Neutral Citation Number: [2024] EWHC 3367 (Ch)

Case No: BL-2021-002294

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: 23rd December 2024

Before :

ANDREW DE MESTRE KC (SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

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Between :

VALERIO MANCINI — **Claimant**

- and -

AMAR HAMI — **Defendant**

- -
- -

Mr Thomas Graham (on direct access) for the Claimant
The Defendant in person

Hearing dates: 4-8 November 2024

- -

Andrew de Mestre KC (sitting as a Deputy Judge of the High Court):

A Introduction

1. This is the judgment on the trial of proceedings brought by the Claimant, Valerio Mancini ("**Mr Mancini**"), an Italian national, against the Defendant, Amar Hami ("**Mr Hami**"), a dual Algerian and French national. The proceedings concern an agreement in writing entitled "*Limited Recourse Loan Contract to 750 preference shares issued by Sardo Ltd*" which was entered into between the parties in London on 11 June 2009 ("**the Loan Agreement**").

2. At the trial Mr Mancini, who had solicitors when he issued the claim in December 2021 but has acted as a litigant in person for the majority of the proceedings, was represented by Mr Graham, counsel instructed on a direct access basis. Mr Graham had also appeared on behalf of Mr Mancini at some of the earlier hearings in the proceedings, including a jurisdiction challenge in November 2022 and the PTR which I heard on 8 October 2024. Mr Hami represented himself at the trial although he had had the assistance of solicitors and counsel at earlier stages of the proceedings including for the preparation of his Amended Defence, and his solicitors remained on the record until 26 March 2024.

3. The opening statements and witness evidence at the trial were heard in person with the closing submissions being heard remotely at Mr Hami's request in order to accommodate his childcare needs. I am grateful to the parties for their cooperative approach which facilitated the smooth running of the trial in this regard.

B Mr Mancini's claims in summary

4. It was common ground that the purpose of the Loan Agreement was for Mr Mancini to lend a sum to Mr Hami in connection with the purchase by Mr Hami of 800 redeemable preference shares issued by Sardo Limited ("**Sardo**"), a company incorporated in Jersey.

5. Mr Mancini's case was that:
   5.1. Mr Hami was obliged under the Loan Agreement (a) to pay to him sums which Mr Hami received between June 2009 and March 2010 in respect of 750 of the preference shares (those 750 shares being referred to as "**the Shares**") less any withholding taxes or levies and (b) to transfer the Shares to him in March 2010. Mr Hami was entitled to retain the other 50 preference shares which he had paid for himself and any dividends or principal repayments on those shares.

   5.2. Although Mr Hami made substantial payments to Mr Mancini between 2010 and 2021, he failed both to transfer the Shares to Mr Mancini in March 2010 (or at all) and to make payments totalling the full amount of the distributions received by Mr Hami in respect to the Shares. The alleged shortfall between the relevant amounts received by Mr Hami and his payments to Mr Mancini was identified in a schedule to Mr Graham's skeleton argument, the material parts of which are set out below. There was a particular dispute at trial about the payment in August 2011 (the row numbered 14 in the table).

	Date distribution received by/payment made by Mr Hami	Amount paid by Sardo to Mr Hami in respect of 800 preference shares (€)	Amount due from Mr Hami to Mr Mancini in respect of the Shares (€)	Amount paid by Mr Hami to Mr Mancini
1	6-Aug-09	123,409.87	115,696.75	
2	6-Nov-09	116,164.29	108,904.02	
3	5-Feb-10	122,075.20	114,445.50	
4	19-Mar-10			(€99,972)
5	6-May-10	121,670.17	114,065.78	
6	11-May-10			(€99,972)
7	6-Aug-10	121,933.64	114,312.79	
8	5-Nov-10	114,537.31	107,378.73	
9	29-Dec-10			(€100,000)
10	7-Feb-11	126,766.01	118,843.13	
11	31-Jan-11			(€100,000)
12	11-May-11	117,007.59	109,694.62	
13	29-Jun-11			(€100,000)
14	6-Aug-11	124,719.00	116,924.06	
15	7-Nov-11	120,068.88	112,564.58	
16	6-Feb-12	123,826.44	116,087.29	
17	4-May-12	122,634.77	114,970.10	
18	2-Aug-12	122,067.11	114,437.92	
19	6-Nov-12	114,656.41	107,490.38	
20	7-Feb-13	122,343.35	114,696.89	
21	8-May-13	119,448.00	111,982.50	
22	9-Aug-13	121,029.71	113,465.35	
23	6-Nov-13	118,724.38	111,304.11	
24	20-Dec-13			(€248,263)
25	6-Feb-14	122,404.69	114,754.40	
26	18-Jun-14 25-Jul-14	119,601.86 + 286,000.00	380,251.74	
27	6-Aug-14	45,922.97	43,052.78	
28	6-Nov-14	40,052.42	37,549.14	
29	9-Feb-15	46,090.04	43,209.41	
30	7-May-15	44,757.55	41,960.20	
31	6-Aug-15	45,468.22	42,626.46	
32	6-Nov-15	45,090.19	42,272.05	
33	25-Jan-16	544,923.47	510,865.75	
34	02-Mar-16			(€1,000,000)
35	01-Dec-16			(€600,000)
36	7-Jun-21			(€2,000)
37	29-Jun-21			(€4,000)
38	30-Jun-21			(€4,000)
39	5-Jul-21			(€11,640)
40	8-Jul-21			(€29,052)
	Total	**€3,513,393.54**	**€3,293,806.44**	**€2,398,899**
	Shortfall		***€894,907.44***	

5.3 The Shares were retained by Mr Hami until they were redeemed in accordance with their terms in two tranches – in July 2014 and January 2016. As such

they could no longer be transferred to Mr Mancini and, accordingly, it was said that Mr Hami was liable:

(i) In debt for the shortfall of €894,907.44 referred to in the final line of the table above; and/or

(ii) For breach of the Loan Agreement, the damages being quantified in the amount of the shortfall; and/or

(iii) To account to Mr Mancini as an express, alternatively constructive, trustee of the Shares and their proceeds, the relevant relief being either to trace into Shares and their proceeds or equitable compensation for breach of trust.

6. Until shortly before the trial Mr Mancini's claim was €600,000 higher but the parties agreed in October 2024 that it should be reduced by reference to €600,000 transferred by Mr Hami to Mr Mancini's mother on 1 December 2016 and documented as a 10-year interest free loan from Mr Hami. This is the entry in line 35 of the table set out above.

7. Mr Hami defended the claim for the remaining shortfall on a number of bases.

8. First, he said that there were three additional amounts not reflected in the calculation of the shortfall:

8.1. He asserted that Mr Mancini had failed to take into account two payments which Mr Hami had made to him, namely £200,000 on 14 July 2011 and £230,000 on 19 September 2011.

8.2. He asserted that there were accounting errors in the sum of €252 which also need to be credited to him.

9. Second, he said that was entitled to set off €254,124 he had paid to HMRC (as remittance basis charges) against any sum due from him to Mr Mancini. This entitlement arose either from the Loan Agreement on its true construction or because there was, he said, a separate agreement between himself and Mr Mancini – which the parties referred to as the Offshoring Agreement during the trial – pursuant to which Mr Mancini agreed (a) to leave the Shares in the ownership of Mr Hami unless and until a new corporate vehicle to take the Shares was established in an offshore jurisdiction and (b) to indemnify Mr Hami against any tax liabilities incurred by reason of his continuing to hold the Shares. The effect of this alleged Offshoring Agreement was, Mr Hami said, that he was not in breach of the Loan Agreement when he did not transfer the Shares to Mr Mancini in or after March 2010 and that he could set off the remittance basis charges which he said that he had paid. There were factual disputes between the parties as to the existence of the Offshoring Agreement and as to the sums which Mr Hami claimed to be entitled to set-off.

10. Third, he asserted that Mr Mancini's claims to the first two distributions identified in the table above (line 1 in August 2009 and line 2 in November 2009) were barred by limitation.

11. The effect of the defences advanced by Mr Hami would, if correct, be to extinguish the claimed shortfall and more, leaving no sum due to Mr Mancini under the Loan Agreement.

12. There was also a suggestion in his submissions that Mr Hami was complaining that the Loan Agreement was in some way illegal or tainted by illegality and so unenforceable. However, following detailed submissions in opening from Mr Graham as to the need to plead illegality and the limited extent to which the Court was entitled to consider illegality of its own motion, Mr Hami confirmed to me that he was not advancing a defence of illegality. Rather, he was relying on what he said was wrongdoing by Mr Mancini to explain relevant events and, in particular, the reason why Mr Mancini would have made the Offshoring Agreement.

C Witnesses

13. Both Mr Mancini and Mr Hami gave evidence during the trial. In his closing submissions, Mr Graham submitted that I should accept Mr Mancini's evidence in full and I should find that Mr Hami was not telling the truth in a number of important respects. In support of this submission, Mr Graham made a series of trenchant criticisms of Mr Hami's approach to the proceedings and of his written and oral evidence.

14. There was considerable force in some of the points made by Mr Graham. It is correct, for example, that:

    14.1. Relevant account statements showing receipt of distributions by Sardo had not been disclosed at the outset by Mr Hami and that, even after Mr Mancini made disclosure applications, Mr Hami wrongly continued to deny their relevance or to produce them in an unredacted form;

    14.2. Mr Hami's approach to one of the distributions received by him (in August 2011) did not, as explained further in paragraph 41 below, reflect the strength of the evidence against him on that point;

    14.3. When it was pointed out to Mr Hami that his pleaded case that the Offshoring Agreement was entered into before the end of March 2010 could not be correct, in his oral evidence he simply changed the date of the alleged Agreement – which formed a central part of his Defence - to 2011 or 2012;

    14.4. His approach to evidence more generally did not show the required care and attention to the detail. For example, he said in his witness statement that the date for the transfer of the Shares in the Loan Agreement (March 2010) was chosen as it might have been the first payment date when it was clear, and Mr Hami knew at the time, that the first payment was made in August 2009; and

    14.5. He was not able to explain in any detail matters which were of material relevance to his case, such as how the payments he made to HMRC had been calculated and how they related to the Shares.

15. Mr Graham also argued more generally that Mr Hami was a sophisticated financial player rather than an "*innocent abroad*" (as he put it) and had received sufficient legal assistance for parts of the case with the result that limited concessions should be made to him.

16. In my view however, these arguments understated the impact of the understandable unfamiliarity which Mr Hami had with the litigation process. I consider that significant allowance has to be made for the fact that Mr Hami was conducting proceedings in a foreign language as a litigant in person, was dealing with events which took place many years ago, and was plainly being caused considerable distress by the proceedings.

