



Neutral Citation Number: [2024] EWHC 2437 (Comm)

Case No: CC-2022-BHM-000036

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

Birmingham Civil Justice Centre
The Priory Courts, 33, Bull Street, Birmingham B4 6DR

Date: 26 September 2024

Before:

HHJ WORSTER

(sitting as a Judge of the High Court)

Between:

Calor Gas Limited

Claimant

- and -

(1) Walsall Gas Cylinders Limited

Defendants

(2) Ahtaf Mahmood

(3) Riffat Mahmood

Celia Rooney (instructed by **Knights Professional Services Limited**) for the **Claimant**
The 3rd Defendant in person and for the **1st Defendant**
The 2nd Defendant did not appear was not represented

Hearing dates: 4-5 and 8 July 2024

Judgment Approved by the court
for handing down
(subject to editorial corrections)

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HHJ WORSTER:

Introduction

1. This is a claim brought by Calor Gas Limited (“Calor”) against three Defendants. I heard the evidence and submissions over three days and reserved judgment. In reality the issue at trial was between Calor and Riffat Mahmood. Mr Mahmood represented himself at trial. He also represented the first Defendant company (“WGC”) as its Director. The second Defendant had failed to comply with the terms of an unless order, and was debarred from defending the claim, but he attended to give evidence for Calor.
2. Calor have long been in the business of supplying Liquid Petroleum Gas (“LPG”) in the UK. The gas is supplied in cylinders, and whilst those cylinders come in various sizes and colours, each of them has the following words (or words to this effect) painted on the side:

Property of and only to be filled by Calor Gas Ltd

That represents what I might call the legal position. Calor called detailed evidence in support of that proposition, and it is not in issue between the parties. It also represents the position “on the ground.” Riffat Mahmood has worked in the LPG business in the past, and his evidence was to the effect that “everyone knows” that Calor gas cylinders are the property of Calor and can only be re-filled by Calor.

3. Calor go to considerable lengths to retain ownership of these gas cylinders, and to control who can re-fill them. That is for two principal reasons. The first is that it wants to be able to profit from re-filling the cylinders with its gas. The second is that it ensures that these gas cylinders are subjected to regular safety checks and inspections when returned to Calor for re-filling, and that the process of re-filling is carried out in a safe and controlled manner. Calor called Henry Betts to give evidence about this aspect of the matter. Whilst Riffat Mahmood challenged some of his evidence, Mr Betts was an impressive witness. Until his recent semi-retirement, he was Calor’s Chief Engineer. His witness statement provided detailed evidence about this heavily regulated area, and the need for rigorous systems. He dealt with Riffat Mahmood’s questions quietly and without difficulty: the breadth and depth of his knowledge of this area, and the reliability of his evidence, becoming increasingly apparent.
4. Calor’s case against these Defendants is that they have been variously involved in the filling of its gas cylinders without its authority, and in a potentially unsafe way, at premises at 1 Croxstalls Road in Walsall. Its case is that all the Defendants were involved in that, but that Riffat Mahmood’s role was central. There can be little doubt that there was the unauthorised re-filling of Calor’s gas cylinders at those premises, and having seen the evidence of how that was done, and had Mr Betts’ evidence that it posed “a real risk to the general public”, I accept that the refilling of these gas cylinders was carried out in a potentially unsafe way. The principal issue in the case is whether or not Riffat Mahmood was involved in that operation. His case is that he was not.
5. I heard evidence from a number of witnesses for Calor. Ms Marshall-Rowan dealt with Calor’s business, and the contractual provisions by which it retains ownership of these gas cylinders when they are provided to its network of suppliers, and to the end-customers. Mr Betts dealt with the technical issues I have briefly referred to above. Calor’s solicitor, Helen Pickford, gave evidence about the contacts between her firm and the Defendants over the material time. Whilst Riffat Mahmood asked some questions of those witnesses, it was apparent that most of the issues they dealt with were not in serious doubt. I return to some of the correspondence between Riffat Mahmood and Calor’s solicitors, but it is unnecessary to review the evidence of these witnesses in any great detail. The more controversial evidence comes from the two

other witnesses called by Calor; Ahtaf Mahmood (“Ahtaf”) the second Defendant, and Kashaf Mahmood (“Kashaf”), Ahtaf’s brother. Their evidence goes to the central issue of Riffat Mahmood’s involvement in the re-filling of Calor gas cylinders at the Croxstalls Road premises. That evidence was very much in issue. Both Ahtaf and Kashaf were accused of lying.

6. The only witness for the Defendants was Riffat Mahmood. His daughter had made a witness statement, but she did not attend the trial and her statement was not relied upon. Riffat Mahmood’s witness statements were not professionally prepared and were brief. I allowed him to supplement that evidence orally. No point is taken by Calor about that, but Ms Rooney did express Calor’s concerns about Mr Mahmood’s approach to disclosure.
7. Calor have emphasised the need for proper disclosure by the Defendants throughout this litigation. I heard the Costs and Case Management Conference on 11 December 2023. Having explained the need for both sides to disclose all the relevant documents [C/88] I made orders for disclosure. The Defendants were representing themselves, and consequently shortly before the hearing Calor’s solicitors wrote to each of them identifying the types of documents they would expect to see on disclosure. They did so by reference to the four issues for disclosure they had provided for in the Disclosure Review Document. On 19 February 2024, Riffat Mahmood sent Calor a list of nine documents. Calor were expecting there to have been rather more than that, in particular in relation to the operation of WGC. Consequently, after some correspondence, on 28 March 2024 it applied for further orders for disclosure, including unless orders against the first and second Defendants. I heard that application at a hearing on 26 April 2024. Riffat Mahmood attended, as did his daughter (who at that stage was the sole Director of WGC). It was apparent from what was said at the hearing that Mr Mahmood’s daughter was no more than a nominee for her father and had no actual involvement in the company. Riffat Mahmood subsequently took steps to secure the removal of his daughter as Director and his appointment in her place.
8. I made further orders for disclosure at that hearing. Riffat Mahmood responded to them, but in reality he produced little more in the way of documents. Ahtaf did not respond at all, and as a consequence was debarred from defending. There is a transcript of the ruling on the issue of disclosure in Trial Bundle A at page 151-155 [A/151-155]. In the course of that hearing the nature of a litigant’s duty to disclose documents was emphasised. It was explained to Riffat Mahmood that it was important that the parties disclosed the relevant documents, so that the other side could see what there was, and that parties could not just turn up at trial and produce their documents.
9. I appreciate that litigants in person may not always fully understand the duty to disclose. Riffat Mahmood also told me that he is not good with documents, and he made little in the way of notes during the trial. He is not a lawyer or an accountant. But as the review of the evidence in this judgment illustrates, there were occasions during the trial (both when questioning witnesses and giving evidence himself) when Mr Mahmood reached for his phone and brought up some relevant document or message which he wanted to rely upon. I gave him some considerable latitude, but it meant that for Calor it was something of a moving target. It also necessitated recalling Kashaf to deal with one important document which had not been disclosed or put to him.

