be memorable. However, in contradiction to DK's written evidence, HKN states that rather than witnessing DK personally handing the cash over to D1 at JC4C's offices, it was HKN who "*personally collected £25,000 from my mother in law..and gave this to Parminder to help him and Harmale pay the bridging finance monthly payment in November 2012*."; and

b. The bank statements disclosed by the defendants show the sources from which the bridging companies were paid. There is no recorded cash receipt of £25,000.

<u>Rent for renovations</u>

270. C stated in his written evidence that by the time the final sales completed on 24 April 2012 he had already started to renovate some of the Properties that had been purchased earlier. The Properties which were already renovated were rented out. Once the rent was collected, it was banked by JC4C and C used the rent monies in order to renovate the remaining Properties. As and when the remaining Properties were renovated, they too were then placed on rent in order to generate an income.

271. However, that evidence is flatly contradicted by the spreadsheets that C sent to D2 as attachments to the email dated 11 June 2012. The spreadsheets confirm that none of the Properties were then rented out and indeed the majority of the Properties still required work before they could be rented out. Those spreadsheets corroborate the defendants' evidence that they were concerned about the lack of progress being made over the renovations.

272. The reports in the trial bundle confirm that Silk Plant Associates carried out initial valuations of the Properties on behalf of Lloyds TSB in November 2012, but then carried out updated valuations in December 2012. Excluding 9 & 11 St Augustine's Road, which had been sold in the meantime, the total average value of the remaining Properties increased from £2.093 million to £2.201 million.[7] This corroborates the evidence of the defendants and of BT that initially Lloyds TSB refused to lend because of the poor condition of the Properties, which required the defendants to raise funds to undertake urgent repairs prior to the updated valuations.

<u>Missing in action</u>

273. There is compelling evidence that C tended to go missing when unable to fulfil financial promises that he had made to others as evidenced by:

a. C raised concerns (via his MP) with Lloyds TSB over (i) its failure to give him notice of its intention to repossess the properties charged to it and (ii) the failure of the then appointed receivers to meet with C to discuss the possible sale of those

[7] Schedule E to the defendants' Skeleton Argument.

properties to a consortium of buyers arranged by C. In a letter of response dated 22 June 2012, Lloyds TSB stated that –

> *"[C] operated well run accounts until midway through 2010. At this point, [C] promised to reduce his overdraft by selling some of his property, but he failed to honour this commitment. However, of more concern to us, he stopped paying his rental income into his account, resulting in the overdraft escalating to more than £900,000.*
>
> *[C] did not respond to our correspondence and we eventually took the commercial decision to close his business accounts and………..*
>
> *In the absence of any contact or repayment proposals from [C], we decided to call in our security.*
>
> *……………*
>
> *We do not accept that we did not give him adequate notice of our intentions. In my view, we have been patient with [C] and I am not sure what more we could have done. We now know that [C] has moved from the address that we were writing to, but he did not advise us of this. We understand that he moved abroad, which I believe was a less than responsible action, given the level of borrowing that he had with us and other lenders*.";

b. On 20 April 2012, Jeevan Purewal of Monaco Insurance emailed C –

> "*We are disappointed that after leaving at least 10 messages for you and also your promises that you would come into our office to resolve the outstanding premium issues, you failed to do so.*
>
> *You issued a deposit cheque for £1,500 which you stopped and despite many promises that you would bring in a replacement cheque this has not happened. You also instructed us to take the balance via direct debit facility utilising Close Premium Finance and again you cancelled the instruction despite signing the mandate*."

c. DSM sent to C increasingly desperate and angry emails over his missing funds -

> 21 July 2012
> "*You were suppose to email me a few weeks back and nothing as of yet*?"
>
> 28 July 2012
> "*I know you did not want to speak to me last week because I asked for money but this week the matter is getting serious…..Can you email me a urgent update*."
>
> 24 October 2013
> "*you're causing me undue stress and I'm frankly at the end of my rope….on Sept 12 you said funds are coming any day and you would call me within 4 days.* ***Today is Oct 24, almost 45 days later****! Enough is enough. If I don't hear from you tomorrow I'm taking matters to the next level*."
>
> 2 November 2013
> "*I don't know how many times I have to tell you to stop avoiding me!!!!*"