17. Further, I do not agree that there was such a sharp distinction as Mr Graham submitted between the quality of evidence of the parties. Mr Mancini had plainly spent a long time considering the documents disclosed in the proceedings and had crafted a lengthy witness statement which sought to navigate a path carefully through the available documents to support his case. However, the statement was argumentative or speculative in a number of respects and, in his oral evidence, he had a tendency to give long and sometimes rambling answers which often contained argument and speculation about what Mr Hami must have known or thought rather than answering the question. His recollections were also expressed in his witness statement and oral evidence without any real doubt or qualification despite the fact that the events in question largely arose between 8 and 15 years ago and that there were limited documents from which that recollection could be refreshed. By way of example, as I explain in paragraphs 49-56 below, I was not impressed with his evidence in relation to a payment of £230,000 made by Mr Hami in September 2011.

18. In these circumstances, I do not think that it is right simply to accept Mr Mancini's evidence in full and to reject Mr Hami's in its entirety where there were differences between the parties. Rather, I must consider each of the factual disputes between the parties in the light of such contemporaneous documents as are available, the written and oral evidence given by the parties, the motives of the parties, and the inherent probabilities of the case advanced by each.

D Relevant events

19. In the following section, I set out the events which are relevant to the matters in dispute between the parties and, where necessary, make findings in respect of the factual disputes between the parties. I start with the underlying transaction itself and the Loan Agreement before dealing with the origins of the transaction and its operation from 2009 onwards.

The underlying transaction

20. There was no material dispute between the parties as to the mechanics of the underlying transaction at which the Loan Agreement was directed. It involved three elements:

    20.1. The issue of two Series of secured limited recourse notes by a special purpose vehicle incorporated in the Netherlands, Eolo Investments BV ("**Eolo**"):

        (1) Series 2009-1 which consisted of €268 million of secured floating rate senior notes and €2 million of secured floating rate junior notes. The

junior notes in this series, which had a maturity date of 30 April 2014, carried a very substantial interest rate of 3-month EURIBOR plus a spread of 35% per annum.

(2) Series 2009-2 which consisted of €128 million of secured floating rate senior notes and €900,000 of secured floating rate junior notes. The junior notes in this series, which had a maturity date of 31 December 2015, carried the same very substantial interest rate of 3-month EURIBOR plus a spread of 35% per annum as Series 2009-1.

The Series 2009-1 and Series 2009-2 secured floating rate junior notes issued by Eolo are referred to together as "**the Eolo Junior Notes**".

20.2. The purchase by Sardo of the Eolo Junior Notes.

20.3. The raising of funds by Sardo to make that purchase through:

(1) The issue of a Senior Loan Note in the amount of €1.5 million to be redeemed on 30 April 2014 and carrying an interest rate of 3-month EURIBOR plus 12%. This Senior Loan Note was taken up by Concept Trustees as Trustee of the Navigator IPP, a trust connected to Mr Constantinidis, the former boss of both Mr Mancini and Mr Hami.

(2) The issue and allotment of 1,400 preference shares (each with a par value of €1000). 600 of these preference shares were allotted to Concept Trustees (as trustee of the trust connected to Mr Constantinidis referred to above) with the remaining 800 allotted to Mr Hami.

The Senior Loan Note issued by Sardo ranked ahead of the preference shares and so, when Sardo received a distribution from Eolo on the Eolo Junior Notes, it would calculate and pay the interest due on the Senor Loan Note first and then use the surplus to pay a dividend on the preference shares.

The Loan Agreement

21. As explained at the outset of this judgment, these proceedings concerned the funding arrangements for the 800 Sardo preference shares allotted to Mr Hami, the majority of that funding having come through the Loan Agreement.

22. The Loan Agreement, which was short and was drafted without any legal assistance, contained the following relevant provisions:

22.1. In its opening paragraph it identified Mr Hami as the Borrower and Mr Mancini as the Lender, and it referred expressly to the amount of the loan (€830,000), to the purpose of the loan being to finance the purchase of 800 preference shares issues by Sardo, and to the sole purpose of Sardo being to invest in the Eolo Junior Notes.

22.2. It then provided as follows in its second paragraph:

> "*The loan is limited recourse and the Borrower pledges to the Lender 750 preference shares of Sardo Limited (the "Pledged Assets") and the Lender agrees that he will not have any recourses over the assets of*

the Borrower whatsoever other than the Pledged Assets and for the avoidance of doubt, the Lender will not have recourse over the remaining preference shares of Sardo Limited that are not pledged. The Borrower (or his legal inheritors) engages not to transfer to third parties the ownership of the Pledged Assets without previous consent from the Lender. The Borrower (or his legal inheritors) also engages to pay to the Lender (or to whom he may designate) any gross dividend or gross principal repayment, less any withholding taxes and levies if any, paid before March 2010, attached to the Pledged Assets, within 15 business days from the payment date of such dividend or principal repayment. Finally, during March 2010, the Borrower (or his legal inheritors) engages to transfer the ownership of the Pledged Assets to the Lender (or to whom he may designate). Upon transfer of the Pledged Assets to the Lender or to the designated party, the loan shall be extinguished and the Lender, for the avoidance of doubt, shall be content and shall not be entitled to seek further payments whatsoever from the Borrower (or his legal inheritors). The Lender has, at any moment before March 2010, the right to require the Borrower to transfer, the ownership of the 750 pledged Preference Shares of Sardo limited to any person or entity that the Lender may designate (including the Lender himself) and upon transfer of the Pledged Assets to the designated party at the request of the Lender, the Loan shall be extinguished and the Lender, for the avoidance of doubt, shall be content and shall not be entitled to seek further payments whatsoever from the Borrowers (or his legal inheritors).

22.3. Finally, as regard the consequences of any default by Mr Hami, it provided in the third and final paragraph as follows:

"*In case of default by the Borrower (or is legal inheritors) on any of the above contractual arrangement, the Lender (or whom he may designate), as damages, shall immediately receive ownership of the Pledge Assets plus any due and still unpaid gross divided or principal repayment less withholding taxes and levies if any, after which the Lender, for the avoidance of doubt, shall be content and shall not be entitled to seek further payments whatsoever from the Borrower (or his legal inheritors). If the Borrower (or his legal inheritors) has transferred ownership of the Pledged Assets to third parties without previous consent from the Lender, and the Lender cannot achieve ownership of such Pledged Assets, then the Lender shall not be content and the Borrower (or his legal inheritors) shall transfer to the Lender payments equivalent to any distributions (any gross dividends or gross principal repayment) attached to the Pledged Assets (regardless to whoever owns then) from the date when the Borrower defaulted (included) to the final redemption of the Pledged Assets.*"

23. It will be immediately apparent that this was a somewhat unusual loan in that it did not require the borrower to repay a sum of money, nor did it provide for interest to accrue on the loan. As Mr Mancini stated in his witness statement, the overall effect of the Loan Agreement was that he would receive the same return as if he had invested directly in the Shares.

24. Mr Hami was cross-examined at some length about the drafting of the Loan Agreement and it was submitted by Mr Graham that he gave untruthful evidence that he had not been involved in its drafting. In the course of this cross-examination he was taken to an email dated 10 June 2009 which showed that he had provided comments on a draft of the agreement to Mr Mancini who then replied that he had adopted the comments. Neither party was able to produce a copy of the draft showing the extent or nature of those comments. This was an example where the criticism of Mr Hami's evidence went too far. His witness statement (at paragraph 14) read "*I confirm the Claimant drafted the 2009 Loan Agreement and I took no part in this. I provided a limited set of comments prior to signing.*" He confirmed in his oral evidence that he had provided limited comments. There was therefore no attempt by Mr Hami to deny that he had made comments on the draft either in his written or oral evidence. His evidence about not being involved in the drafting therefore has to be seen in the context of his evidence as a whole.

The money flows in June 2009

25. On 23 June 2009 Mr Mancini transferred €825,425.66 to Mr Hami's account at SG Hambros in Jersey pursuant to the Loan Agreement.

26. On 25 June 2009, Mr Hami transferred approximately €881,880 from his account at SG Hambros to Sardo. This consisted of the monies transferred by Mr Mancini pursuant to the Loan Agreement and some €56,450 of Mr Hami's own funds.

27. On or about 26 June 2009, 800 preference shares (including the Shares) were allotted to Mr Hami by Sardo in return for the payment described above.

28. Sardo then used the proceeds of the Senior Loan Note and the preference shares to purchase the Eolo Junior Notes. This was done through a broker, Bridport, who purchased those Notes from Mediobanca and sold them on, possibly to SG Hambros, before they reached Sardo. Mr Hami suggested that there was something questionable about this and it must have been a means of disguising the source of the Eolo Junior Notes or generating additional fees. It seems more likely to me that this was simply the route by which Sardo obtained the benefjcial interest in the Eolo Junior Notes without having to be on-boarded as a client by Mediobanca.

The origins of the transaction

29. It was common ground that Mr Mancini and Mr Hami were bankers who met when they were colleagues at Moody's in London in about 2003; that subsequently they both worked at Merrill Lynch where their superior was a man called Theo Constantinidis ("**Mr Constantinidis**") who features again in the events described below; and that, by 2009, Mr Mancini had moved to the London office of an Italian bank, Mediobanca, which was involved with the structuring or marketing of the notes issued by Eolo referred to above.

30. Beyond that however, there was considerable dispute between the parties as to the precise circumstances in which Mr Mancini and Mr Hami came to be interested in the Eolo Junior Notes. Each party alleged that the other's conduct in relation to the initial investment gave rise to a need or desire for secrecy which then explained some of the subsequent events and particularly the fact that Mr Hami did not transfer the Shares to

Mr Mancini in March 2010 as contemplated in the Loan Agreement but retained them until they were redeemed in full in January 2016.

31. Mr Mancini's evidence was that, although the Eolo Junior Notes were marketed by him and the team he worked in at Mediobanca including to Mr Constantinidis and Mr Hami, he only became involved in the transaction when Mr Hami asked him for a loan to assist with the purchase of preference shares in Sardo as Mr Hami lacked the necessary funds to make the full investment required. He said that this was an interesting opportunity for him as the Sardo preference shares offered double the return of the Eolo Junior Notes but also carried double the risk (because of the priority of the Senior Loan Note). Mr Mancini also said in evidence that he had disclosed to Mediobanca the existence of his loan to Mr Hami and he speculated that it was Mr Hami who wanted to keep Mr Mancini's involvement secret from Sardo (or its bankers, SG Hambros, and its administrators, Ogier) and/or Mr Constantinidis.