The claim

10. Calor's case is that the refilling of Calor's LPG cylinders by WGC is unlawful. The claim is framed firstly as conversion or trespass to goods, secondly as passing off, and thirdly as an unlawful means conspiracy.
11. The claim for passing off is problematic. The factual basis of Calor's case is that members of the public brought empty Calor gas cylinders to the Croxstalls Road premises, where they were filled from LPG gas tanks. There is no evidence of any express representation that the gas going into the cylinders was Calor gas, or that the operation more generally had anything to do with Calor. Indeed, one of the commercial attractions for a customer in having their cylinder filled at these premises, was that it was cheaper than returning it to a Calor dealer in exchange for a full cylinder. There is no evidence that any of the customers thought that they were buying Calor gas or dealing with one of Calor's authorised suppliers.
12. Paragraph 28.2 of the Particulars of Claim puts the case this way:

WGC has filled Calor-branded LPG cylinders with LPG which has been obtained from a source other than Calor and sold such LPG in those cylinders. In so doing, WGC has impliedly represented that the source of the LPG in each such cylinder at the point of sale was Calor. In fact, the LPG was supplied by another supplier. The representation to the contrary was therefore false.

That misrepresentation, which was made in the course of trade, is misleading and is likely to have misled the public to believe (incorrectly) that the LPG in the Calor-branded LPG cylinders was, in fact, supplied by Calor (where it was supplied by a supplier other than Calor). That is a necessary and obvious inference where customers (i) are unable to check the contents of an LPG cylinder; (ii) would have no reason to suspect that the LPG therein was not supplied by Calor; and (iii) in any event, would be unlikely to be able to distinguish the LPG therein from Calor's LPG.

13. Whilst this argument might work if WGC were supplying the Calor cylinders (and so making some sort of representation that their contents had something to do with Calor), the direct evidence in this case is of customers bringing the cylinders to the premises. The probability is that they knew that this was not a Calor filling station, and that the gas was not Calor's gas. In other words, there was no effective misrepresentation. Ms Rooney sought to persuade me that Calor's case might work, but having considered the matter I have concluded that the evidence I have is not sufficient to establish a claim for passing off.
14. The central claim is against WGC in conversion, alternatively trespass. The viability of the claim in conspiracy turns largely on the success of these claims, for it is the conversion or trespass which provide the unlawful means which makes the conspiracy tortious. Paragraph 32.3 of the Particulars of Claim alleges an intention to injure but does not allege that that was the predominant intention. That reflects the fact that this was not a conspiracy to injure per se, but an unlawful means conspiracy. The intention of the conspirators would have been to make money for themselves, and in doing so it was inevitable that Calor would suffer a loss because it would be deprived of the business. But I am not satisfied that injuring Calor would have been the predominant intention of the conspiracy.
15. Before I turn to the law in relation to conversion/trespass, and unlawful means conspiracy, it is to be noted that Calor only pursue its claims for injunctions to restrain the Defendants from selling LPG sourced from suppliers other than Calor in Calor-

branded cylinders and/or handling Calor's LPG cylinders. There is a claim for damages and alternatively an account of profits. But Calor has no means of quantifying its loss, and whilst it would be open to it to claim an account of profits, WGC is no longer trading and would have been struck off were it not for Calor's intervention. There is little or nothing in the way of documents from which to assess any profit, and in any event, neither Riffat Mahmood nor Ahtaf Mahmood appear to have the means to meet any order for payment. A prohibitory injunction meets Calor's aim of enforcing its rights in these gas cylinders, and demonstrating to others that it will pursue these matters. It also reflects a recognition of what is achievable.

Conversion/trespass to goods

16. There are two issues of law to consider in relation to the claim in conversion/trespass to goods. The first is whether Calor have a sufficient interest to bring a claim in conversion and/or trespass, and the second is whether the conduct alleged is a sufficient interference with Calor's rights to amount to a conversion or trespass to goods.
17. The first issue involves a brief consideration of the terms which govern the relationship between Calor and its end customers. Before an end customer can obtain a Calor gas cylinder, they have to enter into a "Cylinder Refill Agreement". A sample customer copy is at [A/368-368A]. It says this at the top of the Agreement:

Calor Gas cylinders remain at all times the property of Calor Gas Limited ("CALOR")

This form must be kept safely, as any refund of this Refill Agreement Charge ... can only be made on production of this form to an authorised Calor Gas supplier.

The Agreement then provides for the name and address of the user, and the charge (which depends on the size of bottle and type of gas). The user then signs below a caption which reads:

The undersigned, upon payment of the Refill Agreement Charge agrees to the Terms and Conditions and the safety instructions on the reverse of this form.

18. The terms and conditions on the reverse include the following:
 1. *Purpose of the Refill Agreement Charge In consideration for the Refill Agreement Charge, [Calor] agrees to refill the [cylinder] indicated with supplies of CALOR Gas ... during the currency of this agreement. [Calor] will fulfil its obligation to refill the Cylinder by providing the User with a pre-filled cylinder in exchange for the empty Cylinder ...*
 3. *Cylinders remain the property of [Calor] at all times and may only be filled by [Calor] Calor makes the Cylinder(s) available to the User as a means of safely transporting and storing the Gas supplied. This agreement is not a rental agreement and it does not provide the User with title in the Cylinder. The User will not part with possession or control of the Cylinders (other than to a CALOR Outlet) nor claim to have rights in breach of this agreement, nor claim or attempt to create or create any agency or bailment in relation to the Cylinders or the User's obligations.*

4. *Use of Cylinder* – Cylinders may be used only as a container for [Calor] Gas and may not be ... transferred ... lent, abandoned, nor ... filled or tampered with.
5. *[Calor's] rights over the Cylinders* – The User is liable for the safe storage and use of the Cylinder ... In any case of wilful damage or breach of this Agreement Calor may repossess Cylinders immediately and the User by entering into this agreement irrevocably authorises [Calor] ... to enter on the Users property for these purposes and in that event this agreement is terminated.

The agreement then provides for the user to obtain a refund of the charge when returning the cylinder to Calor, on a sliding scale based on the years the cylinder has been used.

