



Neutral Citation Number: [2022] EWHC 3206 (Ch)

Case No: BL-2021-001669

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
Date: 21/12/2022

Before:

MASTER CLARK

Between:

HOPE CAPITAL 2 LIMITED

Claimant

- and -

MR STEPHEN MICHAEL JONES

Defendant

Carly Sandbach (instructed by **Prosperity Law LLP**) for the **Claimant**
Damian Falkowski (instructed by **Anton Van Dellen**) for the **Defendant**

Hearing date: 18 November 2022

Approved Judgment

I direct that this approved judgment, sent to the parties by email at 10am on 21 December 2022, shall be deemed to be handed down on that date, and copies of this version as handed down may be treated as authentic.

.....

Master Clark:

Application

1. This is my judgment on the application of the claimant, Hope Capital 2 Limited, by notice dated 10 September 2021 (“the application”), seeking
 - (1) summary judgment;
 - (2) an order striking out the Defence.

Parties and the claim

2. The claimant is a specialist provider of business loans. The defendant was at all material times a director of a company called Sphere Property 2 Limited (“the company”). His co-director was Alexander Collier.
3. The company owned the freehold properties known as:
 - (1) 18 Balcombe Road, Poole BH13 6DY (Title Number DT261185); and
 - (2) 18a Balcombe Road, Poole BH13 6DY (Title Number DT409305);(together, “the Properties”).
4. In October 2018, the claimant entered into a suite of agreements (“the Agreements”) including a loan agreement (“the loan agreement”) with the company under which it provided a loan of £2.1 million (“the loan”) to the company, secured on the Properties. In support of the loan, the defendant and Mr Collier entered into a Deed of Guarantee and Indemnity dated 29 October 2018 (“the Guarantee”).
5. The following facts are common ground:
 - (1) The loan fell due on 29 April 2019;
 - (2) The company failed to make payment of any of the loan on the due date;
 - (3) The amount of the loan has been reduced by the sale of the Properties by LPA receivers appointed for that purpose;
 - (4) Substantial sums remain outstanding;
 - (5) The claimant has demanded payment from the defendant under the Guarantee;
 - (6) The defendant has failed to pay.
6. On 20 January 2020 another company in which Mr Collier was (and remains) the sole director, Sphere Property 3 Ltd (“Sphere 3”), entered into a second charge (“the second Charge”) in favour of the claimant in respect of 20 Balcombe Road, Poole BH13 6DY, in order to provide the claimant with additional security in respect of the company’s indebtedness to it. Shortly afterwards, on 15 May 2020, LPA Receivers were also appointed over 20 Balcombe Road, who sold it. The net proceeds of sale were less than the debt owed to the first charge holder, and the claimant did not receive anything in respect of the second charge.
7. The claim is for the balance of the loan due. Of the defences raised by the defendant, it is only necessary to consider those remaining after the order dated 6 July 2022 of Deputy Master Glover striking out parts of the Defence. The defences to be considered fall into two categories: remaining defences raised in the original Defence as filed, and defences raised in the proposed amended Defence.

Defences in the Defence as pleaded

8. The main remaining defence in the Defence can be summarised as follows:

- (1) The defendant relied upon a representation made by the claimant that sums would only be advanced under the loan agreement if an independent valuation report in respect of the Properties was obtained by the claimant: ¶¶12, 16 Defence;
 - (2) That representation was false as the claimant did not commission an independent valuation report, but instead relied upon a valuation prepared by Mr Collier which had been deliberately inflated: ¶18 Defence;
 - (3) The defendant relied upon the accuracy of the valuation obtained: ¶17 Defence;
 - (4) Had an independent valuation report been commissioned by the claimant, the valuations of the Properties would have been substantially lower and the defendant would not have entered into the Guarantee: ¶19 Defence.
9. The other defences or assertions put forward by the defendant can be summarised as follows:
- (1) The defendant had no involvement in the negotiations between the claimant and the company which led to the Agreements, and was at all times completely reliant upon information provided to him by Mr Collier. The defendant reasonably believed that Mr Collier was providing information to the defendant which emanated from the claimant, with the express consent of the claimant to Mr Collier acting as the claimant’s agent: ¶14 Defence;
 - (2) Mr Collier made false representations to the defendant as to the financial viability of the company and as to the defendant having a shareholding in that company: ¶¶20-21 Defence;
 - (3) The claimant and Mr Collier entered into a new loan agreement which the defendant was informed replaced the loan agreement: ¶23 Defence;
 - (4) The defendant would not have entered into the Guarantee without the undue influence of the claimant and/or Mr Collier acting as the claimant’s agent: ¶28 Defence.

