

REF/2015/0403

**PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002**

BETWEEN

HASAN KARAASLAN

APPLICANT

and

VEYSEL DAS

RESPONDENT

Property Address: Ground Floor, 7 Money Hill Parade WD3 7BQ

Title Number: HD507202

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place London WC1E 7LR

On: 16th and 17th May 2016

Applicant representation: Ms Mattsson of Counsel instructed by JPC Law
Respondent representation: Mr David Stancliffe of Messrs Bowling & Co

DECISION

THE BACKGROUND

1. The Applicant and the Respondent were involved in a restaurant business at 7, Money Hill Parade, Rickmansworth (“the Property”), trading as a Wimpy franchise, from 2011 to early 2013. The Applicant is the Respondent’s uncle. The lease of the Property was in the Applicant’s name. The franchisee was a company called Factual

Limited. They had other business dealings with each other, which unfortunately turned sour, and this led to a major disagreement between them, such that they could no longer work together. The Applicant pleads (see paragraph 6 of the “Re Revised Statement of Case” dated 14th January 2016) that this resulted in an agreement between them in these terms:

“In or about March 2013 the Applicant and the Respondent commenced negotiations for the sale of the Business to the Respondent. The sale was to include the goodwill of the Business, an assignment of the Lease, fixtures and fittings and any stock. The agreed purchase price was initially £32,000. Whilst it did not appear in any written agreement, the Applicant and the Respondent orally agreed that once the Business became established the Respondent would pay a further sum of £15,500 within 6-12 months making a total consideration for the goodwill of the Business, fixtures and fittings and stock of £47,500. Further, it had been expressly agreed that:

- (1) During the negotiations the Respondent would retain the profits from the Business and pay the Applicant £250 per week;*
- (2) The Respondent would pay the freeholder, Mr Salah-Ud-Din Opel’s legal costs [see correspondence at Appendix G]*

2. In his witness statement, dated 21st January 2016, the Applicant provides a different account of the agreement. He says that in their discussions, it was agreed between them that the Respondent would pay an “up front” price of £32,000, with a further sum of £15,500 to be paid within 6-12 months thereafter. However, he does not say that the Respondent agreed to pay the sum of £250 per week pending completion, nor indeed that he agreed to pay the Landlord’s costs. Instead, he provides a different explanation. He says that shortly after concluding the sale agreement in principle, he asked the Respondent for “my share of the profit” of the business. According to him, the Respondent refused to pay him any additional money, and became rude and arrogant towards him. The Applicant says that there was an incident outside the restaurant on 28th May 2013, in which he claims that he was the subject of an attempted physical assault. This version of events is denied by the Respondent, but it gives a flavour of the relations between them. Following this incident, it is common ground that they stopped talking to each other altogether. The Applicant says that family members interceded with a view to resolving the impasse. According to the Applicant, a deal was struck, through these intermediaries, whereby the Respondent agreed to pay the Applicant the sum of £250 per week pending completion. He alleges that this figure was agreed at a meeting in a pub in Rickmansworth, attended by

various friends and family members, including Mr Salman Koyonlu, who is his cousin and the Respondent's brother in law.

3. The Respondent's version of events is somewhat different. He agrees that they fell out with each other in early to mid-2013, and that they could not work with each other any more. He says that the business was carried out through a franchisee, known as Factual Limited, which is the Respondent's company (he being a Director). He says that the business involved three "partners", namely himself, the Applicant and Cemal Kaaraskan, his brother, who lived in Germany. The agreed profit shares were 50% for the Respondent, with the two brothers receiving the remaining 50% between them. He states that an agreement was reached through Mr Koyonlu whereby the business and lease would be sold to him at a price of £32,000. In his witness statement he denied that any further sum of £250 was agreed to be paid, or that there was any agreement to pay an additional £15,500 within 6-12 months of completion, as alleged by the Applicant. Curiously, however, he alleges that a cash sum of £15,500 was paid by his mother to the Applicant, at a meeting held at a jeweller's shop in June or July 2013. This is denied by the Applicant. It will be appreciated, therefore, that there is a conflict between the parties as to the exact terms of the agreement. However, it is common ground that the written agreement between the parties for the sale of the lease and the business stipulated a sum of £32,000, apportioned in the manner set out at paragraph 3 of the Agreement for Sale (at Appendix E to the Applicant's Re Revised Statement of Case).