19. Calor has standard agreements with its authorised outlets. The “Principal Dealer Agreement” is at [A/369], the “Dealer Agreement” at [A/389] and the “Retailer Agreement” at [A/409]. All provide for Calor to retain ownership of cylinders and create a series of bailments (or sub bailments) of the cylinders. They also require that end-customers enter into a Cylinder Refill Agreement; the incentive for the customer being the ability to recover some of the charge paid for the use of the cylinder when they finally return it.
20. This structure is a long-established part of Calor’s business. I note the description of it in *Calor Gas Limited v Homebase Limited* [2007] EWHC 1173 (Ch). I can be confident that these terms applied to any Calor cylinders filled at the Croxstalls Road site.
21. To bring a claim in conversion, a claimant must have (at the time of the conversion) possession, or the immediate right to the possession of the goods in question; see Clerk and Lindsell on Tort 24th ed para 16-43. Ownership of itself is not sufficient. Calor’s case is that when an end-customer takes a cylinder to someone other than an authorised Calor outlet to be refilled, they breach the terms of their Cylinder Refill Agreement. The consequence of that breach is that Calor have the immediate right to repossess the cylinders. I agree with that analysis. The breach arises from parting with possession of the cylinder to someone other than an authorised Calor outlet for the purpose of having the cylinder refilled, contrary to the Cylinder Refill Agreement. The effect of clause 5 of the Cylinder Refill Agreement is that Calor automatically acquire a right to repossess. That is sufficient to bring a claim in conversion.
22. To bring a claim for trespass to goods, the general rule is that a claimant must be in actual possession of the goods at the time of the trespass; see Clerk and Lindsell para 16-139. However, there is an exception to that rule where a bailment is determinable at will. The bailor retains sufficient possession to entitle him to sue third parties. The same was found to be the position in *Calor Gas Ltd v Homebase Ltd*. The material terms of the Cylinder Refill Agreement were the same as they are in this case. The handing over of the cylinder (in that case by the customer to Homebase, which had ceased to be an authorised Calor outlet) terminated the bailment of the cylinder to the customer, and left Calor with an immediate right to possession. That was found to be sufficient to entitle Calor to sue Homebase for trespass to goods; see Henderson J at [41]-[42]. The facts of this case lead to the same conclusion. Whilst it is unnecessary to the result in this case, I would be persuaded that Calor’s immediate right to possession would give it the right to sue in trespass as well.
23. The second issue is whether there is a sufficient interference with Calor’s rights to justify (a) a claim in conversion or (b) a claim in trespass. The conduct complained of is the unauthorised filling of these gas cylinders with LPG. It is of relevance that the

unauthorised filler of the cylinder will know that it is unauthorised. That much would be apparent to the unauthorised filler from what is written on the side of the gas cylinder, and Riffat Mahmood readily accepted that everyone knew that was the position.

24. Absent some explosion, filling the cylinder causes no physical damage to the cylinder. Nor is there any evidence that (for example) it results in any increased wear to the cylinder or the valve. It is simply that it is filled with a gas. In *Kuwait Airways Corp v Iraqi Airways (Nos 4 and 5)* [2002] 2AC 883 @1084, Lord Nicholls said this at [39]:

Conversion of goods can occur in so many different circumstances that framing a precise definition of universal application is well nigh impossible. In general, the basic features of the tort are threefold. First, the defendant's conduct was inconsistent with the rights of the owner (or other person entitled to possession). Second, the conduct was deliberate, not accidental. Third, the conduct was so extensive an encroachment on the rights of the owner so as to exclude him from use and possession of the goods. The contrast is with lesser acts of interference. If these cause damage they may give rise to claims in trespass or in negligence, but they do not constitute conversion.

25. In the following paragraphs Lord Nichols considers the concept of an owner being excluded from possession of his goods. Such an exclusion may arise where the wrongdoer “exercised dominion” over the goods. In those circumstances, the intention with which the acts were done may be material; see at [40]:

The ferryman who turned the plaintiff's horses off the Birkenhead to Liverpool ferry was guilty of conversion if he intended to exercise dominion over them, but not otherwise; see Fouldes v Willoughby (1841) 8 M & W 540.

26. In this case, the wrongdoer takes possession of the gas cylinder in order to fill it with gas. Whether or not the wrongdoer knows it, at that point Calor has the immediate right to the possession of the gas cylinder. That right to possession arises at that time in part to prevent the very thing the wrongdoer is engaged in – the unauthorised and potentially unsafe filling of Calor's gas cylinders. The wrongdoer would know that the gas cylinder belonged to Calor and that Calor would not allow him to fill it with his gas. Knowing that, the wrongdoer proceeds to fill the cylinder. He may have the cylinder in his possession for a relatively short time - the videos of the process I saw in the course of the trial suggest that it is minutes at the most. But whilst it may only be temporary, during his possession of it, the wrongdoer is exercising temporary dominion over the gas cylinder. Or to put it another way, he is using the cylinder in a way which is inconsistent with Calor's right to the possession of it and doing so deliberately. Given that the known purpose of the gas cylinders is to store Calor's gas, and the intention of the wrongdoer is to use it to contain the gas he is selling the customer, this is a sufficiently substantial interference with Calor's right to possession to amount to conversion.
27. The editors of Clerk and Lindsell consider the issue at para 16-11 under the heading – *Taking and using or interfering with goods*. One of the authorities referred to in the footnotes to that paragraph is the Australian case of *Penfolds Wines Pty Ltd v Elliot* (1946) 74 C.L.R 204. The case is also referred to in *The Law of Personal Property* 3rd ed (Bridge and ors) both as an example of trespass; see para 33-003 – “using a bottle”, and in the context of conversion by unauthorised use at 33-021. The case was of some interest because it involved the unauthorised refilling of bottles, although in that case it

was wine bottles rather than gas bottles. The case is not binding but given the points of similarity with the facts of this case, I refer to it briefly.

28. The defendant's brother was the bailee of Penfolds' wine bottles. Latham CJ found that in delivering them to the defendant, the brother's bailment was determined. The defendant then filled them with his wine, without regard to the rights of Penfolds, whose bottles these were. At 218 Latham CJ held that:

A taking of bottles without any intention to exercise permanent or temporary dominion over them, though it might be a trespass, would not be conversion; but the actual use of the bottles for the benefit of the defendant and his brother was a conversion.

The use of the bottles for the purposes of the defendant's trade, and claiming a right to use them in that way, was found to be inconsistent with the dominion of Penfolds and was a conversion; see Latham CJ at 218-219.

29. Dixon J reached a different conclusion, holding that the defendant had not dealt with the bottles in a way which was "repugnant" to Penfolds' immediate right to possession. In other words, that this was not a case where the bottles were damaged or sold or changed in some way. That analysis would appear to be inconsistent with the approach in *Kuwait Airways* (see above), and I would prefer the views of Latham CJ.
30. To return to the present facts, if the filling of the cylinders with gas (and without damage) was insufficient to amount to a conversion, Calor fall back on a claim for trespass to goods. This requires some direct, immediate interference with the claimant's possession of a chattel. Any physical "intromission" (literally putting one thing into another) will suffice. It is unnecessary that the wrongdoer intends to trespass; it is sufficient that they intend the acts which amount to the trespass. Turning off a stopcock thinking that it turned off the water main being worked on, when in fact it turned off the gas supply, amounted to a trespass even though no physical damage was done to the stopcock or the pipe. That was held to be a wrongful interference with the physical property of the claimants; see Butterfield J in *Transco plc v United Utilities Water plc* [2005] EWHC 2784 (QB) at [25]. If, contrary to my finding, the interference in this case is not sufficiently significant to amount to conversion, there is a trespass to the gas cylinders by deliberately handling them and filling them with gas.

Unlawful means conspiracy

31. The law is helpfully summarised in the recent judgment of Miles J in *Lybian Investment Authority and ors v King* [2023] EWHC 265 (Ch) at [761]-[764]. Given that the Defendants are unrepresented, I set out that passage from the judgment in full. The question of whether or not there was a sufficient combination (or agreement) as between the parties to the conspiracy is of particular importance.