Defence in the proposed amended Defence

10. The defendant has applied to amend his Defence (see para 15 below). The proposed amended Defence includes one further defence: that a company called NCI Resources Limited (“NCI”) made misrepresentations to him in reliance on which he entered into the Guarantee, so that he is entitled to rescind the Guarantee, alternatively to damages for misrepresentation and/or breach of duty, which are to be set off against the sum claimed by the claimant.

Procedural chronology

11. The claim was issued on 29 April 2021. The Defence was filed on 25 June 2021. The application was issued on 10 September 2021. It was supported by a witness statement dated 17 August 2021 (“Sealey 1”) of Robert Sealey, the Chief Executive Officer of the claimant.
12. The defendant filed and served his evidence in opposition to the application (“Jones 1”) on 7 February 2022.
13. The first hearing of the application was listed on 14 February 2022, but was vacated (because the claimant’s counsel had Covid). The first effective hearing was before Deputy Master Glover on 6 July 2022. At that hearing the defendant’s counsel made an oral application to adjourn the hearing to enable him (as recorded in the order) to seek permission to amend his Defence in order to incorporate the allegations contained in

paragraphs 45 and 46 of Jones 1 (discussed in paras 41 to 54 below), and to join additional parties.

14. On 20 July 2022 the defendant served upon the claimant a draft amended Defence. No application to amend the Defence in accordance with the draft was made at that stage.
15. On 27 July 2022 the defendant issued an application notice seeking to join 4 additional parties, and bring additional claims against them. The draft statement of case attached to the application notice included the proposed amendments in the draft amended Defence served on 20 July 2022; and the claimant was a respondent to the application. However, the application did not formally seek permission to amend the Defence at all. That application was not listed (and is therefore not before me today), apparently because the defendant did not respond to the court's directions that he file the parties' agreed dates and agreed time estimates for the hearing and pre-reading. It is unclear whether it has been served on the proposed additional parties.
16. On 11 November 2022, 7 days before the hearing before me, the defendant issued a further application seeking only to amend the Defence (and not to add additional parties); and to add a counterclaim alleging misrepresentation and/or breach of duty, and seeking rescission of the Guarantee, alternatively damages. The proposed amended Defence and Counterclaim is identical to that in the draft attached to the July application notice, albeit permission was not formally sought at that stage.

Legal principles

17. CPR 3.4(2) provides, so far as relevant:

“3.4— Power to strike out a statement of case

- (2) The court may strike out a statement of case if it appears to the court—
 - (a) that the statement of case discloses no reasonable grounds for bringing ...the claim;
 - (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;”

18. CPR 24.2 provides, so far as relevant:

“The court may give summary judgment against ... a defendant on the whole of a claim or on a particular issue if –

- (a) it considers that –
 - ...
 - (ii) that defendant has no real prospect of successfully defending the claim or issue; and
- (b) there is no other compelling reason why the case or issue should be disposed of at a trial.”

19. The principles to be applied on applications for summary judgment are well established. They were summarised by Lewison J, as he then was, in *Easyair Ltd v Opal Telecom Limited* [2009] EWHC 339 (Ch), in a formulation approved in a number of subsequent cases at appellate level, including *AC Ward & Sons v Catlin (Five) Limited* [2009] EWCA Civ 1098 and *Mellor v Partridge* [2013] EWCA Civ 477. It is unnecessary to set them out.

20. As to striking out for no reasonable grounds, as noted in the White Book (para 3.4.21), there is a considerable overlap between the court's powers under CPR Part 24 and r.3.4; and the court has a discretion to treat an application made under CPR 3.4 (2)(a) as if it were an application under Part 24. In this case, there is no practical distinction in the test to be applied.
21. It was common ground that in determining the application for summary judgment, the court may take into account the draft amended Defence (and its prospects of success): see *Bhamani v Sattar* [2021] EWCA Civ 243 at [60] and [61].

