Neutral Citation Number:[2023] EWHC 889 (Comm)

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF BIRMINGHAM
CIRCUIT COMMERCIAL COURT (KBD)

Case No: CC-2022-BHM-000002

Courtroom No. 204

Priory Courts
33 Bull Street
Birmingham
B4 6DS

Tuesday, 10th January 2023

Before:
HIS HONOUR JUDGE WORSTER

B E T W E E N:

PRAETURA ASSET FINANCE LTD

and

S LINE RENTALS (1)
NEIL VITALE (2)
SUNDEEP GOHIL (3) (Deceased)

MR A KINGSTON-SPLATT appeared on behalf of the Claimant
MS G MATTU appeared on behalf of the Second Defendant

JUDGMENT

HHJ WORSTER:

1. This is a claim brought by Praetura Asset Finance Ltd against three defendants, S Line Rentals Ltd, Neil Vitale and Sundeep Gohil. Mr Gohil died before the issue of proceedings and the claim has only proceeded against S Line and Mr Vitale.

2. The claimant has a default judgment against the first defendant, S Line for a sum to be assessed. On 19 December of last year, I struck out the second defendant's defence and consequently the claimant has a judgment to similar effect. In simple terms judgment on liability but not as to quantum.

3. The one issue that the second defendant raised in his defence, which I took to be an issue of causation rather than liability, was whether the claimant had failed to mitigate its loss by failing to register the conversion of the vehicle, subject to this claim, from a saloon car to a hearse with the DVLA.

4. The claim arises from a transaction, or series of transactions entered into as between the parties in 2019. On 1 October 2019, Praetura, the claimant, let a Mercedes Hearse to S Line Rentals Ltd pursuant to an unregulated hire purchase agreement. Mr Vitale and Mr Gohil were then the directors of S Line Rentals and they signed forms of guarantee and indemnity. I will come to the terms of those documents in a moment. The hire purchase agreement provided for the payment of instalments over a period of five years with provisions as to termination, if amongst other things, payments were not kept up. Shortly after Mr Gohil died in October 2021 there were issues with payment and in November 2021 the agreement was terminated for non-payment.

5. In December 2021 there was a second termination letter relying upon other matters in breach of the clause prohibiting the removal of the goods subject to the agreement from the country. That was prompted by the discovery that the vehicle was in Italy.

6. There is some background to the transaction in October 2019 but none of this is really in issue as between the active parties, that is the claimant and the second defendant. Indeed I noted in the course of an application for relief from sanction made by the second defendant this morning that there was nothing really in his witness statement which was in issue. What seems to have happened was that a Mercedes S Class 3 Litre diesel saloon car, which had belonged to Mr Gohil and was subject to a hire purchase agreement with Hitachi, was transferred to S Line and converted into a hearse by a company in Italy called Vectoras. S Line then sold it to Praetura for £110,500 plus VAT and Praetura then let it back on hire purchase to S Line. The hire purchase agreement, this is page four of bundle one, included a number of hire declarations to the effect that S Line were relying upon their own judgment and not on the judgment of Praetura or anyone else. In addition, that the information shown and any other information given to the owner was in all respects, correct and complete and they were relied upon by the owner in deciding whether to enter the agreement.

7. The value of the vehicle at that stage was given as £110,500. This appears to be the addition of its value as a car and the cost of conversion. If the figure was not given by S Line, then S Line must have agreed with it. The claimant's evidence was that it undertook a desktop valuation via a firm of valuers called Tallons. That did not involve an inspection of the vehicle, but relied upon information provided to Tallons. That valuation proceeded on the

basis that the vehicle could be lawfully driven on the roads in this country. Having paid off the balance of the pre-existing hire purchase agreement, Praetura then paid something over £80,000 to S Line.

8. Following the signing of the hire purchase agreement, there were some repairs that needed doing to the vehicle and it was sent back to the company in Italy which had converted it. As I understand the evidence of Mr Stark, the single joint expert, the mileage on this vehicle indicates that it probably was never used as a hearse. It was simply driven to Rome and back for the purposes of these repairs. Having been driven to Rome in 2019 it then got caught up in disturbances caused by Covid and it was not until May of 2022 that it returned to the UK.

9. At no point does it seem that S Line, Mr Gohil or Mr Vitale produced a certificate of conformity as to its conversion by the company in Italy from a saloon to a hearse, but there was absolutely no doubt that the parties were aware that it was a hearse conversion at the material time. It is a matter noted amongst other things in the guarantee and indemnity signed by Mr Vitale, page 14 of bundle one.