32. Mr Hami by contrast said that it was Mr Mancini who first proposed the loan as he wanted to invest in the Eolo Junior Notes himself. Mr Hami said he had been prepared to put up some of his own money because of the substantial investment being made by Mr Mancini which was more than ten times his own. He also said that it was Mr Mancini who wished to keep secret his investment into Sardo and the Eolo Junior Notes because, he speculated, Mr Mancini had not told his employers.

33. Despite the size and relative complexity of the transaction, there was an almost complete absence of documentary evidence from the early period. However, such documents as there were and the nature of the transaction more generally, are consistent with both Mr Hami and Mr Mancini having reasons for the arrangements between them to remain private.

34. As regards Mr Hami, he does not appear to have revealed to Mr Constantinidis that the investment coming from his side had been very substantially funded by Mr Mancini. There was no evidence that this was disclosed at the time of the investment, Mr Hami said that he was "99% sure" that it was not disclosed, and when Mr Constantinidis dealt subsequently with Mr Mancini in relation to the potential repurchase by Mediobanca of the Eolo Junior Notes, he did so without any apparent recognition that he was dealing with someone who had a significant personal financial interest in those Notes.

35. As regards Mr Mancini, in my view, he significantly underplayed his involvement in and understanding of the transaction. If Mr Hami had come to him simply seeking a loan to fund an investment he was making, it is highly unlikely that he would have had in mind a loan which gave him no benefit from the investment to be bought with the loan. Rather, the nature of the loan proposed by Mr Mancini (and it was accepted that he produced the first draft of the document) was consistent both with Mr Mancini wishing to invest in the Eolo Junior Notes via a route where that investment would not be evident to the outside world and with Mr Mancini having a complete understanding of the way in which Sardo would be structured. In addition, although Mr Mancini asserted that he had disclosed the loan to his employers, I doubt that this was the case. If he had done so it is unlikely that Mediobanca would have allowed him to conduct negotiations on its behalf with Mr Constantinidis as to the terms on which the Eolo Junior Notes (in which he had a substantial indirect interest) might be bought back by

Mediobanca. In those negotiations he was in an obvious position of conflict and it would not have been an answer to say, as Mr Mancini did in response to a question from the Court, that this would be remedied simply by a requirement that the price be fair.

36. Ultimately therefore, it suited both parties for the existence and nature of the Loan Agreement to remain private to both Mr Hami and Mr Mancini.

The amounts in dispute

37. It is convenient at this stage to deal with the factual disputes as to the amounts received by Mr Hami in respect of the Shares between 2009 and 2016 and the additional amounts referred to in paragraph 8 above which he says he paid to Mr Mancini but which have not been taken into account.

(i) Sums received by Mr Hami from Sardo in respect of the Shares

38. It was not disputed by Mr Hami, that the Eolo Junior Notes performed as intended and, as a result, paid interest quarterly to Sardo and paid principal to Sardo 2014 (when the Series 2009-1 notes were redeemed) and in 2016 (when the Series 2009-2 notes were redeemed).

39. These payments by Eolo to Sardo then resulted in distributions by Sardo to Mr Hami in respect of the 800 preferences shares registered in his name. Again, save for one payment, there was no dispute that the amounts received by Mr Hami were as set out in the table at paragraph 5.1 above.

40. The one exception was the payment of €124,719 on 6 August 2011 (row 14 of the table). This payment occupied some time at the trial as the Claimant sought to demonstrate not just that the sum was received by Mr Hami from Sardo but that he had failed to disclose it and was seeking to mislead the Court by continuing to deny receipt "*in the face of all reason*" (as Mr Graham put it).

41. Starting with the factual question, the account statements for Sardo's account at SG Hambros (which Mr Mancini obtained by way of third party disclosure shortly before the trial) and for Mr Hami's account at the same bank demonstrate conclusively that the payment of €124,719 was received by Mr Hami and that it was a distribution from Sardo. The monies flowed as follows:

41.1. On 1 August 2011, Sardo received payments of €83,630.30 and €185,845.11 in respect of the Eolo Junior Notes into its call deposit account at SG Hambros. Prior to receipt of these payments, the balance on the account was nil.

41.2. On 3 August 2011 (with a value date of 5 August 2011), Sardo transferred the entirety of the monies which it had received from Eolo to (i) "*the International Pension Plan*" i.e. Mr Constantinidis's trust in the amount of €144,756.41 and (ii) "*Current account*" in the sum of €124,719.

41.3. On 3 August 2011 (with a value date of 5 August 2011) Mr Hami's current account at SG Hambros received the sum of €124,719 by way of a "*Transfer*

from Call a/c." Although the statement for this account did not refer in terms to the money as having come from Sardo, there can be no doubt that it did.

42. Having resolved the issue about the payment in August 2011, I find that Mr Hami received all of the sums from Sardo identified in the third column of the table above and that 75/80ths of those sums represented gross dividends or principal repayments within the terms of the Loan Agreement.

43. Turning to Mr Hami's evidence on the August 2011 payment, it is certainly correct that he would have been well advised by the time of the trial to accept that he had received the payment even if his account statements did not say in terms that the sum he received had come from Sardo. However, it does not follow that his failure to do so was done with the intention of misleading the Court. Rather it seemed to me to be born initially out of an over-literal reliance on the fact that his own account statement did not refer to Sardo on this point and subsequently reflected a naivety about the nature of the court process. When he gave evidence he did not seek, for example, to claim that the amount came from some other source unrelated to the proceedings but rather said it was for me, as judge, to decide now that the parties were in court rather than for him to accept things put to him in cross-examination. This was naïve but not, in my view, a dishonest attempt to mislead the Court.

(ii) Payment in July 2011

44. Mr Hami said that Mr Mancini had not given credit for a payment of £200,000 (the equivalent of €228,067) which he (Mr Hami) made on 14 July 2011. It was not disputed by Mr Mancini that this payment was made in respect of sums due under the Loan Agreement. His answer however, was that the payment was reversed on 15 May 2012 by a payment to Mr Hami of £200,000 so the two entries cancelled themselves out in the overall account between the parties. The reversal payment in May 2012 was evidenced by a CHAPS Transfer in the relevant statement for Mr Mancini's account at Natwest. Although I was not shown any account statement from Mr Hami's side confirming receipt, he did not seek to demonstrate that the money had not been paid, for example, by producing all his account statements from the relevant month to show the absence of any relevant entry.

45. Mr Mancini's explanation was that, until August 2011, he and Mr Hami were content for payments under the Loan Agreement to be made in currencies other than Euros but they changed their minds around this point as they did not want exposure to foreign exchange rate fluctuations. They therefore agreed, Mr Mancini said, to reverse the transfer made on 14 July 2011 (which Mr Mancini did in May 2012) and that Mr Hami would pay the equivalent amount in Euros in the future (and Mr Mancini pointed to a payment in December 2013). In his evidence Mr Hami said, by contrast, that the reversal payment was not connected to the Loan Agreement.

46. There were a number of unconvincing aspects of this explanation provided by Mr Mancini including the fact that (a) there was no reference in any document to the agreement relied on by Mr Mancini or to the fact or purpose of the reversal itself; (b) if the reversal was driven by exchange rate concerns it would have been expected to happen quickly rather than being delayed well into 2012 by which time exchange rates could have fluctuated further; (c) as dealt with further below, in September 2011, Mr Mancini requested a payment in Sterling (and not Euros) from Mr Hami and

linked that payment to the Loan Agreement; and (d) the payment which Mr Mancini pointed to in December 2013 was itself made in US Dollars and not Euros.

47. However, it was equally unusual that Mr Hami was not able to provide any alternative explanation for the payment to him by Mr Mancini of £200,000 in May 2012. If it had been unrelated to the Loan Agreement, it ought to have been possible for Mr Hami to identify, even if only in broad terms given the passage of time, what other dealings had taken place between the parties. Equally, I would have expected to see some reference in the contemporaneous dealings to other transactions between the parties.

48. Given that I am doubtful about the evidence of both parties on this issue, it is the absence of evidence of other dealings between the parties which is the most telling indicator of what was intended back in 2011 and 2012. Accordingly I find that both the payment out from Mr Hami and the payment back by Mr Mancini were related to the Loan Agreement and should be taken into account in the overall balance between the parties.

(iii) Payment in September 2011

49. Mr Hami said that Mr Mancini has failed to give credit for a payment of £230,000 which he (Mr Hami) made to Mr Mancini on 19 September 2011. The payment in Sterling was the equivalent of €262,278 at the exchange rate on the day of payment.

50. It is common ground that this payment was made. Mr Hami's case was that it was a payment made under or pursuant to the Loan Agreement. Mr Mancini's case was that it was an entirely separate bridging loan made to him by Mr Hami which the parties had then forgotten about. In his witness statement for trial, Mr Mancini also asserted that any claim by Mr Hami for the recovery of this separate loan would be time-barred as no claim for repayment had been made within 6 years of the loan being made albeit that he would be prepared not to take the limitation defence if Mr Hami accepted that the payment in July 2011 and referred to above had been reversed.

51. I do not accept that the payment related to a separate bridging loan and find that the payment of £230,000 was made under or pursuant to the Loan Agreement and, as such, it should be taken into account so as to reduce the balance due from Mr Hami to Mr Mancini under the Loan Agreement. I have reached this conclusion for the reasons set out below.

52. First, it is inherently unlikely that Mr Mancini and Mr Hami would enter into an entirely separate undocumented loan transaction and then forget about it at a time when Mr Hami was substantially indebted to Mr Mancini under the original Loan Agreement. This is all the more so when, on Mr Mancini's case, the parties had agreed in August 2011 to reverse the payment of £200,000 made in July 2011 but that reversal had not happened and did not happen until May 2012.

53. Second, the payment itself followed from an exchange of emails in September 2011 which linked a request for payment to the Loan Agreement. On 5 September 2011 Mr Mancini provided Mr Hami with details of his Natwest account and said "*I also need pounds, therefore can you please add £30k to your transfer, which I'll keep. This should complete repayment of principal, more or less.*" The reference to "*principal*"

can only be to the original sum advanced under the Loan Agreement. Following an exchange on 6 September 2011 about locking the exchange rate (something which was also relevant to the Loan Agreement which had been denominated in Euros), Mr Mancini then provided details of a "*GBP account*" he had opened at Banca Popolare di Spoleto. It was this account to which the payment of £230,000 was made by Mr Hami.

54. The telling feature of these emails is that the request for the additional £30,000 by Mr Mancini was unequivocally linked to the Loan Agreement and there was nothing which passed between the parties subsequently which made any reference to the purpose of the ultimate payment (which included the £30,000) shifting entirely to a separate bridging loan.