Discussion and conclusions

Alleged misrepresentation by claimant that loan was contingent on independent valuation report

22. This can be dealt with quite shortly. Paragraph 12 of the Defence alleges that

“On 25 September 2018, the Defendant attended a video call with [the claimant] in which the broad terms of the [Guarantee] were explained. [The claimant] stated that the loan was contingent upon an independent valuation report and other due diligence being completed satisfactorily. The Defendant relied upon this representation and reasonably believed that [the claimant] would commission and obtain its own independent report.”
23. The claimant recorded this video call, and a transcript of it is in evidence before me. The participants in the call were the defendant, Mr Collier and representatives of the claimant (Sarah Cropper and Laura Carr). The defendant does not challenge the accuracy of the transcript. In the course of the hearing, his counsel conceded that he could not show me any passage in the transcript containing the representation alleged in paragraph 12 of the Defence.
24. In these circumstances, it is not necessary to consider whether the claimant did in fact commission and obtain its own independent report. However, Mr Sealey's unchallenged evidence is that the claimant did arrange for an independent valuation to be carried out for it by the VAS Panel, an independent organisation that specialises in obtaining loan security valuation surveys on behalf of lenders.
25. The Valuation Reports' Terms of Instruction make clear the following (emphasis added):

“We confirm that this Report has been prepared in accordance with the RICS Valuation – Professional Standards incorporating the IVSC International Valuation Standards, January 2014 Edition (the "Manual")...As far as we are aware no conflicts of interest, either personal or in relation to Gully Howard Ltd (the Company), exist. **The Company is an External Valuer as defined in the Manual and, unless stated to the contrary, is deemed to be an "Independent Valuer" with no other current or presently foreseeable fee earning relationship concerning the Property and/or Business apart from the valuation fee**’.

26. A valuation report dated 27 April 2018 in respect of the Properties was prepared by Mr Jamie Whittle (a Chartered Surveyor and RICS Registered Valuer) of Gully Howard Chartered Surveyors; and a second updating valuation report dated 18 September 2018 was also prepared by him.
27. The defendant has exhibited copies of some Facebook pages seeming to show that Mr Whittle and Mr Collier had some personal connection. But there is no evidence that the claimant knew of this connection, and the defendant's counsel accepted that no such knowledge could be imputed to the claimant. The existence if any of such a connection does not in my judgment mean that the valuations obtained by the claimant were, to its knowledge, not independent.

Representations by Mr Collier as agent for the claimant

28. Paragraph 14 of the Defence alleges:

“The Defendant had no involvement in the arrangement and negotiations of the agreements between [the claimant] and [the company]. He was at all times completely reliant upon the information that was provided to him. The source of that information was Mr Collier. In so far as Mr Collier provided the Defendant with information that emanated from [the claimant] the Defendant reasonably believed that he was doing so with the express consent of [the claimant] and that he was acting as their agent. Accordingly, the representations made to the Defendant by Mr Collier were made either as in his role as a representative of [the company], or as an agent of the Claimant, or both.”

29. The first sentence of paragraph 14 is plainly untrue. As is evidenced in Sealey 1:
 - (1) the defendant was involved in the negotiations leading to the Agreements;
 - (2) the defendant was in attendance at all relevant meetings;
 - (3) the defendant was present in all relevant calls with the claimant;
 - (4) the transcript of the video call on 25 September 2018 shows that the defendant was informed of the terms of the loan agreement, including the loan amount, the term of the loan and the interest rates during the term of the loan and upon default: in addition, he was invited to raise any queries he had in respect of them, to which he replied ‘no, I think we’re good’;
 - (5) following the call, the defendant provided the various documentation required to complete the loan agreement, including his personal assets and liabilities statement;
 - (6) the defendant received independent legal advice in connection with the Guarantee.
30. As to whether Mr Collier had actual authority to act on behalf of the claimant, there is no evidence to support that allegation, and counsel did not press it. As to whether Mr Collier had ostensible authority to act on the claimant's behalf, the defendant's counsel accepted that the claimant did nothing to clothe Mr Collier with its authority.
31. It is not therefore necessary to consider the representations said to have been made by Mr Collier and whether they were true.

32. In any event, the defendant represented and warranted (pursuant to clause 6.1.3) that he was not entering into the Guarantee ‘*in reliance upon*’, nor that he had been ‘*induced to enter*’ the same ‘*...by any representation, warranty or undertaking made by or on behalf of the Lender (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee*’.
33. This is sufficient to prevent him from relying on any misrepresentations made by Mr Collier, even if, contrary to my conclusion above, they were made on behalf of the claimant.