10. None of that really is in issue. Nor is it in issue that the hire purchase agreement was validly terminated by the claimant. As a consequence of termination pursuant to clause 7.4 of the hire purchase agreement, S Line is obliged to pay a sum which is calculated in accordance with the provisions of that clause. That includes all unpaid instalments and other payments due under the agreement. Clause 7.4.2 provides for the value of the outstanding payments at termination to be discounted by 2% per annum. The other relevant clauses are these:

> 7.4.3: "Damages for any loss which the owner suffers under this agreement or as a result of any breach of the agreement by the hirer".
> 7.4.4: "All expenses of recovery and attempting to recover possession or in tracing the vehicle and all sums required for putting goods in good repair and condition consistent with the terms of the agreement."
> 7.4.5: - provides for interest,
> 7.4.6: "If the owner has repossessed and sold the goods the net proceeds of sale, the owner's estimate of the proceeds has been returned to the owner but not at that time sold, after deducting all of the costs of sale and the purchase fee".

11. The claim brought by the claimant against S Line is for a contractual sum which was then just over £90,000, and in the alternative damages for wrongful interference with goods and interest. The claim against the guarantors is pursuant to the guarantees and indemnities in the same sum, and in the alternative damages for wrongful interference. There is also a claim pursuant to the guarantees, an indemnity against any loss, costs or liability that Praetura may suffer arising from or arising out of the agreement, the supply of the goods or services under the agreement or if the guaranteed obligations are/or become unenforceable, invalid or illegal and then costs and interest.

12. In other words the claim against the parties is put in two ways, the first in debt and the second for damages. It is not unusual to find claims put in that way, but there is an issue in this case which means it is of some relevance.

13. Following the recovery of the car from Italy, it was returned to the claimants in June of 2022. Following that there was an inspection by a single joint expert Mr Stark, who has prepared a report. It was then sold in the November. Mr Vitale has challenged the valuation Mr Stark gave the vehicle, and the sum achieved on sale, in effect saying it is below the proper market value of the vehicle. And as I have indicated from the terms of his amended defence, the says that here had been a failure to mitigate on the part of the claimant.

14. The first response by the claimant to that allegation is that there is no duty to mitigate because Mr Vitale's liability under the Guarantee and Indemnity he signed is in the nature of an indemnity, in other words a primary obligation rather than a secondary one. Consequently his liability is in debt, and there is no duty to mitigate where the claim is in debt.

15. In the course of his submissions, Mr Kingston-Splatt has taken me through some of the authorities. In his skeleton argument, he helpfully sets out some of the guidance that has been provided, both in the main textbook in this area and in some of the cases. The question of whether Mr Vitale's obligations are as a guarantor, and so secondary, or under the terms of an indemnity, and so primary, rests on the construction of the agreement. He quotes from Andrews & Millett, the *Law of Guarantees* at paragraph 1014, at paragraph 25 of his skeleton argument:

> "The question whether a particular contract happens to be a guarantee or an indemnity and whether the normal incidence of a contract of that had been modified, is a matter of construction in each case and is often very difficult to resolve. A contract of suretyship which contains a provision preserving liability in circumstances in which a guarantor would otherwise be discharged, such as the granting of time to the principal or a material variation of the underlying contract without the surety's consent, will usually be construed as a guarantee because such a provision would be unnecessary if the contract was an indemnity. The contract may also contain a provision to the effect the surety is to liable in circumstances in which the principal debtor has ceased to be liable e.g. on the release of the principal debt of either creditor although it may be argued by parity of reasoning that this tends to indicate that the contract is a guarantee, such provision may point towards the opposite conclusion as it may show that it was intended that the liability of the obligor should continue regardless of what might happen to the principal debtor".

16. Mr Kingston-Spratt has taken me to a number of the terms of this form of Guarantee and Indemnity which is at page 13 of bundle one. Clause 2 is headed 'Guarantee and Indemnity':

> "In consideration of the funder entering into the final screen of the customer, the guarantor hereby unconditionally and irrevocably".
>
> 2.1: "Guarantees to the fund of the functional payment and discharge of all monies and liabilities, whether present or future, whether certain or contingent and whether a loan or jointly with any other person and in whatever name style or form now or hereafter owing or incurred by

> or from the customer to the funder under the finance agreement 'Guaranteed obligation'".