4. It is documented that solicitors were instructed by each party in early May 2013. The Applicant instructed Kirkwoods, in the person of Mr Richard Bridges, a partner. It appears that Kirkwoods had been instructed on previous occasions to act for the Applicant, in unrelated transactions, although a different partner (Mr Kramer) had been the point of contact. It is accepted that the Applicant met Mr Bridges and instructed him personally. During the course of the hearing before me, Mr Bridges produced the actual paper file which he had opened for this transaction, from which it was apparent that the first contact address written on the file was an email address known as father10@hotmail.co.uk. That is the email address of Mr Koyonlu. The first telephone contact number on the file was also that of Mr Koyonlu. According to Mr Bridges, the Applicant's own telephone contact number was not written on the file

until after the dispute arose. The Respondent initially instructed Trinity Solicitors, in the person of Gunduz Misiri, a relative of one of the Applicant's witnesses and a key player in the story, Mr Cemal Misiri. When Mr Misiri moved to a firm called Bowling & Co the instructions moved to that firm.

5. Thereafter the transaction proceeded in a somewhat desultory manner. When Kirkwoods needed to communicate with their client, they sometimes used the "Father10" Hotmail address – Mr Koyonlu's email address. On other occasions telephone calls were made to Mr Koyonlu's number by Kirkwoods. According to Mr Bridges, on other occasions the Applicant came into the office to see him. Some correspondence was sent to the Applicant's home address. As I have said, Mr Bridges was not in possession of a telephone contact number for the Applicant, and did not obtain that number until after the events that have given rise to this dispute. It had been agreed that the Respondent would pay the Landlord's solicitors' costs, and on 7th November 2013 he paid the sum of £1000 in that regard. On 16th December 2013 Mr Misiri was chasing for the engrossed contract for his client. On 19th December 2013 Kirkwoods (Sheila Budia) sent (to the Father10 email address) "*I attach herewith Agreement for the sale of business, Deed of Assignment of goodwill, Licence to Assign and I would be grateful if you could sign all of these documents some of which should be signed and witnessed. Please return them to me. Will you also please let me have a list of fittings and contents which should come to a value of approximately £2000.*" According to Mr Bridges, the Applicant had attended personally at his office to sign the documentation, and indeed Mr Bridges had witnessed his signature as appears from the documents themselves. There is no attendance note recording this event – indeed there are no attendance notes at all on the file until after the date of completion. It appears that the documents must have been signed before 6th January 2014, because Kirkwoods (Sheila Budia) sent an email to Mr Misiri on that day (timed at 10.52) in these terms:

"I confirm I am holding Agreement for sale of business signed by our client. I confirm the apportionments at clause 3.1 as follows:

<i>Lease</i>	<i>£18,000</i>
<i>Goodwill</i>	<i>£12,000</i>
<i>Fixtures & Fittings</i>	<i>£2000</i>

I attach Schedule 3 and can confirm that Schedule 1 should read "none" and Schedule 2 should read "none". I hold a signed TR1 copy attached and

signed receipt for the contents. I am holding The Deed of Assignment of Goodwill and Licence to Assign which has been signed by my client. I believe the freeholder's solicitor is not in the office until Monday and I have notified him of our intention to complete today."

6. She sent an email to the Landlord's solicitor at the same time stating that she was hoping to complete the transaction that day. However, completion did not take place on 6th January 2014. There were still outstanding issues: Mr Misiri was awaiting replies to requisitions, and the Landlord was awaiting proof of the Respondent's identification, and also confirmation that a canopy erected at the Premises had been removed. This was a condition of consent to assignment and had been raised by the Landlord at the outset. Also, the estimated fees had increased from £1000 (already paid by the Respondent) to £1500 – largely due to the delay, according to the Landlord's solicitor. On 8th January 2014 Kirkwoods sent to the Landlord the engrossed Licence to Assign, and on 9th January 2014 the final completion sums were agreed. On 10th January 2014 Kirkwoods received the completion monies from the Respondent, and sent an email (timed at 14.58 and forwarded to Mr Misiri at 15.01) informing the Landlord's solicitors that they wished to complete on that day (a Friday). Once again, completion did not take place. On the following Tuesday (14th) the Landlord's solicitors indicated their agreement to the assignment and stated that they would sign the licence the following day.