New loan agreement

34. Paragraph 23 of the Defence states:

“The Claimant and Mr Collier agreed a new loan agreement which the Defendant was informed would replace the Loan Agreement. The Defendant is unaware of the details of this loan and cannot therefore plead it. Neither the Claimant nor Mr Collier provided the Defendant with a copy of the new loan agreement, and at all times, it was the Defendant’s reasonable belief that the liability of [the Company] had been extinguished by this new loan and that accordingly that his obligations pursuant to the Deed of Guarantee and Indemnity had been extinguished.”

35. As to this, Mr Sealey’s evidence at [61] is that there was no new loan agreement, and the defendant has not adduced any evidence to the contrary.
36. The defendant’s counsel submitted that the company would have been a party to an agreement for Sphere 3 to provide collateral security, in the form of the second charge over 20 Balcombe Road. Sphere 3 would, he said, only have provided collateral security if the claimant and the company had agreed that, in return for the additional security, the claimant would hold off enforcing its rights against the company. That agreement, he said, was a variation of the loan agreement, and the effect of that variation was to discharge the defendant from his obligations under it.
37. None of this is pleaded. The Defence does not refer to Sphere 3 or the second charge, nor does the proposed amended Defence, even though the granting of the second charge is set out in Sealey 1, so that the defendant has been aware of it for 14 months.
38. In any event, the Guarantee contains, at clause 3.2, provisions that the guarantors’ liability shall not be reduced, discharged or otherwise adversely affected by:

“3.2.2 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Lender may now or after the date of this guarantee have from or against any of the Borrower and any other person in connection with the Guaranteed Obligations; or

3.2.3 any act or omission by the Lender or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Borrower or any other person;

- 3.2.4 any termination, amendment, variation, novation, replacement or supplement of or to any of the Guaranteed Obligations ... ; or
- 3.2.5 any grant of time, indulgence, waiver or concession to the Borrower or any other person; or
- ...
- 3.2.10 any act or omission which would not have discharged or affected the liability of the Guarantors had they been a principal debtor instead of a guarantor or indemnifier or by anything done or omitted to be done by any person which, but for this provision, might operate to exonerate or discharge the Guarantors or otherwise reduce or extinguish their liability under this guarantee.”

“Guaranteed Obligations” is defined as “all monies, debts and liabilities of any nature from time to time due, owing or incurred by the Borrower to the Lender ...”

- 39. Each of the above provisions, and particularly, clause 3.2.10 is sufficient to prevent the agreement postulated by the defendant’s counsel from discharging the defendant from his obligations under the Guarantee.

Undue influence

- 40. Finally, as the claimant’s counsel submitted, the defendant’s bare assertion that he would not have entered into the Guarantee without the undue influence of the claimant and/or Mr Collier (¶28 Defence) is misconceived when no undue influence by the claimant is even alleged, either in the Defence or elsewhere.

Proposed amended Defence: misrepresentation by NCI

- 41. The genesis of this defence is as follows. The Defence in its current form does not refer to NCI at all.
- 42. Sealey 1 (in support of the application) at paragraph 27, under the heading “Attendances on Mr Jones regarding the loan application”, states:

“on 19 September 2018, a representative of NCI Resources Limited (“NCI”) attended an in-person interview with Mr Collier and Mr Jones, which took place at 18 Balcombe Road. NCI is a third party agency engaged by [the claimant] for the purposes of undertaking pre-completion reports for proposed loan facilities.”

- 43. Paragraphs 45 and 46 of Jones 1 (in opposition to the application) states:

“45. In reply to paragraph 27 of the Claimant’s witness statement, the Claimant claims that purpose of the visit by the NCI representative was to ‘*undertake pre-completion reports for proposed loan facilities.*’ This is intentionally vague and not correct. **The NCI representative explained to me whilst on site that the purpose of the visit was to confirm that the buildings existed and were in good order as described in accordance with the valuation.** I was instructed to attend the onsite visit from the NCI representative at very short notice and took time off work the day of the visit in order to drive to Bournemouth. I returned to London immediately

having met Mr Collier and the representative of NCI, Mr Graeme Lambert, having met for less than 30 minutes.