2 November 2013
"*STOP AVOIDING ME!!! You know it stresses me out*"

d. ASG's son sent HKN increasingly desperate text messages asking C to contact his father/provide an update urgently about repayment of the £120,000 loan -

30 January 2012
"*Could you ask Ashok to ring my dad up*"

31 January 2012
"*think [C] didn't get a chance to call my dad. Could you let him know it's a bit urgent so if he could call him as soon as he can*"

8 February 2012
"*account details for Western Heating are…..Could you please send over the money urgently*"

13 February 2012
"*could you let me know what the situation is with the payment. Twice now we have had to extend the completion date and they are imposing penalties*"

13 February 2012
"*Please let us know ASAP as like I said it is a bit urgent now*"

15 February 2012
"*just wanted to see what the situation is [C] still hasn't rang and the money hasn't been sent over yet either*."

16 February 2012
"*we have missed another completion today….This is getting a bit ridiculous now, we really need to know what is going on and need the money urgently*."

20 February 2012
"*Any update..? We have another completion date this week*."

21 February 2012
"*Can you tell him to call my dad up, it's pretty urgent*."

23 February 2012
"*Any further update…? Also he still hasn't called my dad up to explain what is going on.*"

23 April 2012
"*Well…it has been 5 months now and Ashok still hasn't even rang once to explain what has happened and why he hasn't paid any money back or what's wrong. We have lost our money in India as well because of this and couldn't complete our deal there*."

23 April 2012
"*I'm not blaming you and nor is my dad and nobody has ever said it was your fault because it was Ashok who rang us not you. But for five months he hasn't even called once to let us know what has happened. We cant get hold*

of him because he doesn't answer his calls either and he isn't calling even after you forwarding our messages"

274. It is clear from contemporaneous emails that JS was becoming increasingly frustrated by C's lack of engagement as the redemption dates for the bridging loans fast approached:

a. On 4 September 2012 Capital emailed JS requesting "*an urgent update on the redemption of this loan*";

b. On 5 September 2012, JS forwarded Capital's email to C and the defendants stating –

"*I am being chased daily on this now and I have tried to keep them off the subject*

Cannot do any more need answer today

On 15 they will want interest payment and new fees to renew the loan. The rate will go up because you will be in default.

Can I have an urgent answer today. Don't avoid this they are serious on this point.

Await a urgent reply."

c. On 6 September 2012, Capital emailed JS "*Still waiting for an update on this case redemption is due on 15th September. Will this be on time? Have you copies of any refinance?*"

d. On 6 September 2012, JS forwarded Capital's email to C and the defendants stating –

"*I am getting this daily now please respond to me or u shall have to tell them the truth that I am not getting any reply from you??*

I don't want to do that but there is a limit to what I can do on this.

Reply to me very urgent."

e. Also, on 6 September 2012, JS emailed C and copied in the defendants –

"*Ashok*

I have asked many times for the proof of sale or refinance not for my benefit but for the lender as am being chased daily.

Can I please have this today????

Please do not play with these people as I know they will not mess about.

Await your urgent reply."

f. On 1 November 2012, JS forwarded an email from Capital (threatening the appointment of receivers) to C and the defendants stating –

> "*You will see from the email……that they are now getting serious. The problem is that you have advised me the following and I in accordance with the information that you have given me told them the same.*
>
> *I had a long telephone conversation with them today and he said to me that for more than 8 weeks now funds have been promised and nothing has turned up.*
>
> - *First we told them funds were due from relatives overseas*
> - *Then we gave them copy of BTL mortgage offers*
> - *Then we advised that we had imminent sales*
>
> *They questioned me on why none of the above has materialised?"*

These contemporaneous emails corroborate JS's evidence that (i) as the dates for redeeming the bridging loans drew closer and he began chasing C for progress on the renovations, C rarely answered JS's calls and (ii) when JS did manage to speak to C he just came up with excuses.