[761] *The basic elements of the cause of action in the tort conspiring to injure by unlawful means are set out in Kuwait Oil Tanker Co SAK v Al Bader (No. 3) [2002] 2 All ER (Comm) 271 (CA), per Nourse LJ at [108]:*

"A conspiracy to injure by unlawful means is actionable where the claimant proves that he has suffered loss or damage as a result of unlawful action taken pursuant to a combination or agreement between the defendant and another person or persons to injure him by unlawful means, whether or not it is the predominant purpose of the defendant to do so."

[762] *In addition, the following principles apply:*

- i) *A claimant must establish on the available evidence that there was an agreement or combination with the common design to cause injury to them. This is a question of fact.*
- ii) *Formal agreement is not required, and it is sufficient if two or more persons combine with a common intention, or, in other words, that they deliberately combine, albeit tacitly, to achieve a common end: (Kuwait Oil Tanker at [111])*
- iii) *In most cases it will be necessary to scrutinise the facts to see what inferences can be drawn as to the existence or otherwise of the alleged conspiracy. In many contexts it will be necessary in order to prove intention to ask the court to infer the relevant intention from the primary facts: Kuwait Oil Tanker at [112] and [120].*
- iv) *Nevertheless, it must be shown that the alleged conspirators were sufficiently aware of the relevant circumstances, and had a sufficiently similar objective, before it can be inferred that they were acting in combination: (Kuwait Oil Tanker at [111]).*

[763] *As to the requirement of intention to harm the parties agreed that the principles are set out in OBG Ltd v Allan [2008] AC 1 at [164]-[167]:*

- i) *A defendant may intend to harm the claimant's business either as an end in itself or as a means to an end.*
- ii) *Intentional harm inflicted against a claimant in either of these circumstances satisfies the mental ingredient of this tort, even if the defendant does not wish to harm the claimant in the sense that he would prefer that the claimant were not standing in his way.*
- iii) *Lesser states of mind do not suffice: to establish liability, a high degree of blameworthiness is called for because intention serves as the factor which justifies imposing liability on the defendant for loss caused by a wrong otherwise not actionable by the claimant against the defendant, and the defendant's conduct must be deliberate.*
- iv) *Foresight that conduct may or will probably result in damage to the claimant cannot be equated with intention and this intent must be a cause of the defendant's conduct. The defendant must intend to injure the claimant. This intent must be a cause of the defendant's conduct.*
- v) *If a defendant seeks to advance his own business by pursuing a course of conduct which he knows will, in the very nature of things, necessarily be injurious to the claimant (i.e. the loss to the claimant is the obverse side of the coin from gain to the defendants and the two are, to the defendant's knowledge, inseparably linked and the defendant cannot obtain the one without bringing about the other).*

[764] *As to unlawful means and knowledge:*

- i) *The claimant must establish that: (a) the alleged acts were "unlawful" and (b) that they were in fact the means by which injury was inflicted upon them Digicel (St Lucia) Ltd v Cable & Wireless Plc [2010] EWHC 744 (Ch) at Annex I [3].*
- ii) *The defendant must have knowledge of all of the facts which make the means unlawful: The Racing Partnership Ltd v Sports Information Services Ltd [2020] EWCA Civ 1300 at [141].*
- iii) *By a majority decision it has been accepted that knowledge of the unlawfulness of the means employed is not required: see The Racing Partnership Ltd at [139] and [171].*
- iv) *The requirement of knowledge is satisfied where the defendant has "blind-eye" knowledge: The Racing Partnership Ltd at [159]. That requires a suspicion that certain facts may exist, and a conscious decision to refrain from taking any step to confirm their existence.*
- v) *As to blind eye knowledge see Group Seven & Ors v Nasir [2019] EWCA Civ 614, [59]-[60]:*
 - a) *it is not enough that the defendant merely suspects something to be the case, or that he negligently refrains from making further inquiries;*
 - b) *the suspicion must be firmly grounded and targeted on specific facts;*
 - c) *the existence of the suspicion is to be judged subjectively by reference to the beliefs of the relevant person; and*
 - d) *the beliefs of the relevant person, and the decision to avoid obtaining confirmation must be deliberate.*
- vi) *To be "unlawful", the actions need not themselves be actionable civil wrongs: Revenue and Customs Commissioners v Total Network SL [2008] 1 AC 1174.*
- vii) *Deceit may constitute the necessary unlawful action (ERED at [381]), as may a breach of fiduciary duty (Fiona Trust & Holding Corp v Privalov [2010] EWHC 3199 (Comm) at [69]).*
- viii) *It may be a defence for the defendant to prove that he believed that the means in question were lawful: obiter, in The Racing Partnership, Arnold LJ at [146].*

32. In this case:

- (i) the combination is alleged to include the three Defendants, but in fact would also include others;
- (ii) the unlawful means are the civil wrongs involved in the handling and filling of the gas bottles, whether that be conversion or trespass;
- (iii) the necessary intent to injure is present. The conspirators would have known that the sale of gas to those who brought Calor cylinders to the Croxstalls Road site necessarily meant that Calor would lose the profit it would otherwise

have made from refilling its own cylinders. It was the other side of the coin from the profit their enterprise would make from the sale of this gas; and

- (iv) the probability is that the conspirators knew that this activity was unlawful (in the sense that it was an unauthorised interference with Calor's rights in the gas cylinders), but at the very least they knew all of the facts which made the means unlawful, or turned a blind eye to those facts.
33. The central issue on the conspiracy claim is whether or not Riffat Mahmood was part of the combination.

The facts

34. Riffat Mahmood is (or was) a good friend of Arshad Mahmood ("Arshad"), albeit as I understand it, they are not related. Arshad is Kashaf and Ahtaf's father. Arshad's family have a taxi business, and Riffat Mahmood has worked in that business in the past. In August 2015, the taxi business was incorporated as Starlight Taxis Limited. Kashaf was the Director, albeit it seems that Arshad retained control. The registered office was Orbital Works, Croxstalls Road, Walsall.
35. In 2019, Calor investigated the unauthorised use of its gas cylinders at an address in High Street, Bloxwich. This was the "Handy Car Wash." Investigators went to the site posing as customers with a Calor gas cylinder, and witnessed it being refilled from an Autogas refuelling tank at those premises. Calor then wrote to Handy Car Wash, seeking undertakings not to handle or fill Calor's gas cylinders. It received a form of undertaking dated 10 June 2019 and signed by "Rifat Mahmood" as a Director of Starlight Gas Centre [A/182]. Riffat Mahmood says that he never signed this document.
36. Calor's investigators made further test purchases from the Bloxwich site in December 2019, and in January 2020 Calor sought a further undertaking. It received forms of undertaking signed by "Rifat Mahmood," Ahtaf Mahmood and Wass Khan. Riffat Mahmood's case is that he did not sign this undertaking either. The video evidence of these test purchases was not before me.
37. On 19 December 2019, Walsall Gas Limited was incorporated. The registered office was 1 Croxstalls Road, Walsall. The Director was Ahtaf, although his evidence was that he was asked to sign the relevant documents by Riffat Mahmood and Arshad. Kashaf's evidence was also to the effect that this company was really his father's and Riffat Mahmood's. Riffat Mahmood's evidence was that whilst it was his idea to set up a company to supply LPG (and that the name of the company was his idea) it was not his company. He told me that his son become very ill, and they spent a lot of time in hospital. He said much the same to Calor's solicitors in a telephone call on 17 October 2022; [A/169]. In that conversation he was putting his son's illness and time in hospital as 2018 to 2019. In any event, his case is that Arshad went ahead without him. Walsall Gas Limited traded but filed no accounts and ceased trading in April 2021. It was struck off and dissolved in February 2022.
38. On 16 June 2021, the 1st Defendant WGC was incorporated. Its registered office was 1 Croxstalls Road, and its sole Director and shareholder was Riffat Mahmood's daughter. It is accepted that in fact she played no part in the running of the business. The reality is

that this was Riffat Mahmood's company, although his evidence is to the effect that he did not trade it. No trading accounts or formal financial records have been disclosed.