55. Third, the only document supporting the existence of a bridging loan was an email which Mr Hami sent to SG Hambros, his bank, on 14 September 2011 asking it to transfer £200,000 to Mr Mancini's account at Banca Popolare and including the phrase "*Description: bridge loan as agreed.*" to describe the purpose of the payment. There were no other documents before or after the payment which referred to the existence of a separate loan agreement. Mr Hami's evidence was that the phrase in the email was what he had been told by Mr Mancini to say to the bank so as not to arouse any suspicion. Mr Mancini denied this but he was not able to give any more details about the terms of the alleged loan or its purpose, beyond saying that it was "*short term*" which he thought would mean a term of 2 or 3 years.

56. Indeed, although Mr Mancini's witness statement for trial stated that he was "*clear*" that the parties did not consider this payment to be related to the Loan Agreement, Mr Mancini only recalled that the payment was a bridging loan when he saw the document referred to above once it had been disclosed by Mr Hami in mid-2023 and he had "*refreshed his memory*" from it. When he was first challenged about the payment (in Mr Hami's Defence in January 2023), rather than deny the relevance of the payment and assert that it was a bridging loan, Mr Mancini sought to avoid saying anything positive about the payment and entered a non- admission that the payment was made pursuant to the Loan Agreement (Reply ¶7(2)). It was only when he saw the email referred to above that he sought to rely on it to seek to avoid having the payment taken into account. His evidence did not explain how his reference on 5 September 2011 to keeping at least the £30,000 which would repay the principal under the Loan Agreement was consistent with it forming part of a separate loan. In these circumstances, I accept Mr Hami's evidence as to the origin of the phrase in the 14 September 2011 e-mail.

57. The overall result therefore is that both of the payments by Mr Hami (in July and September 2011) and the payment back by Mr Mancini (in May 2012) are to be taken into account in the calculation of the overall balance due under the Loan Agreement.

(iv) Accounting errors of €252

58. There was also a relatively minor dispute between the parties about the correct amount of the first five payments made by Mr Hami to Mr Mancini between March 2010 and June 2011 (rows 4, 6, 9, 11, and 13 of the table above). In his Amended Defence, Mr Hami asserted that, on each occasion, he had paid slightly more than the amount recorded by Mr Mancini. By way of example, Mr Mancini recorded receipt of

€99,972 on 19 March 2010 but Mr Hami asserted in his Amended Defence that he had paid €100,039. The total difference for the five payments was €252 for which Mr Hami said that he should be given credit. He also said, in his witness statement, that Mr Mancini was aware that bank fees were imposed and that Mr Hami was not the person to bear those fees.

59. Mr Mancini's response was that the amounts to be taken into account were those which were ultimately received into his account as Mr Hami was obliged to make payment in full of the amounts owed.

60. The most likely explanation for the difference is that bank charges were incurred at Mr Hami's bank as Mr Hami's written evidence is to this effect (paragraph 52) and the account statements for Mr Mancini do not show any fees being charged at his bank on receipt of the relevant payments. I was not however, provided with the relevant account statements from Mr Hami's bank to confirm this. Indeed, I was not shown any documents showing the larger pleaded amounts being paid out of any account of Mr Hami. This is an issue because Mr Hami's own witness statement, at paragraph 47, gives a different figure for the payment on 19 March 2010. He says there that he paid €100,000, so a difference of €28 and not €67 as pleaded.

61. Leaving aside this discrepancy, this issue turns on which party was intended to bear bank charges at Mr Hami's bank. The Loan Agreement requires Mr Hami to transfer the "*gross*" dividend or principal repayments with the only exception being for "*withholding taxes or levies*". As fees would not fit within this phrase, I conclude that it was for Mr Hami to bear charges imposed his own bank. The position would have been different if and to the extent that the €252 had resulted from charges made at Mr Mancini's bank where such charges would have served to diminish the amount received by Mr Mancini.

62. In these circumstances, I do not accept that Mr Mancini has to give credit for the additional amount of €252.

The alleged Offshoring Agreement

63. The factual issue which occupied the most time at the trial was the existence or not of the Offshoring Agreement alleged by Mr Hami. His case, as set out in paragraph 10 of his Amended Defence, was that:

63.1. By the end of March 2010, Mr Mancini had indicated that he did not wish to have ownership of the Shares transferred to him or payments of distributions made to him as he would incur tax liabilities and would have to disclose his ownership of the Shares to his employer;

63.2. Mr Mancini asked Mr Hami to find an offshore jurisdiction and establish an offshore holding company to hold the Shares as his nominee, pending which it was agreed that Mr Hami would continue to hold the Shares; and

63.3. It was agreed between the parties that Mr Mancini would indemnify Mr Hami against any steps which he (Mr Hami) had to take to minimise any tax liability as a consequence of holding the Shares.

64. In support of this case, Mr Hami relied particularly on documents from 2011 and 2012 which showed the parties investigating offshore jurisdictions and discussing tax liabilities.

65. Mr Mancini's evidence was that there was no Offshoring Agreement and that the investigations into offshore jurisdictions took place because Mr Hami wanted to restructure the way that he was holding the Sardo preference shares and Mr Mancini was happy to help him with this.

66. In order to put Mr Hami's case in its proper context, it is necessary to consider not just the documents relied on by him but also the way in which the transaction and the parties' relationship developed after the initial loan in June 2009. The sequence of events is set out below.

67. The first quarterly interest payment on the Eolo Junior Notes was made to Sardo in early August 2009. This resulted in Sardo distributing €123,409.87 to Mr Hami on 6 August 2009. Mr Hami was aware of this distribution as, on that day, he asked Mr Prince at SG Hambros whether it had been paid and received a confirmation by e-mail on the afternoon of 6 August 2009 that the money was in his personal account. Mr Hami did not, at this stage, make any onward payment to Mr Mancini.

68. Further distributions were made by Sardo to Mr Hami on 6 November 2009 and 5 February 2010 but there do not appear to have been any communications between the parties about these. Again, Mr Hami did not make any onward payment to Mr Mancini.

69. The first written communication between the parties came on 8 March 2010 when Mr Mancini emailed Mr Hami in the following terms (using the English translation of the original French text):

> "*Hi,*
> *can you please start to transfer Sardo distributions received until now, to the following bank account:*
>
> [I have omitted the bank details]
>
> *it is a good idea to transfer first from your bank account at ML, or better event, from your retail account in France. I suggest by tranches of 100k. Thanks. V*

70. On 11 March 2010, Mr Mancini emailed Mr Hami an excel spreadsheet (entitled "CASHFLOWS_EOLO_SARDO_JAN10") which contained details of the actual and projected cash flows from the Eolo Junior Notes and the distributions from Sardo which those flows would generate for both the Senior Loan Note and the preference shares. This document appears to have been created by Mr Constantinidis when the transaction was under consideration and to have been updated by him periodically as distributions were made. The version sent on 11 March 2010 included the precise amounts of the first two distributions to Mr Hami and estimates for the third and all future distributions.

71. These emails were then followed by the first payments from Mr Hami to Mr Mancini on 19 March 2010 (of €99,972) and 11 May 2010 (again of €99,972). As I have already dealt with above, Mr Hami said that, in fact, he had paid €100,039 and €100,038 respectively.

72. The Shares were not transferred to Mr Mancini by the end of March 2010.

73. On 6 May 2010, Mr Constantinidis asked Mr Mancini whether or not Mediobanca would sell credit default protection to Sardo to hedge the credit risk of Credit Suisse. This was a relevant risk because Eolo had entered into an interest rate swap with Credit Suisse under which it was Credit Suisse which was obliged to pay Eolo the amount necessary to satisfy its obligations under the notes including the Eolo Junior Notes. Mr Mancini replied to Mr Constantinidis that it would not be good timing. He also forwarded these exchanges to Mr Hami with the instruction "*answer him in private that you are not interested for Sardo (you are the majority shareholder)*".

74. Two points come out of this. First, Mr Constantinidis's dealings with Mr Mancini do not suggest that he was aware that Mr Mancini had a financial interest in Sardo through its preference shares. Second, it appears that Mr Mancini was content for the Shares to remain in Mr Hami's name and for his involvement to continue to be through Mr Hami.

75. On 2 November 2010 and again on 24 January 2011, Mr Hami told Ogier that he had not received any notification of coupon payments by Sardo. Ogier responded by sending him a copy of the most recent payment instruction for 6 November 2010.

76. Further payments by Mr Hami to Mr Mancini were made on 29 December 2010 (€100,000) and 31 January 2011 (€100,000). As before Mr Hami says that he actually paid slightly higher amounts of €100,039 in each case.

77. On 7 February 2011, Ogier sent the latest payment instruction to Mr Constantinidis and Mr Hami. It was also copied to Mr Mancini. His explanation for this was that Ogier were simply checking that the figures were correct where the amounts paid by Eolo to Sardo on the Eolo Junior Notes had changed, for example where the payment date fell on a non-business day and had to be modified.

78. The investigations into offshore jurisdictions relied on by Mr Hami then started when Mr Hami suggested to Ogier Fiduciary Services by email on 28 February 2011 that he was considering "*moving the ownership of my shares to a vehicle where I am the sole owner (family office)*". On 7 March 2011, Mr Hami asked Ogier if they offered corporate services and, following a phone call on 7 March 2011, Ogier provided information about the incorporation of a Jersey company.

79. At about the same time, Mr Hami was in contact with DMS Management Limited in the Cayman Islands about the incorporation of a company called IZEM Capital Fund Ltd and the cost of the provision of fund services. On 24 February 2011 Mr Hami received a "*quote for services*" from DMS and forwarded it to Mr Mancini.

80. Mr Hami was also in contact with the Concept Group in Guernsey and Codan Trust Company in the BVI about obtaining an offshore company into which the Sardo

preference shares could be transferred. The introduction to the Concept Group had come by email from Mr Prince at SG Hambros, Mr Hami's bankers in Jersey, on 1 March 2011. Mr Prince said that Mr Hami wanted to form a limited company into which he could transfer assets being "*notes named "Sardo"*".

81. On 4 March 2011, the Concept Group provided Mr Hami with information and draft documentation relating to the incorporation of a BVI company having suggested that this was a preferable jurisdiction to the Cayman Islands.

82. There was then a hiatus in the offshore investigations over the summer of 2011, likely to have been caused by separate discussions which were ongoing between Mr Constantinidis and Mediobanca (through Mr Mancini) about the potential repurchase by Mediobanca of the Eolo Junior Notes. As to this:

    82.1. On 14 July 2011, Mr Mancini emailed Mr Constantinidis about restructuring the Eolo Junior Notes so that they would be partially redeemed.