275. It is no coincidence that the previous financial advisor, Mr Brown, experienced similar frustrations as JS. On 9 March 2012 Mr Brown emailed C and D1:

> "*Further to our meeting two weeks ago I confirm the following –*
>
> 1. *Bridge £400k agreed and we enclose revised invoice, please see this is paid immediately.*
> 2. *We also had agreement in principle for a higher loan to value bridge, but paperwork not signed and returned.*
> 3. *We have not had the promised information for Lloyds/TSB.*
>
> *It is disappointing that you have not updated Lloyds, particularly as Lloyds were reluctant to support the Jhuttis again following previous dealings.*
>
> *We had to persuade them and you have let us down.*
>
> *I cannot see Lloyds looking at any future deals for the Jhuttis.*
>
> *Obviously we still expect payment of our invoice*."

276. Mr Brown's invoice was not paid and so he issued court proceedings on 25 May 2012 claiming the amount of £4,800 from the defendants, who had signed the engagement letter. However, RLK's attendance note dated 25 June 2012 states that "*Mr Brown claims that he has done a considerable amount of work on behalf of the Jhuttis and has evidence to prove it. Mr Brown's clear gripe is however with Ashok Singh rather than the Jhuttis and that all the delay and difficulties were caused by Ashok Singh*."

277. All of the above corroborates the defendants' evidence that they were finding it increasingly difficult to get hold of C, which when combined with the lack of progress being made on the renovations/refinance was causing them very real concerns.

Increasing financial pressure on the defendants

278. In his own letter dated 30 September 2011 to the Receivers, C described his Original Investors, including D1 and his wife, as being "*from humble backgrounds….and not multi-millionaires that can afford to lose the money that they……loaned me.*" With regard in particular to D1 and his wife, C described them as being in their "*late 50's……..If they were to lose £200,000 this would be devastating for them especially at their age.*"

279. There is overwhelming contemporaneous documentary evidence to corroborate the defendants' evidence that they were under increasing and significant financial pressure:

a. By letters dated 19 July 2012 and 31 August 2012 (x3), Capital wrote to the defendants confirming that the 4 loans were due for redemption on 15 September, 18 October (x2) and 19 October 2012. The total redemption figure was £1,284,380. Those letters were in similar terms whereby Capital expressly reserved "*the option of instruction to our solicitors to take steps to enforce repayment of the loan and other sums payable under the Agreement if the redemption date is not met. The rate of interest will also increase to the amount indicated in the …Agreement."* The default rates of interest under the Loan Facility Agreements were 3% per month being equivalent to almost £40,000 per month across all 4 loans;

b. Having agreed a 4 week extension, Capital wrote to the defendants on 19 September 2012 –

> "*to confirm that your loan…..was due to be redeemed on 15 September 2012.*
>
> *The default interest at a rate of 3% which is £13,260 and a fee of 25 to extend the loan of £8,840 will need to be paid by 21st September 2012*."

c. On 19 September 2012, JS emailed a copy of Capital's letter to C and stated "*This needs to be sorted out ASAP and paid by Friday*";

d. On 21 September 2012, Capital emailed JS requesting an "*update…..on the progress. If we do not get this resolved ASAP we shall be taking the appropriate action. Please advise urgently.*"

e. On 24 September, JS emailed C and the defendants stating that "*the amount of £22,100 needs to be made today.*"

f. On 25 September 2012, WestOne wrote to the defendants to advise them that its loan of £475,750 was due to be repaid on 22 October 2012.

g. On 16 October 2012, WestOne emailed JS to confirm that –

> "*Please ensure that the Jhuttis pay in a minimum of £13,321 by 23rd October and that you advise us of a capital reduction that you mentioned.*
>
> *Should this be received then we would allow the loan to continue for a further month without issuing proceedings with interest accruing at the…rate of 2.85% until 23rd November.*

h. On 17 October 2012, JS forwarded WestOne's email to C and the defendants stating that "*You will see what West One are now looking for if the loan is to be extended from the due date they require the payment listed below to be made*."