39. On 18 June 2021, Starlight Taxis Limited sub-let part of the Croxstalls Road site to WGC. This was a formal written sub-lease for a period of 7 years [A/222]. The guarantor was "Rifat Mahmood." The lease was for the "... selling of LPG. Use of office storage and facilities." It was signed by Arshad, Riffat Mahmood and (on the face of it) his daughter. The sub-lease was later surrendered; see the deed of surrender dated 6 September 2022 at [A/228]. The deed of surrender was obtained by Riffat, signed by Kashaf and (apparently) Riffat's daughter, and witnessed by someone Riffat knew. In a telephone call with Calor's solicitors on 18 October 2022 [C/185] Kashaf denied that the lease had been surrendered in September 2022. His evidence was that this happened in February 2023.
40. The site at Croxstalls Road is shown in the Google Earth ariel photograph at [A/220]. This shows the entrance from Croxstalls Road, with two green gas tanks to the left at the front of the site; see the photograph at [A/467; C/517]. Then there is an "office" in a portacabin. Then, further into the site, there are some white gas tanks; see the photograph at [A/468; C/516]. The gas tanks near to the road belong to WGC and would be for propane for filling gas cylinders, and the gas tanks further into the site are the Autogas tanks which Starlight had to fill taxis.
41. In a handwritten statement dated 8 May 2024 [B/67] in relation to the disclosure of documents, Riffat Mahmood said that he had no documents relating to the two green tanks because he bought them second hand and paid cash. Nor were there any records relating to sales and purchases of gas because the only filling was done by the fitters to test for leaks, and the only gas put into those tanks was to test them. Nor were there any records relating to the sale of cylinders because the company was in the early stage of searching for suppliers of empty gas cylinders. However, he did disclose statements from Vita Gas [C/469-502 and 533-554] dated from March 2019 to November 2022 showing supplies of gas to Starlight Taxis and then to Walsall Gas Limited during that period. The two sets of statements differ. The first set shows the account brought up to date by a payment on 14 March 2022, and the second on 30 November 2022. Riffat Mahmood relies on the statements to show that there were no supplies to WGC. Riffat Mahmood also disclosed receipts and the like relating to Starlight's tanks from 2018 onwards; [C/519-530 and 555]. There are also some incomplete emails from suppliers of gas cylinders which Riffat Mahmood relies upon to support his case that he was unable to source any gas cylinders for WGC.
42. In early October 2021, Calor received an anonymous letter and a photograph of a price list [C52-53]. The letter said that it came from a member of the public who was concerned about the "dangerous fraudulent practice taking place at 1 Croxstalls Road ...". It alleged that any make of gas cylinder in any condition was being filled by unqualified staff, often underfilled, and on occasion overfilled. The letter enclosed a photograph of the price list displayed and named the companies trading from the premises as Starlight, Walsall Gas Limited and WGC. As a consequence, Calor arranged for an investigator to attend.
43. On 26 October 2021 two investigators went to the Croxstalls Road premises. The video of the visit was very short, and of little evidential value. The written report is at [A/157]. It confirms that there were "2 bulk tanks positioned just inside and to the left of the gates" and "an Autogas filling unit connected to another bulk tank positioned at the rear of the yard". The attendant was in the process of supplying a taxi with Autogas, but when the investigator held up a 6kg Calor propane cylinder for him to see, he

gestured to take the cylinder to him near the bulk tank. Having finished filling the taxi, he connected the nozzle of the filler to the cylinder, tightened it with a spanner, and filled the cylinder. The charge was £8, payment was in cash, and no receipt was asked for or given. The photograph on [A/160] is of the cylinder being filled. It was later tested by Calor and found to be overfilled by 600 grams. As Mr Betts explained, overfilling a gas cylinder can be dangerous.

44. There was a second visit on 9 November 2021. Once again, a gas cylinder was filled. This time the video shows that it was filled from the Autogas filler fed from the white tanks. The video was played at trial, and there are some stills in the bundle at [A/175-177] showing the person who filled the cylinder. This was Ahtaf, who took the cash and went into the portacabin office. On this occasion, the cylinder was overfilled by 1.5Kg.
45. On 7 December 2021, Calor's solicitors wrote to Kashaf (for Starlight), Riffat Mahmood's daughter (as the Director of WGC) and Ahtaf (as Director of Walsall Gas Limited) requesting undertakings; [C/62-69]. Ahtaf and Kashaf signed undertakings on 16 and 17 December 2021 and returned them to Calor's solicitors [A/184, 186]. However, there was no immediate response by WGC. Calor's solicitors followed it up with a letter dated 20 December 2021 [C/80] offering WGC a final opportunity to deal with the matter by giving an undertaking. On 21 December 2021, a process server went to the Croxstalls Road site to serve the letter. He gave the letter to Arshad and took some photographs of the banners on the fence [C/86-87]. They are quite large and say "Walsall Gas Ltd" with a picture of a car and some gas cylinders, in front of a large gas tank. The same banner can be seen in the Google photograph at [A/221]. As I set out above, by this time, Walsall Gas Limited had ceased trading, and WGC had taken a sub-lease of part of the premises.
46. On 6 January 2022 Riffat Mahmood sent Calor's solicitors an email from his iPhone [C/90]. It reads as follows:

*Riffat Mahmood
Walsall Gas Cylinders Limited
Orbital Works
WALSALL
WS3 2XU
28.12.21*

.... My name is Riffat Mahmood, manager here at Walsall Gas Cylinders Limited. Firstly I would like to apologise for such a late response back to you. i have been abroad on business and got back not too long ago. We have received your correspondence, and we strongly disagree with the accusations your client has put against us. First thing is first we strictly only sell and fill our own gas cylinders, our own branded gas bottles. We don't deal with any cylinders which aren't from our company nor do we store any other branded bottles, your clients are most welcome to come to our site and inspect. We haven't been provided with any concrete evidence to show that the bottles in question were filled at our site or by a member of our staff. We give receipts to customers and if your clients have had a bottle filled at our site then most definitely they would have proof of purchase. If you would kindly give us any proof of purchase that would be helpful. We are a newly set up company and work very professionally. We have no reason to earn unlawfully through names like Calor. We are working hard to promote our own company and building ourselves up, we have never thought about using other brands to build our work base. We won't be signing documents until we have proof that the accusations made against us are true, many thanks.

The original message as sent the day before was put into the subject line and included only the opening words of the full message. I return to this important document later, but the fact that it was sent by Riffat Mahmood to Calor suggests that the letters Calor had been sending to Riffat had been passed onto him by whoever received them at Croxstalls Road (in this instance Arshad).