Pausing there, that clause, both in terms of its language, in particular the word "guarantees", and the nature of it, suggest a guarantee.

17. Clause 2.2 provides that:

> 2.2: "Undertakes for the funder, that whenever the customer does not pay any of the guaranteed obligations when due, the guarantor shall immediately, on demand, pay that amount as if it was the principal obligor".

The use of the phrase "as if it was the principal obligor" points towards an indemnity, a primary obligation. Clause 2.3 provides that:

> 2.3: "Indemnifies the funder against any loss, costs or liability that it may suffer resulting from or arising out of the finance agreement, supply of the goods or services under the finance agreement or from any of the guaranteed obligations being or becoming unenforceable, invalid or illegal".

There are points to be made either way in the case of 2.3 as the passage from Andrews & Millett identifies, but the submission is that, on balance 2.3 points towards an indemnity, not least because it begins with the word 'Indemnifies'. Clause 3 provides for the continuing nature of the obligations. It says "the guarantee and indemnity is a continuing guarantee and will extend to the ultimate balance of the guaranteed obligations regardless of any intermediate payment" etc.

18. Clause 4, "Liability of guarantor not affected by certain events". Again this might be seen as pointing towards a guarantee but not as clearly as it might.

> 4.1: "The funder may at any time without discharging or prejudicing this guarantee and indemnity or the liability of the guarantor".
>
> > 4.1.1: "Terminate, modify or increase any credit to or agreement with or liability of the customer or any interest, charges, rentals or instalments payable by the customer such as."

Then this: "The variation of the underlying agreement does not discharge the guarantee". That is a clause designed to ensure that the guarantee does not discharge, and so points towards a guarantee.

> 4.1.2: "Grants the customer or any other person any person any or indulgence"

The effect is much the same.

> 4.1.3: "Settle or compromise with the customer or any other guarantor

> or indemnifier or any other person".
> 4.1.4: "Take, release, modify, exchange deal with or omit, perfect or demand any security or other guarantee or indemnity or rights the funder may now or hereafter have from or against a customer or any other person".

As I say, it seems to me that clauses of that type are there principally to safeguard the position of somebody benefitting from a guarantee.

19. However, there are other clauses which Mr Kingston-Splatt says point the other way,

> 7: "The liabilities and obligations the guarantor under this guarantee and indemnity shall not be affected by the bankruptcy, liquidation or death of the customer".

In addition, 9 which falls into two parts - 9.1 and 9.2.

> 9.1: "This guarantee and indemnity will cover all liabilities incurred and owing by the customer under or in connection with the finance screen, notwithstanding that the borrowing or incurring of such liabilities may be invalid or in excess of the powers of the customer or of any director, agent, attorney or other person purporting to act on behalf of the customer and notwithstanding any irregularity in the borrow or incurring of liabilities".

9.2 is a separate and independent stipulation.

> "It is agreed by the guarantor that any guaranteed obligations which may not be recoverable on the footing of a guarantee, whether by reason of any legal limitation, disability or incapacity on or of the customer or in any other fact or circumstance and whether known to the funder or guarantor shall nevertheless be recoverable from the guarantor as sole and principal debtor in respect of it and shall be paid by the guarantor on demand".

Therefore 9.1 is about ultra vires borrowing in particular and it is not of much assistance there. 9.2 tends to point towards there being obligations of indemnity.

20. Finally clause 15 provides:

> "A certificate by a director, secretary or authorised officer of the funder as to the monies and liabilities due, owing incurred by the customer to the funder will be conclusive evidence in court or other proceedings against the customer except in the case of manifest error".

That Mr Kingston-Splatt says, points strongly towards this being an indemnity. He took me in particular, to the case of *IIG Capital LLC v Van Der Merwe and Anors* [2008] EWCA Civ 542. That was a case where one of the issues was whether the obligation was one of indemnity or guarantee. The court had to construe the nature of the obligation. There were

clauses where agreements were made as a principal obligor, but there was plainly some issue on the matter. At paragraph 32 of his leading judgment Waller LJ says this:

> "Clause 4.2 then provides that a certificate in writing duly signed by a duly authorised officer stating the amount at any particular time due and payable by the guarantor shall, save for manifest error, be conclusive and binding on the guarantor for the purposes hereon".