    82.2. On 20 July 2011, Mr Constantinidis set out the amounts which would be due to unwind the Eolo Junior Notes, including the amounts which would be payable to him and to Mr Hami. Mr Mancini forwarded this email to Mr Hami the same day.

    82.3. On 21 July 2011, Mr Mancini referred to the price at which the Notes could be bought and referred to Mediobanca's intentions – there was a 90% chance that they would buy-back the Series 2009-2 Junior Notes and a 50% chance that they buy back the Series 2009-1 Junior Notes. Mr Mancini forwarded these exchanges to Mr Hami on 21 July 2011.

    82.4. On the same day, Mr Constantinidis told Mr Mancini that he would have to "*agree with hami use of sale proceeds. Will also confirm pricing with him.*" Mr Mancini's response (at 20:11) was to ask Mr Constantinidis to call him on his mobile.

    82.5. On 22 July 2011, Mr Constantinidis sent Mr Hami an updated version of the excel spreadsheet referred to above, and sent "*dirty prices*" for the Eolo Junior Notes to Mr Mancini (copied to Mr Hami).

    82.6. On 27 July 2011, Mr Constantinidis provided a detailed explanation to Mr Hami of the proposal from Mediobanca and set out the fair value which he had indicated for the Eolo Junior Notes. The e-mail referred to a suggestion from Mr Hami to split the proceeds pro-rata between the Senior Loan Note and the Sardo preference shares and referred to the priority of the Senior Loan Note "*since we structured it to be so*".

    82.7. Mr Hami must have forwarded this to Mr Mancini (most likely in an email with the subject "*zero upside…*") as Mr Hami's subsequent response to Mr Constantinidis on the evening of 27 July 2011 contained wording suggested by Mancini to the effect that he was happy with the calculations. Mr Mancini was blind copied on this response.

83. The proposed restructuring did not, in fact, happen. Further, through the late spring and early summer of 2011 further payments were requested by Mr Mancini and made by Mr Hami:

83.1. On 11 May 2011, Mr Mancini sent Mr Hami an email saying, "*payment time*!" and providing bank details. Different bank details were then provided on 17 June 2011 with the following text (using the English translation of the original French):

> "*Regardless of the order on Credit Agricole (300k), I believe you should have at least 200k on top of that. Can you please transfer to me, from ML or other than Hambros, this amount to the following account (and not the one I gave you previously)*

Mr Hami then made a payment of €100,000 on 29 June 2011. As with the previous four payments, he says that he, in fact, paid a higher amount, €100,039.

83.2. On 14 July 2011, Mr Hami made the payment of £200,000 which I have considered above. The only document relating to this payment was an email confirmation from his bank to Mr Hami on 13 July 2011 that the payment instruction had been received and would be made.

83.3. On 19 September 2011, Mr Hami made the payment of £230,000 which I have considered above. The relevant email exchanges are set out in those paragraphs and, for the reasons given there, I have concluded that this payment was made under the Loan Agreement.

84. The investigations into a revised offshore structure restarted in November and December 2011. Mr Hami introduced Mr Mancini to Bank of Singapore in mid-November and, after a meeting with Lucy Su Chin Yow, on 29 November 2011, Mr Mancini raised the possibility of creating an offshore structure in the following terms:

> "*Hi Lucy,*
>
> *Thanks a lot for the meeting the other day. For me (and also for Amar I believe) is very improtant* [sic] *to confirm if we can achieve what we discussed, i.e.:*
>
> *- create an SPV (SPV1) where the beneficiary owner would be Mr. X*
> *- such SPV invests in 55% of the preference shares issued by another SPV Jersey based (SPV2). The beneficiary owner of SPV1 is disclosed to SPV2 Directors at this stage (i.e. Mr X name and KYC).*
> *- If Mr X. decided to sell the ownership of SPV1, at a subsequent moment, to Mr Y, it is very important that SPV1's Directors have no duty to inform SPV2's Directors of such change of ownership.*
> *If you can help me structure such SPV1, I will be interested in opening an account with your bank.*

Mr X in this scenario was Mr Hami, Mr Y was Mr Mancini, and SPV2 was Sardo.

85. Ms Yow forwarded Mr Mancini's question on a confidential basis to a contact of Ms Yow's, Mr Merrin at Intro International, and his reply was passed to Mr Mancini on 9 December 2011. It noted that, in the case of an SPV in the BVI or Marshall Islands, it would not be possible for third parties to find out about a change of ownership but there could be a condition on the preference shares that a change of ownership of SPV1 had to be disclosed. Mr Mancini forwarded this Mr Hami and, on 13 December 2011, asked Mr Hami for the "*docs of Sardo*" in order to check the point about change of ownership.

86. The parties were also discussing tax issues at this time as, on 20 December 2011, under cover of an email with the subject "*Tax indemnity*" Mr Mancini provided Mr Hami with a letter which read:

> *"Dear Amar,*
>
> *I confirm that I owe you GBP 30.000,00 as refund for tax optimization practices implemented by you in connection with the financing agreement we signed in 2009 for the purchase of Sardo Notes. This will not affect the above mentioned agreement signed in 2009.*"

In his evidence, Mr Mancini said that, despite its wording (which he described as "*amateurish*" in oral evidence), this letter reflected only an agreement by him to pay £30,000 to Mr Hami if he incurred any tax optimisation costs for that financial year in connection with the Shares. Although Mr Hami's Amended Defence did not refer to this agreement in terms, as I explain further below, his claim to be entitled to deduct amounts paid to HMRC did include £30,000 for the tax year 2011/12. Mr Hami's witness statement said (at paragraph 57) that similar agreements were made orally in the following years.

87. On 25 January 2012, Mr Hami sent Mr Mancini a link to HMRC's website relating to the remittance basis of taxation commenting that it was "*very ambiguous"* and that they should meet as soon as possible.

88. On 2 February 2012, Mr Hami asked Ogier for contract details "*for transferring by shares to a trust.*" This prompted Ogier to check the corporate restrictions for a transfer of the Sardo preference shares and to ask for details of the proposed trust. Ogier confirmed in an email of 6 February 2012 that there were no restrictions on transfer and provided Mr Hami with a part completed transfer form for the preference shares. Mr Hami forwarded this e-mail and form to Mr Mancini on the same day.

89. On 7 February 2012, Mr Hami told Ogier that he was "*finalising the trust on the other side…*"

90. Between 7 and 10 February 2012, Mr Hami was back in contact with DMS Management Ltd in the Cayman Islands and discussed with them the creation of an SPV (called Izem Special Fund) which would bank with the Bank of Singapore and invest in €800,000 worth of preference shares issued by a Jersey SPV which itself held bonds issued by a bank. Mr Hami would be the sole holder of the notes issued by the SPV but he needed to be able to transfer the notes as required. Mr Hami

forwarded to Mr Mancini details of the fees charged by DMS for fund governance and corporate services.

91. The following day Mr Mancini resent the email of 9 December 2011 from Mr Merrin (paragraph 85 above) to Mr Hami with the following comment (in the English translation): "*Look below please, BVI and Marshall Islands apparently are better than Caymans for what concerns us…".*

92. When Mr Hami then explained to DMS on 10 February 2012 (so after Mr Mancini's email of 9 February 2012) that he needed the SPV to be incorporated in the BVI, DMS recommended Ogier for that purpose given the latter's presence in the BVI.

93. On 10 February 2012, Ogier in Jersey confirmed to Mr Hami that there were no restrictions in Sardo's corporate documentation to prevent a change of shareholder to a corporate entity. However, receipt of a completed stock transfer form would be a KYC trigger event requiring Ogier to complete KYC on the new corporate entity and its beneficial owner.

94. On 16 February 2012, Mr Hami received documents from Codan Trust Company in the BVI in relation to the incorporation of a business company in the BVI.

95. At this time Mr Hami was also in contact with Maples & Calder in the BVI about a proposal for a fund (again called Izem Special Fund) and provided them with a completed application form by email on 24 February 2012. This form, which identified Mr Hami as the sole shareholder and director in the proposed company, prompted Maples to advise Mr Hami on the same day that the word "Fund" was restricted and would have to be removed. Mr Hami forwarded this advice to Mr Mancini later that day.

96. On 15 March 2012, Ogier inquired about the discussions regarding settling Mr Hami's shares into a trust and, in response on 26 April 2012, Mr Hami informed Ogier Corporate Services by email that the plan to settle the Sardo preference shares into a trust was "*on hold for now*".

97. That marked the end of the substantive investigations into a new offshore structure save that:

    97.1. In May 2012, Mr Hami obtained a copy from Ogier of the resolution setting out the terms of the preference shares issued by Sardo having been asked by Mr Mancini for that document.

    97.2. On 31 August 2012, Mr Mancini sent Mr Hami details of a YES Money card available from Bank of Singapore which Mr Mancini described as "*incredible*".

98. There were relatively few other events to which the parties referred between 2012 and the commencement of the proceedings. They included:

98.1. Mr Mancini continued from time to time to be copied into emails from Ogier setting out the payments being made by Sardo to Mr Hami and to the trust connected with Mr Constantinidis..

98.2. On 20 December 2013, at Mr Mancini's request, Mr Hami made a payment of $339,376 to one of Mr Mancini's creditors in respect of the purchase of a plane.

98.3. On 8 June 2015, Mr Mancini provided Mr Hami with details of a new bank account. He said that "*I've opened the entity with account offshore. Try to transfer initially 1k to the following coordinates (each word in* [sic] *necessary, as tested)*". The account details given were, in fact, for an account in the name of his mother at SG Hambros in Jersey.

98.4. On 2 March 2016, Mr Hami paid Mr Mancini €1 million through Bank of Singapore.

98.5. On 6 May 2016, Mr Mancini sent Mr Hami a link to a KPMG blog about significant changes to the non-domiciled tax regime.

98.6. On 1 December 2016, Mr Hami transferred €600,000 to Mr Mancini's mother, Ms Bifarini. This transaction was documented as a 10-year interest-free loan. Mr Mancini did not refer to this loan in his initial claim although it was referred to in his application to serve out of the jurisdiction in April 2022. Mr Hami then raised it in his Defence, asserting that, while this amount remained outstanding it suspended his obligation to pay the same amount to Mr Mancini. Mr Mancini then said for the first time in his Reply that, in addition to the written agreement for this loan, there was an oral agreement between Mr Mancini, Mr Hami and Ms Bifarini that the loan would immediately be set off against and serve to reduce the amount due from Mr Hami under the Loan Agreement. I do not have to resolve which of these arguments is correct as, on 11 October 2024, the parties agreed that the sum should be deducted from the claim.