47. Calor also had some correspondence from solicitors acting for Starlight Taxis on 31 January 2022 [C/92]. This suggested that the person who filled the gas bottle on 9 November 2021 was “an employee” of WGC and was not an employee of Starlight Taxis. That was not exactly a full picture of the position, given that the “employee” was Ahtaf, who was the brother of the Director of Starlight Taxis. A further letter sent by Starlight’s solicitors on 28 April 2022 [C/100] did however confirm that this was Ahtaf and that he had been a Director of Walsall Gas Limited. The letter went on to allege that some agreement had been reached between Ahtaf as Director of Walsall Gas Limited, and Riffat’s daughter (as Director of WGC) by which Ahtaf assisted WGC in its business. The account is unreliable. The evidence I had from Kashaf was to the effect that Riffat’s daughter had never been to the Croxstalls Road site and had nothing to do with the running of WGC.
48. Calor’s solicitors wrote to Riffat Mahmood on 14 February 2022, seeking further information. There was no reply, and they wrote again on 4 May 2022 [C/102]. There was no reply to that letter either. On 17 June 2022 Calor’s investigators paid a third visit to the Croxstalls Road site. Once again, a Calor gas cylinder was filled, without question, and paid for in cash. The investigators also saw two Calor patio gas cylinders being filled for another customer who appeared to be well known to the staff. The video was played at trial, and there is a still at [A/181]. Riffat Mahmood makes two important points: (i) that in none of the videos is he shown to be present on the site, let alone filling a cylinder, and (ii) that the videos show that cylinders being filled from the Autogas tanks, and not the green tanks nearer to the gate.
49. Calor’s solicitors then proceeded to draft an application for an interim injunction. On 17 October 2022 Riffat had a long conversation with Calor’s solicitor, which she noted. The attendance note is at [C/167]. I accept it as be an accurate record of the conversation. According to that note, Riffat said that Starlight had terminated his lease. He also confirmed that he had owned the Handy Car wash but had passed it on to a friend. It was that friend who apparently signed the 2019 undertaking. The solicitor referred Riffat to the three occasions on which Calor investigators had seen Calor gas bottles being filled at Croxstalls Road. Riffat denied that he was involved in those matters, but towards the end of the conversation the following exchange is noted [C/173]:

So you are saying that from the end of 2021 to the summer of 2022 you were personally not at Croxstalls Road

Yes

So we have the business running until September and cylinders being filled in your own brand and you are running the business

Yes I was filling my own cylinders but I didn’t have any walk in customers.

But there were walk in customers because we have evidence – turning up at the premises and having Calor cylinders being filled

I know nothing about that so I can't give you an answer to this.

The difficulty with that explanation, is that Riffat Mahmood accepted that in fact he had never been able to obtain his own branded gas cylinders. That had been the intention, but it had never happened.

50. Calor's solicitor also spoke to Kashaf at about this time. In the note of that conversation [C/187] Kashaf explained that the tanks and pumps belonged to WGC, but that Starlight and WGC had a verbal agreement by which Starlight could use gas to fill its fleet of taxis. When they filled up their cars with gas a note would be made, and a log kept so that they would know how much gas had been used and how much they would have to pay. That too is a rather convenient explanation for Starlight's use of the gas. The evidence of the test purchases supports the use of the gas to fill up taxis, but whoever was filling up the cars was also prepared to use the gas to fill up Calor cylinders.
51. In due course, Kashaf, Ahtaf, Riffat Mahmood and his daughter all signed consent orders by which they undertook not to deal with Calor's gas cylinders (the terms are more comprehensive than that). Riffat Mahmood says that this undertaking was obtained by duress or unconscionable conduct, by which he refers to the pressure put on him and his daughter to sign. The point is academic, because Calor do not rely on the signed undertakings, and Riffat Mahmood did not pursue the point at trial. I simply observe that having read the relevant correspondence and attendance notes I can see nothing untoward in the approach taken by Calor's solicitors.
52. Proceedings were issued in November 2022, and a Defence filed by Riffat Mahmood on 23 December 2022. At that stage he was represented by solicitors and Counsel. He made an application to have the matter struck out, but that was dismissed by HHJ Williams on 10 March 2023. The matter has proceeded from that point to trial. In that time Starlight has ceased trading and the gas tanks have been moved to a different location.

Ahtaf

53. Ahtaf was debarred from defending, but it is for the court to determine whether or not an injunction should be granted in his case. The starting point is that there is direct evidence of his filling Calor gas cylinders. His evidence was that he did not appreciate that it was wrong, and that he was doing it under the instructions of Riffat Mahmood. He is young, and now understands that he is not allowed to sell gas in this way. Notwithstanding that, Calor are entitled to an order to protect their position. There are good commercial and safety reasons why Calor retains the right to the possession of these gas cylinders, and it is a simple matter for those rights to be infringed. In the circumstances of this case, an injunction is the only way to do that. Given his acceptance of wrongdoing, I would be prepared to accept an undertaking from him in the terms of the injunctions sought by the claim (or to that effect) if that were offered.

Riffat Mahmood

54. With that I turn to a consideration of the evidence relevant to the issues in the case against Riffat Mahmood. The background is set out above. In particular that WGC was in reality Riffat's company, that he had some experience of the supply of LPG gas in

cylinders, that the intention was (as its name suggests) that WGC should supply gas in cylinders, that it had a sub lease of part of the Croxstalls Road premises and two tanks from which to supply the gas, but apparently no branded gas cylinders of its own. It is also apparent that Riffat and Arshad were friends, and that relationship involved business as well as a personal friendship. The following part of this judgment focusses on the evidence of Kashaf, Ahtaf and Riffat, and the issue of Riffat's involvement (or otherwise) in the business of filling gas cylinders.

55. Kashaf's witness statement is at [B/43]. He says that in about 2020 his father and Riffat decided to set up a business operating an LPG station at Croxstalls Road. Initially this was just for Starlight's taxis, but over time sales were made to other customers who brought their vehicles to be filled up. He says that Riffat wanted to set up his own company, but could not at the time, and so Walsall Gas Limited was formed. Starlight bought the gas for Walsall Gas because it had no bank account. He gives evidence of an arrangement by which Starlight noted how much gas it used for its taxis and took payment for the gas bought by customers. When Starlight paid the gas supplier, that was credited against the LPG the taxis had used. At paragraph 22 he says that his father and Riffat then decided how the remaining sales revenue for LPG was to be treated.
56. Walsall Gas Limited ceased trading in early 2021 and WGC was incorporated. Kashaf's evidence was that business was good, and he recalls Riffat wanting to grow the business. In other words, Riffat was actively involved in it. I observe that at that stage there must still have been a good relationship between these parties. Arshad was bringing Walsall Gas to an end and making it possible for Riffat's company (WGC) to trade from the Croxstalls Road premises. That is a concrete indication of Riffat's influence in this business operation at that time. Riffat cross-examined Kashaf in some detail. In the course of his answers, Kashaf said that his understanding was that he (Riffat) had authorised the filling of gas bottles with the LPG, although he also confirmed that Riffat's dealings were with his father. He also said that Riffat had set up some Facebook advertising for the gas business.
57. The next witness was Ahtaf. In his witness statement [B/40] he accepts that he was the person who filled the Calor gas cylinder at the test purchase on 9 November 2021. He also says this:
 4. *I have also over a period of around 6 months in 2021/2022 filled cylinders of various different brands with LPG from the LPG station at Croxstalls Road, although I cannot recall which brands of cylinders those were.*
 5. *I did this because I was asked to do so by Riffat Mahmood ...*
58. The witness statement goes on to say that his father and Riffat were friends, that he had just finished at sixth form and was helping out in the business, and that his father asked him to help Riffat, whom he understood to be running the LPG station. At some point Riffat asked him to fill cylinders with LPG from the LPG station when customers turned up with empty cylinders. He did that when Riffat was not at Croxstalls Road because his son was unwell. At paragraph 11 of his witness statement, he says this:

11. ... RM was often at Croxstalls Road himself and I can remember seeing RM filling cylinders with LPG from the LPG station on several occasions.

He could not recall the brands. He helped out for 6 months and was paid £250-300 per week in cash. Ahtaf also said that in March 2023 Riffat asked him to sign a witness statement which said that Riffat did not know he was filling Calor's cylinders and that

he had not been authorised to do so by Riffat. He refused to sign that statement because it was not true.

59. Riffat cross examined Ahtaf. In the course of his answers, Ahtaf explained that he was helping out generally. This was one site, so he would help with the taxis and the LPG. The cash he took for the LPG was put in a book and at the end of the week they would get wages. He said that Riffat would sometimes take the money and put it in the bank (something Riffat strenuously denied), that Riffat and his father were “business partners” and that they both paid him (in other words it could have been either of them because they were partners). Riffat put it to Ahtaf that if he (Riffat) was working there, he should have been there on at least one of the three occasions when Calor’s investigators called. Ahtaf said that he was lucky not to get caught. He also repeated the point about Riffat turning up in a white transit van and filling up “normal bottles” and forklift bottles as well before leaving the premises. Riffat disputed that evidence saying that he had never had a transit van.
60. I pause to make it plain that there was a lot more evidence given by Kashaf and Ahtaf during the course of their cross examination. I was provided with a transcript of it and have read it all again for the purposes of writing this judgment. The above is summary of the important parts of their evidence on the relevant issues.
61. I then heard evidence from Riffat Mahmood. He confirmed the content of the witness statement he made for the application to strike out, drafted when he was legally represented [B/57] and the handwritten statements at [B/48] and [B/67-69]. In essence he denied filling gas bottles. He was setting up WGC, but his son was seriously ill, and the business never ran.
62. He was cross examined by Ms Rooney. I note that:
 - (i) In 1998-2000 he had worked for a company filling gas bottles and learned how to do it properly, using scales to ensure the bottle was not over or under filled. He had not been involved in the business of filling gas bottles since that time.
 - (ii) He understood the danger involved in filling a bottle from the pump and would never have done it.
 - (iii) “Walsall Gas” had been his name, and he had wanted to start a business under that name, but Arshad had used the name.
 - (iv) He had set up WGC in order to sell gas in bottles, but only his own branded bottles. The price of the bottles went up, so that never happened. He accepted that he had been the manager of WGC since January 2022 but said that it had been run by Starlight prior to that.
 - (v) He had bought the green gas tanks and paid the supplier cash for them.
 - (vi) At paragraph 7 of the witness statement drafted by his solicitor, having said that his daughter was the sole director of WGC, he said that he helped her in the business “gratuitously”. Asked what he did, he said the help was in the setting up of the business not the running of it.
 - (vii) At paragraph 4 of that statement he says that WGC ceased trading in September 2022. Asked why he would say that if WGC never operated, his response was to the effect that he only had the tanks fitted and tested and nothing more.

- (viii) He maintained that the deed of surrender of the sub-lease was signed in September 2002, and said Kashaf was lying when he said he signed it in the spring of 2023. Kashaf was also lying when he said in his email of 22 February 2023 [C/394] to Calor's solicitors that he had signed the document that day.
- (ix) The Facebook advertising had been set up by Kashaf but in his (Riffat's) name because of his position within the community.
63. Ms Rooney had asked Riffat about the email of 6 January 2022 at [C/90] whilst cross-examining during the morning of the second day. Immediately after lunch Riffat produced an email to him from Kashaf which was a draft of that letter. The issue was put back for consideration, but in due course I allowed Riffat to produce the email and to give further evidence on the topic, and for Calor to recall Kashaf so that the matter could be put to him. Consequently, Kashaf made a second witness statement, and produced some further documents he had found as a result of learning what Riffat had said during his witness evidence.
64. Firstly, Kashaf agreed that he had drafted the email of 6 January 2022 for Riffat to send to Calor's solicitors. They had all received letters from Calor's solicitors. Riffat had been in Pakistan, and when he returned they discussed what to do. His recollection is that he had given an undertaking by that stage on behalf of Starlight, and instructed solicitors. Riffat had not done anything, and Arshad and Kashaf thought he should respond to Calor. Riffat was not good at formal letters, and so told Kashaf what to say, and Kashaf then composed the letter. He then sent it to Riffat by WhatsApp. At paragraph 10 of this witness statement Kashaf says this:
- I did not tell RM what to say. He told me what to say and I wrote that down for him.*
65. Kashaf had also looked at his own WhatsApp messages and had found the message he had sent, and another on 4 January 2022 in which he said he had been unable to set up a WGC email address for Riffat, and told him to send the email to Calor from his own email address. It is apparent that this is what Riffat did.
66. The content of the email of 6 January 2022 to Calor is problematic for Riffat. It says that he was the manager at WGC, something he had accepted at a previous hearing, but presumably in the context of a business which was not trading. However, rather than saying that WGC was not trading, the email says that WGC only sells its own branded gas cylinders, when it is plain that it never did, and then goes on to say that it provides receipts to its customers, when on Riffat's case it would have had no customers.
67. Riffat's response to this is to the effect that he did not read the draft before he sent it, and that Kashaf was setting him up. I do not accept that Kashaf was setting him up. At this stage, these parties were still on good terms. Kashaf's draft challenges Calor's case, says they have no evidence against WGC and ends by saying they won't be signing any documents until they have proof that the accusations made against them are true. If it had been up to Kashaf, I have no doubt that he would have had Riffat agreeing to sign an undertaking. It was Riffat who appears to have been the one who was determined not to. It is also hard to accept that Riffat made no attempt to see what Kashaf had written for him before he sent the message from his own email address.
68. In the course of looking for his WhatsApps, Kashaf also found some other messages between himself and Riffat. These are not dated, and Riffat says they are fabricated, but

they appear to be from “Rifat” and do not read as if they are staged. I accept Kashaf’s evidence that they are genuine. The first has Riffat asking Kashaf if he will cover his shift for him because he is taking his son to hospital. Kashaf agrees. Riffat then says this:

Tell hataf have 6000 ltr tomorrow in white tanks only ok and run the old dispenser turn the main dispenser off ok

The reply from Kashaf is:

6000 in white tanks and use green tanks till they empty??