And this,

> "I agree with the judge that that clause puts the matter beyond doubt. Any presumption as by the language is being clearly rebutted. Apart from manifest error Van Der Merwe bound themselves to pay on demand as primary obligor, the amount stated in the certificate pursuant to clause 4.2".

21. In another case that I was taken to, clauses similar to that found at clause 2.2 and 2.3 can be found. This is the case of *Sofaer v Anglo Irish Finance Plc* [2011] EWHC 1480 (Ch) the decision of Lewison J as he then was. The clauses that we see there, particularly clause 2.2 in the *Sofaer v Anglo Irish Finance Plc* case, and the clause at 2.2 and 2.3 in this case, are to similar effect. The *Sofaer* clause was headed 'Indemnity' and followed on from a clause headed 'Guarantee'. There was, as it was put, a similar hierarchy of provisions. Mr Kingston-Splatt's submission was the combination of clauses 2.2 and 2.3, in this case, amounted to what was being undertaken at 2.2 in *Sofaer v Anglo Irish Finance Plc.*

22. The case is also of some assistance because it is an example of a case where there are obligations which can be seen as guarantee, sitting alongside obligations which can be seen as indemnity, and where it is the nature of the obligation relied upon in the claim that matters. It is not objectionable to find obligations which can be separated out in that way so long as they can properly be separated out.

23. The views expressed by Lewison J in that case were not met with universal approval. The authors of the *Law of Guarantees* by Andrews & Millett would doubt some of Lewison J's findings, in particular in relation to clause 2.1(b) in *Sofaer v Anglo Irish Finance Plc.* However, it is at the lowest, a useful point in the claimant's favour.

24. Construction can often be a matter of impression as to which there can be two perfectly understandable approaches. In this case, whilst I have had the benefit of detailed and conscientious submissions from Mr Kingston-Splatt, I have not had the benefit of argument as between the parties. Consequently, whilst I have done my best to test what was put to me, I have not had the benefit of both sides of the argument.

25. Looking at the words used and taking them in context, whilst the provision at paragraph 2.1 is a guarantee, what is being provided for at 2.2 and 2.3 is an indemnity. Clause 2.2 uses the phrase "as if it was the principal obligor". That is inconsistent with the obligation being a guarantee. Similarly whilst there is an argument that 2.3 can be seen as a guarantee, it begins with the word 'indemnifies'. The use of that language expresses the parties' intention that this is a primary obligation. The clauses in the balance of the agreement,

particularly at clause 4, deal with the obligations under clause 2.1. The point about the certificate at clause 15 is of some assistance, albeit not as compelling as it was suggested. Consequently, on the basis of the document construed on the usual principles, I am satisfied that this was a document which included obligations of indemnity, those being the obligations relied upon in the claim. Consequently, my first ruling is that the sum claimed is claimed as a debt, and there is no duty to mitigate.

26. However I should go on to consider what the position would be if I were wrong about the construction of the agreement, and consider the position if the claim were one made for damages. In those circumstances, it is well established that there is a duty on a claimant in this sort of case to act reasonably to mitigate their loss. It is important to recognise the requirement is only to act reasonably and that the standard of reasonableness is not a high one, the defendant being the admitted wrongdoer. The standard of conduct claimants must attain is dealt with by the editors of McGregor at paragraph 9-079 of the 21st edition. They refer firstly to the speech of Lord McMillan in *Banco de Portugal v Waterlow & Sons Ltd* [1932] A.C. 452, at 506.

27. At 9-081 of McGregor they say this:

> "At the same time in assessing reasonableness, while it has been said that the claimant is 'Not bound to nurse the interests of the defendant', it is also and long been said that the claimant must act with the defendants, as well as their own interests in line".

There are some illustrations of that given in the text.

28. Whilst the duty is on the claimant, the evidential burden is on the defendant, at least to get that issue off the ground. In this case the allegation relates to the failure to re-register the car as a hearse. The factual evidence as to the sale of the car and its valuation comes firstly from the live evidence of Mr McClellan, who is the head of collections for the claimant and who oversaw the recovery and sale of the car. I asked Mr McClellan a number of questions. Secondly I heard evidence from Mr Richard Stark, an engineer and valuer who initially was jointly appointed by the claimant and the second defendant to provide a valuation of the car before it was sold. His report is dated 10 September 2022 (it was in fact 10 October 2022). He answered some written questions from the claimant, but the second defendant did not put any written questions. He has also attended to give evidence today and answered some further questions from counsel for the claimant. Those questions also covered what I had intended to ask him.