7. The exact timetable of the events of 16th January 2014 – and indeed some of the events themselves – is disputed, and gives rise to a number of stark conflicts of evidence. It is not in dispute that a purported exchange of contracts and simultaneous completion took place at 6 pm. The Applicant's case is that he had asked his friend and business associate Mr Cemal Misiri to telephone Mr Bridges that morning. Once the connection had been made, the Applicant spoke to Mr Bridges to tell him that "*the deal was off and that I did not want to sell the Respondent my business*". It is known that there was a telephone call made from Mr Misiri's mobile phone to Kirkwoods at 11.50 – that, says the Applicant, was the relevant call. It is his case that he then asked Mr Cemal Misiri to call Mr Koyonlu and inform him that the deal was off because the Respondent was not paying him his "wages" – namely the weekly payments of £250 that he claims had been agreed by the Respondent at the outset. They both say that

Mr Misiri spoke to Mr Koyonlu immediately after the conversation with Mr Bridges and informed him that the deal was off.

8. From a consideration of Mr Bridges's file, it is known that at 16.01 he transferred to the Landlord's solicitors, from funds in his client account, the Landlord's outstanding legal costs and the agreed rent deposit. These funds of course emanated from the Respondent, having been transferred on 10th January 2014 and held to his strict order pending exchange and completion. At 16.29 pm Mr Bridges confirmed to the Landlord's solicitors that these sums had been paid. At 16.34 pm a telephone call was received for Mr Bridges in Kirkwoods' office. An internal office email was sent to him, referring to a call from "*Hasan*" and noting a telephone number which was that of Mr Koyonlu. Mr Bridges says that shortly afterwards he called this telephone number and spoke to a person whom he says he believed to be his client, who authorised completion. At around 6pm there was a telephone conversation between Mr Bridges and the Respondent's solicitor in which they agreed simultaneous exchange and completion.
9. On the Applicant's case, he did not discover that there had been a purported completion until he had a meeting with Mr Bridges in the following week, on Monday 20th January. On that day he sought to repudiate the agreement on the grounds that he had never authorised completion. By coincidence, Mr Bridges had a meeting two days later with the Respondent in relation to a completely different transaction in which he was acting for him. According to Mr Bridges, Mr Koyonlu interrupted the meeting and introduced himself to Mr Bridges, providing his passport and a copy of a document in Turkish signed by him and the Applicant. According to Mr Bridges, Mr Koyonlu admitted that he had given instructions for completion in the knowledge that the Applicant did not wish to proceed. Also according to Mr Bridges, the Respondent was unmoved by this revelation and was clearly aware of the situation.

THE REFERRED APPLICATIONS

10. The Applicant applied to enter a Registrar's restriction on the register and such a restriction was entered on 4th April 2014. This was expressed to be done in order to prevent a fraud from taking place. The Respondent applied in Form AP1 dated 5th September 2014 to register the TR1, and made a further application in Form RX3

dated 24th November 2014 to cancel the restriction. The Applicant objected to both applications by letter dated 6th March 2015. The dispute could not be resolved by agreement and the Land Registry referred the matter to the Tribunal on 15th June 2015. Statements of Case were served by the both parties - the Applicant's original Statement of Case in July 2015, subsequently amended twice, most recently in January 2016. I heard this case over two days, and received evidence from the Applicant, his wife, Mr Bridges, Mr Ismail Palit and Mr Cemal Misiri on one side, and the Respondent on the other. They had all made witness statements upon which they were cross-examined. Mr Koyonlu did not make a statement and did not give evidence – neither side called him. The Applicant was represented by Ms Lina Mattsson of Counsel, and the Respondent by Mr David Stancliffe, employed by Bowling & Co, Solicitors.