98.7. On 31 March 2020, Mr Mancini e-mailed Mr Hami as follows:

> "*Please find attached all your wire transfers from your bank accounts to me or my mother or for my airplane (the latter is the only one in USD, with FX as of 20/12/2013 of 0.73eur/usd). I think the total is 2.35mln. If you have paid "remittance"", this means you still owe me 3/8-0.25-2.35 = 0/68mln (ie eur680k) according to our contract.*

98.8. On 3 January 2023 representatives of Intertrust Group (which had taken over the business of Ogier's fiduciary services arm) told Mr Hami that in relation to Sardo and/or the Eolo Notes "*it does appear that Mediobanca was the Arranger and I can see that there was some initial correspondence with Mr Valerio Mancini.*"

Analysis of the alleged Offshoring Agreement

99. I have set out the terms of the alleged Offshoring Agreement at paragraph 63 above and referred to the sharp disagreement between the parties as to the existence of this

Agreement. As Mr Graham submitted, the principal relevance of the Offshoring Agreement to the proceedings was Mr Hami's claim that, pursuant to one of its terms, he was entitled to deduct or set-off amounts he paid to HMRC. It also explained why Mr Hami said that he was not in breach of the Loan Agreement in not transferring the Shares.

100. This aspect of the case was not straightforward.

101. On the one hand, Mr Hami's pleaded case as to the terms of the Offshoring Agreement does not work. He said in his Amended Defence, which was settled by Counsel, that Mr Mancini had indicated before the end of March 2010 that he did not want to receive either the Shares or the distributions. This indication then resulted in the Offshoring Agreement and in offshore investigations from March 2010 to February 2012. However, as I have recorded above, on 8 March 2010 Mr Mancini made his first request for payment in respect of the distributions on the Shares and, after March 2010, Mr Mancini continued to request payments and Mr Hami continued to make payments, for example in May and June 2011 (as set out in the table above).

102. When this was pointed out to Mr Hami, he suggested in evidence that the Offshoring Agreement must have been made in 2011 or 2012 and that this was "*the best he could do*" as regards pinpointing the time of the Agreement. However, payments were made even after those two dates, for example the substantial payment in respect of Mr Mancini's plane in December 2013. There cannot therefore have been any agreement in respect of distributions.

103. Equally, there was a material difference between Mr Hami's pleaded case on the tax charges paid to HMRC and his evidence. The pleaded case was that the agreement by Mr Mancini to indemnify Mr Hami was part of the Offshoring Agreement and was presumably agreed at the same time as the other aspects relating to the transfer of the Shares. However, his witness statement referred (at paragraph 57) to the tax indemnity letter of December 2011 and said that "*the same*" was agreed orally for subsequent years. The indemnity appears therefore to have been a matter which was, he said, agreed separately and year by year.

104. Mr Mancini's explanation for the offshore investigations also found support in the various investigations in which it was Mr Hami making inquiries about the incorporation of a vehicle into which he could transfer the 800 Sardo preference shares. These inquiries, which made no reference to any need or intention to transfer the Shares, included Mr Hami's communications with Ogier, DMS, Concept Group and Codan Trust in February and March 2011.

105. Mr Mancini also pointed in evidence to the fact that, where the parties had wanted to reach an agreement about tax charges, they were able to reduce that to writing as they did in December 2011. He said that the existence of this document, relating to one year only, demonstrated that there had not been a broader agreement about tax costs more generally because the parties would also have made such an agreement in writing. I note however, that on his own case, the parties made oral agreements including on matters where the oral agreement undermined or added to a written agreement, notably in relation to the payment of €600,000 to his mother.

106. On the other hand, the terms of the Loan Agreement were clear when they referred to the obligation on Mr Hami first to pay over distributions received by him in respect of the Shares within 15 business days of receipt and then to transfer the Shares to Mr Mancini by the end of March 2010. However, the Shares were not transferred to Mr Mancini at that time, or at all. I would have expected such an obvious breach of the Loan Agreement to have resulted in Mr Mancini requiring that the Shares be transferred to him if that was what he wanted.

107. It was surprising therefore that the documents in the trial bundle (which included everything disclosed by the parties) did not contain a single written request by Mr Mancini for Mr Hami to comply with his obligation to transfer the Shares. Nor did they even contain an oblique or indirect reference to such a request. Mr Mancini's answer was that he only made oral requests to Mr Hami for a transfer. I do not accept this. There is no reason why Mr Mancini would make requests for money by email (as he did, for example, in 2010 and 2011) but would limit his requests to a transfer to phone conversations and it is inconceivable that, if Mr Mancini had considered Mr Hami not only to be in breach of contract but to be ignoring oral requests for a transfer, he would not have put a request in writing.

108. The obvious question then is why did Mr Mancini not demand the transfer of the Shares? An agreement with Mr Hami that he should retain them would be a plausible explanation.

109. Further, just as there were documents which were consistent with Mr Mancini's explanation for the offshore investigations, so there were documents which fitted more naturally with the existence of some form of agreement that Mr Hami would hold the Shares until a new offshore structure was set up and that it was Mr Mancini who wanted this structure. It was Mr Mancini who sought assistance from Bank of Singapore in late 2011 and set out a structure that was "*very important*" for him, rather than Mr Hami alone. He told Bank of Singapore that he would open an account with them if they helped him with the structure. This is not the language of someone simply looking to help out Mr Hami.

110. Indeed, throughout the offshore investigations in early 2011 (the results of which Mr Hami generally forwarded to Mr Mancini) and late 2011/early 2012 (when both were involved), the parties proceeded on the basis that Mr Hami was and would remain the holder of all 800 Sardo preference shares either personally or through a new structure and that he might transfer the ownership of the new structure in the future.

111. The documents also provided small glimpses of discussions which were taking place between the parties in relation to the tax charges and the remittance basis in particular in December 2011 and January 2012, when the tax indemnity letter referring to £30,000 was sent. The other high point of Mr Hami's case as to tax charges was the reference in Mr Mancini's email of 31 March 2020 to Mr Hami owing €680,000 "*If you have paid 0/25mln as "remittance"*". Mr Hami said that this showed an acceptance by Mr Mancini that remittance basis charges could be deducted from the overall amount owed.

112. Looking at the available materials as a whole, I am not satisfied that the parties entered into a contractual arrangement in the terms of the Offshoring Agreement as

pleaded by Mr Hami. Rather, as I have already explained, both parties had reasons at the outset for wishing their relationship in relation to the Shares to remain private to them. These reasons remained relevant through their subsequent dealings and explain why Mr Mancini did not insist on the transfer of the Shares to him, why Mr Mancini was happy to receive the dividends and principal repayments when he requested them rather than insisting on immediate payment, and why the parties investigated whether an offshore structure could be created under which the Shares could be transferred indirectly without their relationship being revealed.

113. The fact that the parties each proceeded on this basis - that the Shares would remain with Mr Hami – might have provided Mr Hami with a defence to a claim based purely on the failure to transfer the Shares but, as he accepted, it did not remove the obligation to pay over the dividends or principal repayments he received in respect of the Shares.

114. As regards the tax charges, I am not satisfied that there was an agreement by Mr Mancini to indemnify Mr Hami generally or that oral agreements were reached annually after 2011. The position in 2011 is different in that the tax indemnity letter sent by Mr Mancini was expressed in unequivocal terms and I do not accept Mr Mancini's evidence that the drafting was wrong in this regard. However, it is particularly telling that, despite having reduced the agreement for 2011/12 to writing, there was then no further reference to any such agreement in the later years. While the email of 31 March 2020 does refer to the deduction of remittance charges, I accept Mr Mancini's evidence that he was not accepting that such charges were deductible but was explaining to Mr Hami that, even if they were, a substantial amount of money would still be owing.

E Mr Hami's remaining defences

115. I have dealt above with a number of the factual defences raised by Mr Hami. I consider the remaining points below.

(i) Limitation

116. Mr Hami said that he did not make any payment to Mr Mancini in respect of the first two distributions which he received from Sardo (on 6 August 2009 and 6 November 2009) and that, because those distributions were received by him more than six years before the commencement of the proceedings (in December 2021), any claim to them was time-barred.

117. This line of defence was based, as Mr Hami accepted in his oral evidence, on the fact that the first payment he made to Mr Mancini under the Loan Agreement was €99,972 on 19 March 2010 which was after he had received the third distribution from Sardo. He said therefore that his payment related to this third distribution as the most recent in time prior to his payment.

118. For the following reasons, I do not accept that Mr Mancini is making a claim in respect of the first two distributions or that, even if he was, that such a claim would be time-barred.

119. As of 19 March 2010, Mr Hami was obliged under the Loan Agreement to have paid to Mr Mancini the following three sums: €115,696.75 (which had been due within 15 business days of 6 August 2009), €108,904.02 (which had been due within 15 business days of 6 November 2009) and €114,445.50 (which had been due within 15 business days of 5 February 2010).

120. Even assuming that these were treated as separate debts rather than as part of a running account (a matter I will return to below), in order for the limitation defence to be established it would be necessary to show either that Mr Hami appropriated his first payment to the third of these debts (and his later payments to subsequent distributions) or that, in the absence of such a choice by Mr Hami, then Mr Mancini made such an appropriation, the choice as to appropriation lying with the debtor in the first instance but then passing to the creditor: McGee on Limitation at ¶18.048.

121. There is however, no evidence that Mr Hami made such an appropriation or communicated it to Mr Mancini at the time. Rather, the contemporaneous material from March 2010 is consistent with Mr Mancini seeking payment of all of the sums which he was due and not just the third distribution, and Mr Hami making payment on that basis. As to this, the first payment from Mr Hami was prompted by an email from Mr Mancini on 8 March 2010 asking Mr Hami to "*start to transfer Sardo distributions until now*" (i.e. all of the sums received and not just the third distribution) and suggesting that payment should be made in tranches of €100,000. On 11 March 2010 Mr Mancini then forwarded an excel spreadsheet to Mr Hami which included the precise amounts of the first two distributions to Mr Hami and estimates for both the third and for all future distributions.

122. It is clear therefore that Mr Mancini was not seeking payment of just the third distribution and, when he made the payment on 19 March 2010, Mr Hami did not consider that he was paying part of that distribution only. Further, the manner in which Mr Mancini dealt with the payments can be seen from his subsequent communications with Mr Hami which included a text message on 5 October 2021 which stated "*I can confirm that the repayments due from 2009 to 2014 have been settled. So you only need to concentrate on the residual sums due in 2015 and/or 2016.*" This reflected his understanding from his banking experience that repayments are allocated to the oldest unpaid sum.