i. On 1 November 2012, Capital emailed JS –

> "*This loan was due for redemption on 19th October 2012 and we were told that a partial redemption of £300,000 was to be made across the Jhutti portfolio back in September but so far we haven't received any monies. We haven't received a default payment either on the loan to extend by a month.*
>
> *We agreed to defer the appointment of asset managers/receivers and litigation lawyers which would have added considerable cost to the account on the basis that we would receive the above figure over two weeks ago. Unless this is received within the next 5 working days we will be left with no alternative but to proceeds as per the above.*"

The same day, JS forwarded Capital's email on to C and the defendants.

j. On 6 November 2012, JS emailed the defendants –

> "*As per our telephone conversation I discussed the outstanding payments with Capital last night, they have agreed to accept cleared funds of £15,000 in their bank account by midday tomorrow…and they will not appoint PLA receivers or Asset managers.*
>
> *This payment will be towards the interest accruing on the loans.*
>
> *However, they have again stated that they cannot wait indefinitely as they are a short term lender.*
>
> *The situation needs urgent attention so that the refinancing is completed swiftly.*
>
> *We need to provide them a confirmed date this we as to when all the loans will be repaid, and provide supporting documentation.*
>
> *I await your urgent update on this matter.*"

k. On 20 November 2012, WestOne sent a letter of demand to the defendants –

> *"…the term of your loan expired on the 22nd October 2012, and payment of your liability was due to be repaid, in full, on that date. Payment has not been received as required.*
>
> *The balance outstanding at the date hereof amounts to £475,750 and we hereby demand the immediate payment of this sum. Please note that charges will apply and that interest continues to accrue on your liability at the rate of 2.8% per month…..*
>
> *Please note that in the absence of payment we will have no alternative but to take steps to enforce our security which may include the appointment of Law of Property Act receivers*."

l. On 22 November 2012, WestOne emailed the defendants confirming that provided payments totalling £13,321 were made by 28 November 2012, they would "*stave off Mcintyre Hudson's recovery processes until 20th December*".

280. Even in his written evidence, C acknowledged that the bridging finance needed to be paid off urgently because it "*was extremely expensive and difficult to extend*" with the "*bridging financers…themselves threatening to repossess the properties*" such that the defendants' refinance with Lloyds TSB came as "*a considerable relief*". Indeed, as evidenced by RLK's email dated 6 September 2012, C had specifically asked RLK to review the legal charge and advise upon what would happen in the event of default. RLK confirmed to C that the lender would have the right immediately to "*repossess the secured properties and exercise its power of sale or appoint LPA Receivers…In respect of any sums that are overdue for payment, these will attract the default rate of interest (3% per month), instead of the standard rate of interest (1.75% per month).*"

281. In my judgement, it is unsurprising and entirely understandable that, in light of the correspondence from the bridging companies when combined with the difficulties experienced by the defendants/JS in speaking to C, D1 sought advice from BT. This correspondence also corroborates BT's evidence that he advised D1 that there was a significant risk of the Properties going into receivership, since the defendants had extended the finance beyond the term and the penalties/interest were adding up daily running into thousands of pounds, and the defendants needed to arrange long term refinance as a matter of urgency.

<u>Internal inconsistency</u>

282. There is a striking internal inconsistency in C's case.

283. C claims that D1 suddenly decided to double cross C because D1 was motivated by greed. However, it is also C's case that only a year beforehand the defendants had been willing to loan C some £600,000 to help him in his time of need and rescue the Properties from the Receivers (in addition to the £200,000 that I have found that D1 loaned C in 2007).

284. In an attempt to square that particular circle, C sought for the first time through counsel in cross examination to assert (unsupported by any evidence) that D1's greed was manifested by his willingness to take financial advantage of other people in the local community through operating as an unlicensed money lender. It was also asserted that D1 was guilty of tax evasion by failing to disclose the income earned from this activity. However, those assertions only served to highlight a further internal inconsistency in that it was C's own evidence that the very reasons why D1 was nominated and indeed why D1 agreed to act as representative for the Alleged Buy Back Consortium were because:

a. D1 was and still is a trustee of the local Sikh temple, which put him in an elevated position of trust. He had a good reputation within the Sikh community;

b. C and other members of the Alleged Buy Back Consortium trusted D1;

c. D1 was a successful businessman and had been in business for at least 30 years, and because of that business success he had a good credit rating; and

d. D1 had been strongly motivated in becoming a member of the Alleged Buy Back Consortium by a desire to help others by seeking to protect the interests of the Original Investors.