46. In reply to paragraph 27, during the meeting with the NCI representative Mr Lambert, I was assured by Mr Collier and Mr Lambert, that the valuations of the properties were in excess of the loan sought and fell well within the 75% LTV threshold for lending. **I left the meeting with the impression that the representative of NCI was comfortable with the valuation reports supplied by the Claimant and was comfortable with the state of the houses and that the houses were indeed valued in accordance with the valuation reports produced by Mr Whittle for the Claimant.**”
(emphasis as in original)

44. In the proposed amended Defence, this is expanded considerably to the following:

“Breach of duty

31. On or about 19th September 2018, the Defendant was requested by Mr Collier, at short notice, to attend an on-site meeting at Balcombe Road, to meet a representative of NCI Resources Ltd (“NCI”) and Mr Collier. NCI was at all material times the Claimant’s agent. NCI is described by the Chief Executive Officer of the Claimant, in a witness statement dated 17 August 2021, as being “an agency engaged by [the Claimant] for the purposes of undertaking pre-completion reports for proposed loan facilities”. The Defendant was also asked to bring identification to the meeting, which he did. The Defendant drove to Balcombe Road and met there with Mr Graeme Lambert of NCI and Mr Collier. Mr Lambert explained to the Defendant that the purpose of Mr Lambert’s visit was to perform due diligence on the Properties; to ensure that the Properties were valued in accordance with the valuation report which was required for the loan facility; and that the Properties were valued sufficiently to meet the Loan-To-Value (“LTV”) limits imposed by the Claimant for the proposed loan facility to be able to proceed. Mr Lambert also inspected the Properties.
32. Having inspected the Properties, Mr Lambert, (on behalf NCI as agent for Claimant), made the following representations and statements to the Defendant:
- a. He expressed his opinion to the Defendant as to how “impressive” the Properties were;
 - b. He said to the Defendant that he had spent some time that morning driving around the area and said that he was satisfied as to the value of the Properties having seen comparable high value properties locally; by this the Defendant reasonably understood Mr Lambert to be referring to the properties mentioned in the valuation report, namely 6 Brudenell Avenue, 6 Withingham Road, 104 Canford Cliffs Road and Lakeview Road (“**the Similar Properties**”);
 - c. That he was there to do due diligence and to verify that the Properties existed;
 - d. That the Properties were in “good order”;

- e. That the Properties constituted sufficient collateral for the Proposed loan;
 - f. That the Properties were worth what had been stated in the valuation report;
 - g. “*Yes, it is*” in reply to a query from the Defendant who had asked words to the effect of “*So is everything ok with your due diligence?*”.”
45. The claimant has filed and served evidence responding to these allegations by Mr Sealey and Mr Graeme Lambert, the NCI representative. The effect of Mr Sealey’s 3rd witness statement dated 17 August 2022 (“Sealey 3”) is that:
- (1) NCI was not engaged to conduct valuations of the Properties, that task having been carried out by Gully Howard;
 - (2) the claimant does not release valuation reports to prospective borrowers before entering into loan agreements;
 - (3) he is not aware of the valuation reports having been disclosed before the commencement of the claim by the claimant to the defendant.
46. Mr Lambert in his witness statement dated 17 August 2022 (“Lambert 1”) gives the following evidence:
- (1) he is a self-employed Field Agent for NCI;
 - (2) he has no higher education qualifications, and no qualifications in or experience in valuing property;
 - (3) the role of NCI when providing a pre-completion report is to undertake due diligence on the applicant, and inspect the property offered as security for the loan;
 - (4) the inspection of the property is not carried out for the purpose of preparing a valuation report or to otherwise opine on the value of the property; and there is a disclaimer within NCI’s report to this effect;
 - (5) NCI provides its clients (including the claimant) with a standard instruction form and this does not request a copy or details of any valuation reports;
 - (6) NCI has never carried out a valuation of property for the claimant;
 - (7) having undertaken a search of his records, there is no trace of his having received a copy of the valuation report prepared in respect of the Properties.
47. Mr Lambert also denies having made the statements attributed to him in paras 45 and 4 of Jones 1 and para 31 of the Defence, and denies making any statements relating to the valuation or value of the Properties. Mr Lambert exhibits the instruction request dated 13 September 2018 from the claimant in respect of both of the Properties – this does not state that a valuation report is provided. I note, however, that:
- (1) he does not exhibit his report in respect of 18A Balcombe Road;
 - (2) his report in respect of 18A Balcombe Road refers both to the applicant’s estimated valuation and the local agent’s estimated valuation, albeit accompanied by “Note: NCI Resources is not qualified to value property, and these figures are indicative only.”
48. Although the order of 6 July 2022 contained express provision for the defendant to file evidence responding to the claimant’s evidence, he has not done so. His application notice dated 11 November 2022 includes the following:

“Mr Graeme Lambert’s witness statement is at odds with the recordings of the meeting which the Defendant recorded at the time. The witness statements regarding the valuations are at odds with the valuation of Mr Alistair Collier, Mr Collier’s brother, who will be summonsed to be a witness at trial.”

49. The defendant does not exhibit a transcript of the recording he refers to and there is no witness statement in evidence by Alistair Collier. There was no evidence before me as to why this was, even though Sealey 3 and Lambert 1 were served on 17 August 2022.
50. The factual basis of the proposed defence of misrepresentation has many of the hallmarks of being unlikely to be accepted at trial:
 - (1) none of the matters alleged in support of this defence are set out in the Defence, when if true, they were within the defendant’s knowledge at the time the Defence was prepared;
 - (2) the misrepresentation defence was only raised after the claimant referred to NCI in its evidence in support of the application;
 - (3) the factual matters alleged in the proposed amended Defence go far beyond those stated in paras 45 and 46 of Jones 1;
 - (4) the allegations are unsupported by the contemporaneous documentation disclosed by NCI;
 - (5) the evidence said by the defendant to support the allegations has not been adduced by him, although he has had sufficient opportunity to do so;
 - (6) many key factual allegations made by the defendant in his Defence have either been struck out or withdrawn:
 - (i) the Guarantee was procured by undue influence of the claimant: ¶3 Defence;
 - (ii) in the video call of 25 September 2018 the claimant stated that the loan was contingent upon an independent valuation report and other due diligence being completed satisfactorily: ¶12 Defence;
 - (iii) the defendant was given insufficient time to consider the documents and arrange for appropriate and detailed legal advice: ¶13 Defence;
 - (iv) the defendant had no involvement in the arrangement and negotiations of the agreements between the claimant and the company: ¶14 Defence;
 - (v) the defendant was at all times completely reliant upon the information that was provided to him by Mr Collier: ¶14 Defence;
 - (vi) the Guarantee
 - (a) does not contain a valid address or postcode;
 - (b) is not signed by all parties;
 - (c) is not witnessed as a deed;
 - (d) does not have signatures on all pages;
 - (e) is written in Mr Collier’s handwriting.¶25 Defence
51. The changing nature of the defendant’s case and his abandonment or inability to support factual allegations raised indicates that his evidence is unlikely to be accepted at trial.
52. However, it is unnecessary for me to decide whether his evidence should be rejected summarily. The proposed defence faces a more fundamental difficulty. The only basis on which the claimant is alleged to be liable for NCI’s statements is that NCI was its

agent. This is plainly insufficient. Article 90 in *Bowstead & Reynolds on Agency* (22nd edn) sets out the position:

- “(2) A principal is liable in tort for loss or injury caused by an agent, whether or not an employee, and if not an employee, whether or not the agent can be called an independent contractor, in the following cases:
- (a) if the wrongful act was specifically instigated, authorised or ratified by the principal.
 - (b) (*semble*) in the case of a statement made in the course of representing the principal within the actual or apparent authority of the agent
 - (c) where the principal can be taken to have assumed a responsibility for the actions of the agent.”

53. The proposed Defence does not (and could not on the facts set out by the defendant) allege that:
- (1) the claimant specifically instigated, authorised or ratified the statements said to have been made by Mr Lambert;
 - (2) the making of the statements was within the actual or apparent authority of Mr Lambert as agent for the claimant;
 - (3) the claimant can be taken to have assumed a responsibility for Mr Lambert’s actions in making the statements.

For this reason, in my judgment, the proposed defence discloses no discloses no reasonable grounds for defending the claim, and has no real prospect of success.

54. In addition, the claimant is entitled to rely upon clause 6.1.3 (set out at para 32 above) equally in relation to any representations made by Mr Lambert.

Conclusions

55. For these reasons set out above, therefore, I will grant summary judgment in favour of the claimant against the defendant.