123. I therefore accept Mr Mancini's evidence that he sought payment in March 2010 of all the sums then due to him and appropriated the payments which he received from Mr Hami to the sums which had been outstanding for the longest meaning that Mr Hami did, in fact, make the payments due in respect of the first two distributions he received from Sardo. This is sufficient to dispose of the limitation defence in respect of those distributions.

124. However, even if I am wrong and there was no such appropriation by Mr Mancini, it is clear that after March 2010 the parties treated the sums due from Mr Hami to Mr Mancini as part of a running account between them with distributions from Sardo increasing the amount due and payments from Mr Hami, which were generally made in round numbers at Mr Mancini's request, reducing the overall balance. For example, on 11 May 2011, Mr Mancini sent Mr Hami an email saying, "*payment time!*" and followed that on 17 June 2011 by a request for "*200k*" which was in

addition to a sum of "*300k*" held at Credit Agricole. By this time, the distributions in respect of the Shares totalled a little over $900,000 and Mr Hami had paid just under €400,000, leaving a balance of approximately €500,000, the total sum referred to in the June email.

125. The parties therefore proceeded on the basis that there was a single balance due and when Mr Hami made payments to Mr Mancini in June 2011, December 2013, March and December 2016, and June and July 2021, these are to be treated as being made in respect of that overall balance and would amount to a part payment within the terms of s.29(5) of the Limitation Act 1980 causing time to start running again on the outstanding balance (McGee on Limitation at ¶18.048 and Re Footman Bower & Co Ltd [1961] Ch 443). Given the timing of the part payments, there was never a time when the overall balance (or indeed any part of it) became time-barred prior to the issue of the proceedings.

(ii) Remittance basis charges

126. Mr Hami claimed that he is entitled to deduct or set-off "*non-domiciled remittance basis charges*" which he was obliged to pay to HMRC by reason of Mr Mancini refusing to accept a transfer of the Pledged Shares.

127. The remittance basis was a tax regime first introduced in the 2008/09 tax year which allowed non-UK domiciled individuals who were UK-tax resident to pay tax on their foreign income or gains only when remitted to the UK. Such a taxpayer had to elect for this basis of taxation and claim it in their relevant tax return. The cost of such an election was that the taxpayer had to pay a fixed charge as well as tax on any income or gains which were remitted to the UK. The charge varied over time and depended on how long the taxpayer had been resident, but was always a round figure - £30,000, £50,000, £60,000, or £90,000.

128. Mr Hami quantified the remittance basis charges he had paid at €254,124 broken down as follows:

128.1. €35,776 on 1 January 2013;
128.2. €36,332 on 29 January 2014;
128.3. €40,925 on 29 January 2015;
128.4. €90,214 on 26 January 2016;
128.5. €28,239 on 21 June 2016; and
128.6. €22,639 on 11 January 2017.

129. At the start of the trial Mr Mancini's position was that there was no evidence that the first and fifth of these payments had even been made by Mr Hami to HMRC. However, during the trial Mr Hami disclosed additional account statements which demonstrated that they had been made, albeit that:

129.1. The first payment was made by debit card on 4 February 2013 (and not 1 January 2013); and

129.2. The amount actually paid to HMRC on 21 June 2016 was £21,680.50 (or €28,217.91)

130. There was also some debate about how the sums in Euros had been calculated given that any liability to HMRC would have been denominated in Sterling. On this, the account statements showed that, save for the first and last amounts (which appear to have been paid in Euros), the figure in Euros was the amount which it had cost Mr Hami to purchase Sterling to pay to HMRC as follows:

130.1. The payment on 29 January 2014 was the equivalent of £30,000;
130.2. The payment on 29 January 2015 was the equivalent of £30,000;
130.3. The payment on 26 January 2016 was the equivalent of £68,000; and
130.4. The payment on 21 June 2016 was the equivalent of £22,000.

131. As such, it was common ground that Mr Hami had made payments to HMRC in the total amount claimed. That was however, the limit of the agreement between the parties on this issue.

The legal basis for the deduction/set-off advanced by Mr Hami

132. Mr Hami's case on the legal basis for the deduction or set-off of tax charges had three alternatives.

133. First, he said that Mr Mancini had agreed to indemnify him for such liabilities under the Offshoring Agreement. However, I have already concluded above that there was no Offshoring Agreement in the wide terms alleged and, as a consequence and subject to the point made immediately below, I do not accept this argument as a basis for the deduction/set-off.

134. The one exception to this conclusion concerns the first payment made by Mr Hami on 4 February 2013 because this was the payment which Mr Mancini agreed that he would reimburse in the tax indemnity of 20 December 2011 (paragraph 86 above). Even on Mr Mancini's case that the indemnity was only operative in the event that costs were incurred in the relevant financial year – being 2011/12 given the date of the letter – the evidence, notably a letter from Mr Hami to HMRC dated 30 October 2013 but relating to his tax return to the year ended 5 April 2012, shows that Mr Hami claimed the remittance basis in that year and identified Sardo as the source of his foreign income or gain. I am therefore satisfied that €35,776 should be taken into account in the overall balance by reason of the tax indemnity letter.

135. Second, he said that the liabilities were, on a true construction of the Loan Agreement, "*levies .... attached to the Pledged Assets.*" I do not agree. In my view, when the Loan Agreement provided that the Borrower (Mr Hami) was to pay to the Lender (Mr Mancini) "*and gross dividend or gross principal repayment, less any withholding taxes and levies, ... attached to the Pledged Assets*", it was dealing with amounts which were deducted or withheld by Sardo when it paid dividends or principal to Mr Hami. As to this:

135.1. I agree with Mr Graham that the natural meaning of the language coupled with the subject matter of the Loan Agreement – amounts received by the Borrower and payable to the Lender – means that both the words "*taxes*" and "*levies*" are qualified by the adjective "*withholding*".

135.2. Further, the language of the Loan Agreement was expressly linking the relevant withholding taxes and levies to the dividend or principal repayment attached to the Pledged Assets, in other words the amounts paid by Sardo in respect of the Shares.

135.3. In this way the Loan Agreement was making it clear that, although Mr Hami was obliged to pay to Mr Mancini any "*gross*" dividend or principal repayment in respect of the Shares, that did not require him to account for or make an additional payment in respect of any amounts which were retained by Sardo as a withholding tax or levy.

136. Further and in any event, even if the phrase from the Loan Agreement relied on by Mr Hami was wide enough to cover a tax or levy withheld by him as opposed to by Sardo (and it was not suggested that Mr Hami was obliged to or did, in fact, withhold any amount from Mr Mancini), it would still not, on its true construction, cover any remittance basis charge paid or payable by Mr Hami. Such a charge cannot properly be described as a "*withholding tax or levy*" and nor would it be a tax or levy "*attached to*" the Shares. As Mr Graham submitted, the remittance basis charge becomes due as a result of an election by a non-UK domiciled individual who is UK tax resident rather than being a charge which has any direct link to the holding of a particular asset such as the Shares or which can be said to be "withheld" by Mr Hami from Mr Mancini.

137. It is also relevant that the Loan Agreement contemplated payment by Mr Hami to Mr Mancini within 15 business days of receipt by Mr Hami whereas Mr Hami's liability to a remittance basis charge would depend on his election which could be long after he had been obliged to make payment.

138. Third, he said that Mr Mancini was in breach of the Offshoring Agreement in failing to nominate a transferee of the Shares and the remittance basis charges were incurred in mitigating the loss which he would otherwise have suffered by continuing to hold the Shares as a consequence of Mr Mancini's breach of the Offshoring Agreement. As with the first argument, this submission fails on the basis that I have concluded that there was no Offshoring Agreement as alleged by Mr Hami. However, even if the Offshoring Agreement had existed on the terms alleged by Mr Hami, there would have been no breach of it by Mr Mancini as it was not alleged to contain an obligation on Mr Mancini to nominate a transferee. Rather, the central term was that Mr Hami would continue to hold the shares until a transferee was established and nominated by Mr Mancini. As such, no issue of mitigation arises.

The basis for the amounts paid

139. I should explain also that, even if I had concluded that Mr Mancini had agreed to indemnify Mr Hami generally against any steps which he (Mr Hami) had to take to minimise any tax liability as a consequence of holding the Shares, I would not have been satisfied on the evidence available to me that, other than the first payment on 1 January 2013, the sums identified by Mr Hami fell within the terms of this indemnity.

140. The principal issue for Mr Hami's case was that, although by the end of the trial he had produced material to show the relevant payments being made to HMRC, there was, with the exception of the first payment, no sufficient evidence to explain why the

payments to HMRC were made, what they related to, and how they were connected with the holding of the Shares. In particular:

140.1. At the relevant time between 2009 and 2016, the relevant remittance basis charge itself was either £30,000, £50,000 or £60,000 depending on how many years the taxpayer had been tax resident in the UK. While the first three payments relied on by Mr Hami were the Euro equivalent of £30,000, none of the other payments corresponded to any of these amounts. In particular, the final three payments were, in one case, higher even than £60,000 or, in two cases, lower than the minimum remittance basis charge. These discrepancies called for an explanation but none was provided prior to the trial. In his oral evidence Mr Hami suggested, for the first time, that the higher payment involved a penalty but there was no evidence to corroborate this or to explain how the penalty had come to be incurred.

140.2. Even as regards the payments which were for the Euro equivalent of £30,000, it would have been necessary to show that these were remittance basis charges incurred by reason of the holding of the Shares and not, for example, because Mr Hami had other offshore investments or income and would have incurred the charge in any event. As I have explained, there was sufficient evidence in relation to the first payment, but in respect of the others Mr Graham was able to point to at least some evidence that Mr Hami had other offshore investments in his account at SG Hambros.

F Analysis of the Claimant's claim

141. I have concluded above that (a) Mr Hami received each of the sums set out in the second column of the table at paragraph 5.2 above, (b) the part of those receipts relating to the Shares was set out in the third column of the table, and (c) Mr Hami paid Mr Mancini the sums set out in the fourth column of the table.

142. I have also found that:

(1) The account between the parties needs to take into account the payment of £230,000 (equivalent to €262,278) made by Mr Hami to Mr Mancini on 19 September 2011; and the payment by Mr Hami of £30,000 (equivalent to €35,776) to HMRC in February 2013.

(2) There has been no failure by Mr Mancini to take into account the payment of £200,000 made by Mr Hami to Mr Mancini on 14 July 2011 as this sum was returned to Mr Hami on 15 May 2012.

(3) No credit is to be given for €252 as claimed by Mr Hami.