When did C know that the defendants had taken control of the Properties?

285. RLK's attendance note dated 29 and 30 October, 1 November 2012 records:

> "***29/10/12***
>
> ***ASB receiving call from Harmale Jhutti***
>
> *He wished to dis-instruct this firm. No reasons given but he requires copies of his files.*
>
> ***30/10/12***
>
> *Call from Ashok Singh confirming that this firm was still instructed and that he would ask Harmale to call me to confirm as such. ASB confirming that Jhutti was our client so what this firm had to do was decided by them*.
>
> ***01/11/12***
>
> *ASB calling Harmale Jhutti. He re-confirms that he wishes to dis-instruct this firm. HE instructs us to issue letters to all buyers solicitors confirming as such*."

286. By 1 November 2012, C must have known that RLK had been dis-instructed against his express wishes. Also, on 1 November 2012, JS emailed C in strident terms asking why funds that had been promised to the bridging companies for more than 8 weeks had still not materialised. C has not disclosed any response to that email. On balance, I find that by November 2012, C knew that the defendants had taken control of the Properties. Indeed, on his own written evidence, C accepts that he ceased to be involved in the management of the Properties by December 2012.

Conclusion

287. On balance, and for the above reasons, I find that:

a. The defendants took control of the Properties in October 2012 because –

   i. The defendants had lost confidence and trust in C due to C's continuing failures to renovate the Properties, arrange the bank lending and engage fully with them/JS,

   ii. As a result of C's ongoing failure to arrange the promised bank lending, the defendants were left in an extremely precarious position such that they and their family faced financial ruin as a result of the real and repeated threats of the bridging companies to appoint receivers over the Properties; and

b. By the time that RLK were dis-instructed, C knew that the defendants had taken control of the Properties and thereafter he had no further involvement with the Properties.

Standing back

288. In *Bank St Petersburg PJSC & Anor v Arkhangelsky* the Chancellor warned that a trial judge when determining disputed facts must be careful to avoid adopting a piecemeal and

compartmentalised approach, but rather to stand back and consider the effects and implications of the facts he has found taken in the round.

289. I have found on balance that:

a. C forged the defendants' signatures on the Disputed Agreements and 19 October letters; and

b. The defendants fabricated their story about Shiv Sharma in an attempt to conceal that fact that they knew from the outset that C owned the Properties.

290. However, I repeat that lies in themselves do not necessarily mean that the entirety of the evidence of a witness should be rejected.

291. Other than the 19 October Letter, which was not sent to D1 and which I have found was not signed by D1, there are no other genuine contemporaneous documents expressly referring to the defendants acting as C's representatives. Equally, there is an absence of any contemporaneous documentary evidence regarding C's alleged promises to (i) add ever increasing significant costs/expenses/penalties to his original debt and/or (ii) raise third party funds towards the purchase of the Properties and to be set off against C's debt.

292. C was capable of great acts of kindness as evidenced by him (i) buying and selling single properties for D1 and his wife, and (ii) helping SS and his wife purchase their family home. As a result, C no doubt developed strong bonds of trust and confidence with family and friends. On the strength of and through those relationships, C was able in times of financial need to borrow significant funds. For example, £200,000 borrowed from D1, £125,000 borrowed from ASG and £95,000 borrowed from KSP.

293. I have found that it was C's intention that the Properties be purchased from the Receivers by the defendants acting as his representatives. C was no doubt motivated by a desire to rescue the Properties not only for his own benefit but also for the benefit of JC4C, which required use of the Properties for the provision of care homes/supported living accommodation. As evidenced by third party contemporaneous documents, that intention was communicated to RLK, the Receivers and NatWest. Further, C acted upon that intention by obtaining the Injunction and injecting significant funds totalling some £500,000 towards the costs of purchase. Some £180,000 of those funds were introduced prior to any additional costs/expenses being incurred and so cannot be explained by C having allegedly promised to off-set those funds against his ever increasing debt owed to the defendants.