29 I begin with Mr McClellan. The vehicle was recovered by the claimant in June 2022. It appeared to need some repair work and I have seen from the expert's report the nature of some of the defects. The claimant had to store it securely and having had it valued, Mr McClellan said that he formed the view that they needed to sell it. He made the point that it was in the claimant's best interests to get as much as it sensibly could for this car, just as much as it was in the interests of Mr Vitale.

30. Selling the vehicle presented something of a problem. It did not have a certificate of conformity in relation to its conversion from a saloon car to a hearse, and the consequence of that, as best Mr McClellan could discover, was that you could not drive it on the road.

He contacted the DVLA, and on several occasions tried to speak to the company in Italy which carried out the conversion. He did not speak to them about trying to get a certificate of conformity because Mr Stark had done that, but he spoke to the DVLA, and he said that he got conflicting accounts from them. One person said they did not need to do anything as it had four seats in it so they did not need to register it as a hearse. He also spoke to funeral experts who said that they did need to register it and, as he put it, it was getting so complicated he came to the conclusion the thing to do was to get the best possible price.

31 There was a suggestion in the course of some submissions that I heard this morning from Ms Mattu, that Mr Vitale had offers that he wanted to put forward and that he was prevented from doing that. Mr McClellan said that Mr Vitale never made any offers. In the bundle there is an email dated 28 July 2002, page 81 from Mr Good, the legal consultant who was assisting Mr Vitale. He says this,

> "In the meantime our client has received notice of potential interest in purchasing the vehicle from third party contacts. Please kindly confirm that all reasonable access may be afforded by your client to allow such interested parties to view and inspect the vehicle upon reasonable notice to the claimant, alternatively Mr Vitale would like to take possession of the vehicle on usual undertaking of safekeeping and return to enable easy viewing and inspection pre-sale".

32. The claimant was not prepared to give Mr Vitale possession of the vehicle, but Mr McClellan asked that interested parties be referred to the claimant directly. Mr McClellan's evidence is that they never heard anything: "nothing came out of it" is my note. He said we would have considered all offers; it was in our interests to maximise what we could get. However, in the absence of offers coming from Mr Vitale or from those that he had contacts with, Mr McClellan decided to contact an agent called ANG. He did so because that agency had sold another hearse apparently operated by S Line Rental. That was a Mercedes E Class; a bigger vehicle and a more modern conversion. That vehicle had been sold, it is thought, for something in the region of £60,000. This was a vehicle that Mr Stark asked Mr Vitale for details of, because potentially, it was a comparator in a market where it is difficult to find comparators for Mercedes conversions to hearses. However, Mr Vitale refused to provide those details. When Mr Stark made contact with the agents, it was withdrawn from sale, or the advert was cleared.

33. In any event Mr McClellan contacted ANG and ANG acted as the agents for the claimant in arranging a sale. One of the central problems as Mr McClellan understood it, was that there was no certificate of conformity. ANG obtained some interest in the vehicle and that interested party commissioned an independent valuation. This came from a sales executive of Superior UK Automotive in Reading. There is a copy at page 98 of bundle one, an email of 10 November 2022:

> "Hi Tom, further to my meeting with yourself and Tony Gale to provide a valuation on Vectoras hearse based on 2015 Mercedes S Class, registration OO03 BOR, the conversion does not appear to have been logged correctly with DVLA or subject to VCA approved independent vehicle test. Although the description of the vehicle has been altered to include the word 'hearse', the body type on the V5

> under section D5, will I believe still state saloon. On this basis maximum retail sale £50,000 to £55,000, all the problems sorted a very niche vehicle for the UK funeral market or export. Trade purchase £25,000 to £28,000, as it stands. A trader prepared to take on the risk of selling it to the UK funeral market with an incorrect classified vehicle (that should, being pedantic, fail the MOT on this basis) an inappropriate designer vehicle (funeral glass aperture and clarity) and funeral deck for the UK market. Rectify structural body's issues, not insignificant paintwork and window, Sikaflex window sealing sorted, tailgate electronic problems identified and resolved etc. etc. All figures shown include VAT and it does not constitute an offer".

That was £25,000 to £28,000 inclusive of VAT to the trade without more and "if you got everything sorted", which as I understand to be a reference to a certificate of conformity, £50,000 to £55,000 for a private sale.