143. This means that the shortfall I have found is €596,853.44.

144. The final issue which I have to decide is the legal nature of Mr Mancini's entitlement to this shortfall. Mr Mancini's claim was put in debt, breach of contract and trust. Although the trust claim was only the third alternative, I address it first as the claims

in breach of contract and debt cannot be considered without first determining if the Shares and their proceeds were subject to a trust in Mr Mancini's favour.

Trust claims

145. The trust claim was itself put in two ways – express trust and constructive trust. The express trust was said to arise by reason of the wording of the third paragraph of the Loan Agreement set out above. Mr Graham argued that, where the Loan Agreement provided expressly that, if the Borrower (Mr Hami) defaulted in any of his contractual obligations, then the Lender (Mr Mancini) was to receive "*ownership of the Pledged Assets*" as well as any "*due and still unpaid gross dividend or principal repayment*", the parties had intended to create an express trust of the Shares which arose on breach of the Loan Agreement.

146. I do not agree. As Snell's Equity explains at ¶22-013, the settlor's intention must be clear on two main questions, the second of which is that, assuming they intended to create a legal relationship, it was to involve trust duties as distinct from some kind of legal relationship, such as a simple relationship of debtor and creditor. I do not consider that the parties intended to create a trust relationship for the following reasons:

(1) "*Ownership*" in the third paragraph of the Loan Agreement is not used to indicate a change of beneficial ownership. Rather it means "*a transfer of*" so as to indicate that the consequence of a breach of the Loan Agreement was that Mr Mancini was entitled to receive an immediate transfer of the Shares and any gross dividend or principal repayment which has been received by Mr Hami but not paid over. This meaning of "*ownership*" can be seen from the second part of the sentence which provides that, after receiving "*ownership*", Mr Mancini would not be entitled to seek any further payments. The Loan Agreement was therefore equating "ownership" with an actual transfer.

(2) There is other language in the Loan Agreement which is inconsistent with the existence of an express trust, notably the references to Mr Mancini receiving the "*ownership*" as "*damages*" which would indicate that the parties were referring to the usual remedy for breach of contract rather than creating a trust.

(3) The final sentence of the third paragraph of the Loan Agreement is also inconsistent with an intention to create an express trust. That sentence makes it clear that, if Mr Hami had transferred the Shares in breach of the Loan Agreement, then the relevant remedy was for Mr Mancini to receive sums equivalent to the amounts which would have been paid on the Shares. No provision was made for any proceeds of sale. If the parties had intended to create a trust, then they would be expected to have provided for any such proceeds received by Mr Hami as these would have been impressed with the same trust.

147. Turning to the claim relying on a constructive trust, such a trust was said to arise because beneficial ownership of the Shares had passed to Mr Mancini pursuant to the Loan Agreement but, in breach of that Agreement, Mr Hami had failed to pass legal ownership to Mr Mancini by executing a transfer document. These were the "premises" in which it was said that Mr Hami held the Shares on constructive trust. It

was not immediately clear how this claim worked because, if the beneficial interest had already passed to Mr Mancini under the Loan Agreement, there would be no scope for a constructive trust to arise. However, in his submissions Mr Graham confirmed that the basis of this claim was that, because equity treats as done what ought to have been done, it was the obligation to transfer the Shares on breach of the Loan Agreement which gave rise to a constructive trust from the end of March 2010.

148. This was an aspect of the case where, understandably given the limits of his legal knowledge, Mr Hami did not make any substantive submissions. It is one however, with potentially far-reaching consequences if, for example, a trust is held to exist and tracing remedies are pursued in respect of each of the 28 distributions made by Sardo between August 2009 and January 2016. Mr Graham accepted that such a tracing exercise would have to be the subject of further directions after judgment and would be a potentially substantial process.

149. The starting point is that a constructive trust will generally arise by operation of law where there is contract for the sale of shares in a private company on the basis that such a contract is specifically enforceable. In a judgment given after the conclusion of submissions in this case, the Supreme Court referred to "*the vendor-purchaser constructive trust ("VPCT")*" as one "*which typically arises whenever there is an agreement for the sale of property of which equity would grant specific performance*" with such a trust being "*one of the ways in which effect is given to the maxim that equity treats as done that which out to be done*": LA Micro Group (UK) Inc v LA Micro Group (UK} Ltd and Ors [2024] UKSC 42 at [1].

150. As I understood it, this was the type of trust on which Mr Mancini relied. It is referred to briefly in Lewin on Trusts at [8-015], the chapter of that work cited by Mr Graham in support of this claim, but this was not a point which was developed in detail.

151. It was not argued on behalf of Mr Mancini that a trust arose when the Loan Agreement was entered into. Although not described as a sale of the Shares, it might have been said that the practical effect of the Loan Agreement was materially the same as a sale with the loan monies being the purchase price and the completion (through the transfer of the Shares) being delayed until the end of March 2010 or such earlier date as specified by Mr Mancini. I note however, that the parties had themselves described the nature of their relationship at the outset as one of debtor/secured creditor as the Shares were expressly pledged by Mr Hami to Mr Mancini. Although there was no actual delivery of possession of the Shares to make good the pledge, the intention of the parties on this point was clear from the language used in the Loan Agreement. As the constructive trust exists as a consequence of and to give effect to the relevant contract, the fact that the parties intended to create a different relationship could prevent such a trust from arising. Given the way that the case was put, this is not a point I have to determine.

152. Equally, it was not said that a trust arose when Mr Hami did not pay the first dividend to Mr Mancini within 15 business days of the payment by Sardo to Mr Hami in August 2009. This would have been the first "default" by Mr Hami on one of his "contractual engagements" within the terms of the third paragraph of the Loan Agreement.

153. Rather, the focus of Mr Mancini's case was on (i) the second paragraph of the Loan Agreement which required Mr Hami to transfer the Shares by the end of March 2010 and (ii) the third paragraph of the Loan Agreement which provided for the consequences of a default by Mr Hami in complying with the terms of that Agreement. These provisions imposed an unconditional obligation on Mr Hami to transfer the Shares, and accordingly, it was said that a constructive trust arose at this stage and thereafter applied both to the Shares and to any dividends or redemption proceeds paid on those Shares in the following years.

154. I would agree that the basic elements required for a constructive trust to arise were present in March 2010. In particular, the obligation on Mr Hami to transfer the Shares was one for which a court would have granted specific performance at that stage. However, there are several issues which take this case outside of the usual vendor/purchaser situation, the most significant of which arise out of the fact that the Shares had ceased to exist by January 2016 when they had all been redeemed in accordance with their terms. This gives rise to two points relating to the requirement that a contract be specifically enforceable for a constructive trust to arise.

155. First, Mr Mancini did not seek to enforce the obligation to transfer the shares while they existed (a period of between four and five and a half years) and, even after their redemption, waited a considerable period before bringing these proceedings. Specific performance is a discretionary equitable remedy, the right to which can be lost by delay (laches) and here, as I have found, Mr Mancini was content to leave the Shares with Mr Hami.

156. Second, once the Shares had been redeemed and Mr Hami held only their proceeds, specific performance by way of a transfer of the Shares would not have been possible and an obligation to pay over a sum of money would not be amenable to specific performance.

157. While it would not be an answer for the defendant to rely on its own actions in disabling the possibility of specific performance (for example, by transferring away the relevant property), Lewin refers at [4-005] to the trusteeship ceasing if the right to specific performance is lost by the subsequent conduct of the party originally entitled to it.

158. I was not referred to any authority which dealt with a situation in which the unique property ceased to exist in accordance with its own terms without any involvement of the parties but where it was known to the potential claimant that this would happen and no steps to obtain specific performance were taken while the asset existed. Given however, that the availability of specific performance is central to the existence of the constructive trust, and it ceased to be available by mid-2016 at the latest by reason of a combination of Mr Mancini's actions and the terms of the Shares, I conclude that any constructive trust had ceased.

159. I therefore reject the claims in trust.

The claim in debt

160. The claim in debt relied on the third paragraph of the Loan Agreement. It was argued in particular that the second sentence of that paragraph should be construed so that it

applied not just if the Shares had been transferred away to a third party by Mr Hami but also if Mr Mancini could not achieve legal and beneficial ownership of the Shares in any circumstances. This was to be achieved by reading the relevant part of the Loan Agreement as follows (with the words to be added by interpretation or by implication underlined:

> "*If the Borrower (or his legal inheritors) has transferred ownership of the Pledged Assets to third parties without previous consent from the Lender, and/or the Lender cannot achieve legal and beneficial ownership of such Pledged Assets…..*"

161. I do not consider that it is necessary to construe the Loan Agreement in this way or to imply any terms in order for Mr Mancini to make good his claim in debt. In its third paragraph, the Loan Agreement was dealing with the two particular situations which might occur if Mr Hami failed to comply with the obligations in the second paragraph:

161.1. Either Mr Hami would still hold the Shares in which case he had to transfer both the Shares and any due and still unpaid dividend or principal repayments to Mr Mancini. In the context of the Loan Agreement, the "*due and still unpaid gross dividend or principal repayment*" meant any sums falling within this description which he received and so, as each dividend or principal repayment was paid to Mr Hami, he came under an obligation to pay the requisite amount to Mr Mancini.

161.2. Or Mr Hami had transferred the Shares away to a third party, in which case he was obliged to pay to Mr Mancini amounts equivalent to the dividends or principal repayments which he would have received had he continued to hold the shares.

162. The difference between the first and second provisions is that the first retains the limited recourse nature of the Loan Agreement – Mr Hami must transfer the Shares and any dividends/principal which he has received up to the date when the transfer is made but he is not obliged to look to his other assets to satisfy his obligations – whereas the second is the exception to the limited recourse nature of the Loan Agreement because it obliges Mr Hami to use his own assets to satisfy his obligations.

163. It is not necessary or appropriate in these circumstances to widen the second provision by interpretation or implication to cover the fact that the Shares had been redeemed when the first provision provides Mr Mancini with an entitlement to be paid each of the sums identified in the table above and give rise to the shortfall.

164. In these circumstances, Mr Mancini is entitled to judgment for the shortfall I have found as a debt due to him under the Loan Agreement.

Breach of contract

165. In so far as it is necessary, the same result would follow on the claim for breach of contract. Mr Hami was in breach of the Loan Agreement in not transferring the Shares and in failing to pay over the relevant dividends and principal repayments. The loss for such breaches would be the amount of the shortfall that I have found.

G Conclusion

166. I conclude therefore that Mr Mancini is entitled to judgment in the sum of €596,853.44 as a debt, alternatively as damages for breach of the Loan Agreement.

167. Unless agreement can be reached, I will hear from the parties on the consequential relief claimed by Mr Mancini, namely interest and costs.