294. Whilst C intended that the defendants act as his representatives and acted upon his intention, that does not necessarily mean the intention was communicated to and agreed by the defendants. Indeed, I have found that C misled friends and family who provided him with substantial funds about the purpose for which those funds were to be used. This included both Original Investors, such as Mr Nirmal Singh and JSG, as well as members of the Alleged Buy Back Consortium, such as DSM and ASG.

295. The defendants' own conduct was wholly inconsistent with their stated intention that they were purchasing the Properties for the long term benefit both of themselves and their wider family. It is not disputed that C had previously acted on D1's behalf in buying and selling investment properties with little or no involvement by D1, but they were single properties largely bought and sold to realise a quick and modest return. They were a very different proposition to purchasing a multi-million pound property portfolio to be retained long term. Whilst undoubtedly the defendants trusted C, trust alone cannot and does not explain in my judgment their total lack of interest and indeed curiosity in the most basic

elements of this very substantial property transaction. Despite claims that D1 was concerned about the high level of borrowing, he showed absolutely no interest in and was apparently unconcerned about how significant shortfalls on exchange and completion were to be met. Despite claims that D2 was very excited about acquiring this large property portfolio and about learning the business of property development from C, he did not even on his own evidence (i) view internally the vast majority of the Properties prior to them being purchased and in the absence of any surveys being obtained or (ii) think it worthwhile as a novice seeking advice as to how much the units were likely to generate by way of rent, which would have been a vitally important and obvious consideration bearing in mind that the rental income would be required to service the very large debt. Further, when notified in June 2012 that 3 of the Properties were to be sold, the defendants again decided that they need not take any action but could simply leave C to handle matters. I have found that the defendants knew from the outset that the Properties were owned by C. The conduct of the defendants is entirely consistent with them relying upon the fact that C, as owner, knew the Properties well and was going to buy them back from the defendants such that they would only be holding the Properties temporarily and not as a long term investment.

296. In his written evidence, ASG stated that it is "*normal practice in our community to lend each other money..and help each other out with business dealings*." Such a practice, routed as it is in concepts of kinship and duty, cannot be rationalised or judged by reference to business common sense. Indeed, the defendants themselves borrowed significant sums interest free and without those loans being recorded in writing from family, friends and associates to assist with the cost of the renovations and paying sums due to the bridging companies. In his written evidence D2 stated that upon completing the refinance with Lloyds TSB "*My father and I were…quite emotional…We then spent the evening at the temple. We were so grateful for everyone's help. It could not have happened without all of the people who helped us throughout November 2012 and December 2012.*"

297. Standing back, and on balance, I find that there was an initial oral agreement that:

a. The defendants purchase the Properties as C's nominees/representatives and sell them back to C within a short period of time (i) at no cost to the defendants and (ii) upon repayment to D1 of the original £200,000 loan;

b. D1 contribute towards the cost of purchase the sum of £400,000 drawn down from his NatWest facility and in the context of representations made by C that the Properties were (i) worth considerably more than the prices agreed by the Receivers and (ii) in generally good condition although some renovations were required;

c. C contribute significant funds raised from family and friends;

d. The balance of the funding be raised by way of bank finance; and

e. C make all the necessary arrangements including completing the renovations and arranging the required bank finance.

298. However, as the time for redeeming the bridging loans fast approached, the defendants began to lose trust and faith in C as a result of (i) his continuing failure to raise the bank finance required to pay off the bridging loans and (ii) his failure to progress the renovations of the Properties, which renovations were much more extensive than C had initially represented and were intrinsically linked to the ability to raise bank finance secured against the Properties. At the same time, C became increasingly more difficult to

contact, which was his habit when his schemes ran into financial difficulties. When the first bridging loan fell in and the defendants were required to pay the sum of £22,100 to Capital to secure a 1 month extension, the defendants finally decided that they had to take matters into their own hands by seeking bank finance direct rather than continuing to rely upon C. I have found that in doing so the defendants were not motivated by greed but rather self-preservation. I have further found that the defendants were then forced urgently to raise substantial funds to (i) undertake the renovations required to secure the loan from Lloyds TSB (ii) pay additional monies to the bridging companies in order to buy more time to complete those renovations and avoid receivers being appointed in the meantime and (iii) pay the shortfall to redeem the bridging loans once the bank finance had been secured.