Riffat then says *Yes*. This not only shows that the green tanks were in use, but that it was Riffat who was giving the directions.

69. Kashaf had not understood that Riffat’s case was that the green tanks had not been used. It had not been put to him. But having learned that this was the position, he looked for some documents to show that was not the case. He produced photographs of a number of bulk delivery receipts from Vita Gas showing the following deliveries:

Date Gas Quantity Customer

29.3.22	propane	4936	WGC
8.4.22	propane	8007	WGC
15.4.22	propane	4246	WGC
13.5.22	propane	4757	WGC

24.6.22	autogas	1001	Starlight
8.7.22	autogas	1002	Starlight
29.7.22	propane	5002	WGC
9.8.22	propane	5140	WGC

70. In addition, Kashaf provided photographs of the book in which he said that the quantities of gas used for filling bottles had been noted, so that there could be the weekly reckoning. There are two sheets, one dated 3 October 2022 and the next 6 October 2022. Riffat's case is that WGC had ceased trading and surrendered its lease by this point, and the handwriting on the document is Ahtaf's, Kashaf's and Arshad's. But it is some support for Kashaf's evidence about how they were able to divvy up the sales proceeds.
71. Kashaf was cross examined on these issues, but to no real effect. Riffat was then able to give some further evidence on these matters. Much of what he said reiterated his earlier stance. He pointed out that his name was spelt incorrectly on the 6 January 2022 email. He denied that the words were his. He said that when he received the draft he was in hospital with his son who was seriously ill, and so he did not read it. The WhatsApp about the green tanks must have been when he left everything to "them" and was just a screen shot without the context. The Vita Gas delivery notes were put down to Starlight buying gas in WGC's name. The handwritten sheets had none of his writing on them. He said that Kashaf was "full of lies".

Discussion

72. In opening the case Ms Rooney accepted that a good deal of Calor's case against Riffat Mahmood was circumstantial. Most of the direct evidence of his involvement in the selling of gas in gas cylinders from the Croxstalls Road site comes from Ahtaf and Kashaf. In closing she questioned why Ahtaf and Kashaf should lie about Riffat Mahmood's involvement in this business. They were giving evidence which implicated themselves.
73. In closing Riffat Mahmood made a number of points. His position was that both Ahtaf and Kashaf had been lying when they said that he was involved in the filling and selling of gas in cylinders. He questioned why Arshad would hand him the business Walsall Gas had been running and let him set up his own company in its place. He said that Arshad had not been called to give evidence, and his sons were trying to frame him. He was not there when Calor made their test purchases, and on those occasions the gas cylinders were filled from the Autogas pump operated by Starlight, not from the green tanks. If he had made a mistake, he would have put his hand up and accepted it and given Calor an undertaking. But he had not, and there was no reason why he should give Calor the undertaking it sought.
74. In assessing the credibility of Riffat Mahmood on the one hand, and Ahtaf and Kashaf on the other, I begin by looking to the evidence about which I can be sure, and to the surrounding circumstances. WGC was Riffat's company. He may question why Arshad would "give him a business", but the fact is that Walsall Gas ceased trading at around the same time that WGC was incorporated and took a sub-lease of what had been the trading premises of Walsall Gas Limited from Arshad. Those facts persuade me that Arshad did indeed "give him a business". The intention was to sell gas in cylinders; that much is plain from the name of the company. The green tanks were installed, but no gas cylinders were ever purchased. None of that is in issue. Nor can it be disputed that

gas cylinders were refilled. The evidence of the test purchases is sufficient to establish that. Riffat's best point is that he was never there, and that the gas came from the Autogas pump. Ahtaf says he was lucky not to have been caught. Riffat says it reflects the reality of the position, that Starlight was filling cylinders from the Autogas as a sideline. He would never have done something so dangerous.

75. The other piece of evidence which assists me in assessing credibility is the email of 6 January 2022. It is an acceptance that WGC was trading and selling gas in its own branded cylinders, and that Riffat was its manager. That is consistent with the evidence given by Ahtaf and Kashaf, but quite inconsistent with the evidence given by Riffat. Riffat's evidence that the email was written for him by Kashaf, although it came out of the blue and without the prior disclosure of the underlying documents, turned out to be true. The question is whether he is also right in saying that what Kashaf wrote for him was wrong, whatever the motive was.
76. I find it very difficult to see why Kashaf should write an email in these terms for Riffat if it did not reflect what Riffat wanted him to say. Kashaf's instinct was to give Calor their undertaking. It was Riffat who was looking to defend the claim. Was this Kashaf looking to spread the blame and putting things into this email which would subsequently prove to be a problem for Riffat? If the email was an admission of filling Calor's bottles, then I could see that. But it was nothing of the sort. Kashaf could not have foreseen how matters would develop. Moreover, this was an email for Riffat to send. It would be reasonable to expect Riffat to look at its contents before sending it. If Kashaf was trying to "frame" Riffat, Riffat would see that.
77. Has Kashaf misunderstood what Riffat told him to say? That was never put to Kashaf, but again I find it very hard to see how that could explain Kashaf's draft. The essential difference is between a business which was trading and a business which was not. I do not see how Kashaf could have got that wrong. The assertion that WGC was selling gas in its own branded bottles in the email of 6 January 2022 is also consistent with the conversation Calor's solicitor had with Riffat on 17 October 2022 (see paragraph 49 above). Riffat's account of how this email came to say what it said is implausible, and consequently I accept Kashaf's evidence about the email of 6 January 2022.
78. That provides substantial support for the evidence of Ahtaf and Kashaf and damages the credibility of Riffat's evidence. I find that WGC and Riffat were involved in the selling of gas in cylinders from the Croxstalls Road site as Ahtaf and Kashaf say. I am also satisfied on the balance of probabilities that WGC and Riffat converted Calor's cylinders. The test purchases used Calor's cylinders, and whilst neither Kashaf nor Ahtaf could say what brand of cylinder Riffat was filling, given how common Calor's cylinders are in this market, the overwhelming probability is that its cylinders were filled. That provides the unlawful means necessary for the conspiracy claim.
79. WGC and Riffat acted in combination with Ahtaf, and with Starlight and Kashaf. There is no formal business agreement or partnership here, and these parties have since fallen out. But they were trading together, and sharing the profits that were there to be made. There are no meaningful accounts, but on the evidence I have, a tally of sorts was kept and some arrangement made between Riffat and Arshad as to who got paid what. The necessary combination, intention to injure, and loss are established.
80. The claim succeeds against all three Defendants. Calor are entitled to an injunction in the terms sought. The primary need for an order as to future conduct is as against Riffat, for the 1st Defendant has ceased to trade and is likely to be dissolved, and Ahtaf

has agreed to give an undertaking. But Calor are entitled to an order against all three in order to protect their rights.

81. I had intended to hand this judgment down in person shortly after its completion in mid-August. However, it has proved impossible to identify a suitable date, and so the judgment is handed down remotely. The Claimant is to circulate a proposed order in the next 7 days, and the parties are to attempt to agree consequential orders. The parties are to provide dates for a short hearing to deal with any issues on the terms of the orders to be made.