34. Here I come to Mr Stark's efforts to contact Vectoras to obtain a certificate of conformity. None had ever been provided by S Line or indeed by Mr Vitale, who was a director of S Line up until October of 2021. When Mr Stark contacted Vectoras the evidence he gave the court was that initially, he was told there was no copy in the office and it was a long time ago. He was not satisfied with that. In his view it was not that long sinc ethe car had been converted. The second time he rang was told that the engineer who tested the conversion did not have the documents, only the test report. So Vectoras did not definitely say there was not a certificate of conformity, but they did not say that there was one either, and they did not provide one.

35. Without a certificate of conformity from Vectoras, there were very significant problems in getting this vehicle into a condition where it could be driven legally on the road, or at least where that could be demonstrated to a potential purchaser. Mr Stark deals with the effect of that on the value of the vehicle at paragraph 3.3.1 of his report on page 24 of bundle three. He says this,

> "To comply with DVLA re-registration requirements, evidence of type approval, either a certificate of conformity from the manufacturer/convertor or an individual vehicle approval from the DVSA are required".

The UK body for type approval is the vehicle certification agency. They had been contacted and the position was unclear. The cost of obtaining an IVA was said to be significant and there was a risk that any additional works required to obtain an IVA could prove uneconomical. Mr Stark's view at 3.3.2 on page 25 was that,

> "Currently I do not believe the vehicle can legally be driven in the UK and suspect any insurance placed on the vehicle would be invalid. Note, I contacted Vectoras asking for a copy of the certificate of conformity for the vehicle, however I was advised that where the car was track-tested in Italy, a copy of certification is not available/cannot be provided".

36. Relying on what Mr Stark set out in his report, Mr McClellan decided to approach ANG. When the report from Superior came back, that chimed with what he had been told by Mr Stark. So that when an offer of £30,000 was received, that is £30,000 inclusive of VAT, via ANG, it was accepted. As to the way the vehicle was marketed, Mr McClellan did not follow the advice of Mr Stark, which was to put it in an auction. Mr Stark's conclusion was that the vehicle was to be valued at about £20,000. Mr McClellan's approach obtained as good as, if not a better result in terms of price.

37. What are the obligations on a party in this situation? Praetura were incurring storage charges. It had the option of going down an uncertain and potentially expensive route to obtain a certificate of conformity to sell at a higher price, or to accept an offer which accorded with the valuation of the single joint expert. The obligations on such a party are not high, and it seems to me that in taking the steps it did, the claimant acted reasonably. It has obtained a price which is well below the price Mr Vitale thinks it should have obtained, and well below the £110,000 which the vehicle was apparently valued at at the time of the hire purchase agreement. That £110,000 valuation was the consequence of a desktop valuation which Mr Stark's firm had carried out. Mr Stark was not directly involved in that desk top valuation, but his understanding was that the desktop valuation was carried out without an indication of the mileage. That was 84,000, which is rather high for a hearse. It was also undertaken without knowing that it could not be driven on the road. That fact in particular, was a major element in the reduction in value.

38. There were other factors that Mr Stark took into account. The hearse was a diesel, it had a high mileage and the UK funeral industry is traditional and generally, operators have a matching fleet of vehicles, so this was really "one on its own". When he inspected, he noted a number of issues with the conversion which he set out at paragraph 3.3.6 on page 26. There was some cracking to the roof where it meets the windscreen, cracking to the fibreglass rear nearside bumper and some tyre wear, which may be caused by conversion. In addition there was a poor paint finish, window seals perishing, active lines in the bodywork and paintwork did not run together and the interior specification was, in some instances, not suited to a traditional hearse. Further the vehicle was relatively small and did not allow for a larger coffin.

39. The fact it was a right-hand drive vehicle meant that it was not one that could sensibly be marketed on the continent. It might be that in Malta or Cyprus there was a market, but it could not be exported into the EU because it was a diesel, which left South Africa where there might also have been a market. However, it seems to me a sale in this country was the obvious first port of call.

40. This vehicle fetched more than the single joint expert valued it at, so that even if there was a breach of the duty to mitigate, it has not led to any reduction in recovery. Consequently whichever way the issue of construction is determined, the court is led to the same conclusion, that there should be judgment for the claimant in the sum sought. That is something in excess of £91,330.64. It takes account of the storage charges and the other costs the claimant is entitled to recover. Unless there is any other matter I need to deal with, that is my judgment.

End of Judgment.

Transcript from a recording by Ubiqus
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