299. Despite C knowing by November 2012 that the defendants had taken control of the Properties, there is a total absence of any emails/letters sent then or indeed subsequently by C to the defendants querying/challenging why he had been excluded from the Properties. It was only years later after the defendants had been able to stabilise the position that C issued these proceedings and without engaging in any pre-action correspondence. The only rational explanation for this long inaction on the part of C is that:

a. C accepted that he was at fault for causing the serious predicament that the defendants found themselves in and, as on previous occasions when he had let people down, he then went missing; and/or

b. C came to the realisation that he would not be able to refinance the Properties himself in order to buy them back from the defendants and even if the defendants were able to avoid the bridging companies putting them into receivership. C's credit rating would undoubtedly have been adversely affected by the fact that all 5 of his property portfolios had been put into receivership by April 2012. Even AH accepted in his oral evidence that those receiverships would have been flagged on any application for credit, which would have made a big difference to C's creditworthiness. C appeared to accept that his poor credit rating seriously undermined his case, since he then claimed for the first time in his oral evidence that, in the alternative, he would have raised the necessary funds by establishing a second consortium. In essence, C would have been borrowing money from friends/family to pay back money already borrowed from friends/family to pay back money lent to/invested with C by friends/family. I agree with the submission made on behalf of the defendants that this was complete financial fantasy and not for the first time. By way of further examples, whilst all 5 of C's property portfolios had been put into receivership by April 2012:

   i. on 7 February 2012, C emailed Shaun Kidson at Lloyds TSB to apologise for the delay in responding "*but we are tendering for about £75 million pounds worth of contracts with 11 different councils at the moment*." I remind myself that JC4C owned no properties and was reliant upon C's properties to service any such contracts,

   ii. on 5 June 2012, C emailed DSM to explain why he had not responded to earlier emails, but "*I have not had any time for the last 6 weeks, its been really hectic. You know they say the recession is the best time to start a new business and I am starting up a couple of new ventures, there's just so much money to be made at the moment*." I remind myself that this email was sent at the very time that C was apparently struggling to arrange bank finance for the defendants to pay off the bridging companies.

Application of the facts as found to the law

Specific Performance

300. Having found that the Sale Agreement is not a genuine document, the claim for specific performance must fail.

Constructive trust

301. Counsel for the parties are agreed that the correct legal test is as set out by the Court of Appeal in ***Matchmove Limited v Dowding and Church*** [2016] EWCA Civ 1233 in that:

> "[29*]…..a common intention constructive trust could arise where (i) there was an express agreement between parties as to the ownership of property (ii) which was relied upon by the claimant (iii) to his or her detriment such that (iv) it would be unconscionable for the defendant to deny the claimant's ownership of the property*."

302. In my judgment, and for the following reasons, I can see (i) nothing inequitable or unconscionable in the defendants retaining the Properties for their own benefit and (ii) no justification for regarding the defendants as bound by any interest to which the agreement gave rise:

a. C failed to keep to his side of the bargain by not progressing the renovations and arranging the bank finance as he promised, which left the defendants and their family horribly financially exposed having been required to complete the purchases with very substantial bridging loans;

b. After the defendants had agreed to assist C in his time of need by buying the Properties from the Receivers, C then effectively abandoned the defendants in their own time of need as the bridging loans fell in and they themselves now faced the very real and imminent prospect of (i) receivers again being appointed over the Properties and (ii) the bridging companies seeking to recover any shortfalls from the defendants personally following the sale of the Properties at auction;

c. The defendants were left in an invidious position and they had no other choice but to take matters into their own hands in a desperate attempt to protect themselves and their family;

d. Upon taking control of the Properties, the defendants were forced to raise/expend significant funds urgently to renovate the Properties and to pay monies due to the bridging companies by way of penalties/redemptions; and

e. Only after the defendants have spent considerable time, money and energy stabilising the position, C now seeks to uphold an arrangement that he himself departed from many years ago leaving the defendants to resolve a financial crisis not of their making.

Overall conclusion

303. C's claims are dismissed.