THE ISSUES

11. I shall consider the legal position in more detail in due course, but for present purposes I shall simply summarise the parties' respective cases. As I have said, the Applicant's case is quite simple. He contends that Mr Bridges did not have instructions to complete the transaction, those instructions having been withdrawn on the morning of 16th January 2014. Accordingly, Mr Bridges did not have the authority of his principal – the Applicant – to effect exchange and completion. To the extent that Mr Bridges believed that he had been instructed by the Applicant to complete by means of telephone call at 16.34 on 16th January 2014, he says that the person who gave Mr Bridges these instructions was not him but Mr Salman Koyonlu. Mr Koyonlu did not have his authority to give those instructions, and knew that the Applicant did not want to complete. Mr Koyonlu fraudulently impersonated the Applicant and accordingly the completion is vitiated by Mr Koyonlu's fraud. Furthermore, the Respondent was party to the fraud, in that he was aware of the impersonation, and is therefore bound by it. In order to make this case good, the Applicant must prove (a) that Mr Bridges did not have express or implied authority from the Applicant to complete; (b) that Mr Koyonlu purported to give instructions to Mr Bridges to complete without his authority, and did so in the knowledge that the Applicant had changed his mind; and (c) that the Respondent was aware of these facts at the time of completion. Mr Stancliffe, for the Respondent, accepts that if these

facts are proved the completion could be set aside, on the basis that Mr Bridges had no authority, alternatively that it had been procured by fraud. There is no dispute as to the legal principles that are engaged. However, the Respondent disputes this version of events on the facts. Mr Stancliffe contends that there are two alternative analyses of the events of 16th January 2014. First, that Mr Bridges completed in accordance with genuine instructions and therefore on the basis of actual authority. Secondly, that Mr Bridges completed the transaction either in the absence of instructions, or on the basis of mistaken or defective instructions, but with apparent authority.

12. I shall set out the relevant legal principles in more detail in due course. However, there are serious conflicts of evidence which I must resolve before the legal principles are applied. The principal factual issues that need to be resolved are as follows:

- a. What were the terms of the agreement between the Applicant and the Respondent – in particular, were additional terms as to regular monthly payments agreed outside the written agreement? Although both Ms Mattsson and Mr Stancliffe agree that this has no bearing on the fact of completion, it is or may be relevant to the issue of credibility
- b. What was the role of Mr Koyonlu? Did he have authority to act on behalf of the Applicant, or the Respondent, or both or neither of them? Did he have authority to instruct Mr Bridges to exchange and complete?
- c. Prior to 16th January 2014, what was the extent of the authority given to Mr Bridges with regard to exchange and completion?
- d. Did the Applicant or anyone authorised by him inform Mr Koyonlu on 16th January 2014 that he was withdrawing from the transaction?
- e. What instructions were given to Mr Bridges by or on behalf of the Applicant on the morning of 16th January 2014? In particular, was Mr Bridges instructed not to exchange contracts and complete the transaction?
- f. What if any further instructions were received by Mr Bridges prior to his conversation with Mr Koyonlu after 16.34 on 16th January 2014?
- g. What happened during the meeting with the Applicant at the offices of Mr Bridges on 20th January 2014?
- h. What happened during the meeting with the Respondent at the offices of Mr Bridges on 22nd January 2014?

THE QUALITY OF THE EVIDENCE

13. Given the stark conflicts of evidence in this case, inevitably at times I have had to prefer the evidence of one witness over that of another. Unfortunately, I did not find either the Applicant or the Respondent to be particularly impressive witnesses, but for different reasons. The Applicant himself had made a witness statement dated 21st January 2016. He had also signed a statement of truth on all three versions of the Statement of Case. He had asked for a Turkish interpreter to attend the hearing on his behalf, and this was done. He verified the witness statement on oath. At the outset of his cross-examination, Mr Stancliffe asked him if he could understand English. He replied that he did understand some English, but it would be difficult to read English. He was then asked if he had read his witness statement, the truth of which he had just confirmed on oath. He replied that he had not, but that his daughter had read it to him before he had signed it. No statement had been made in Turkish and then translated. The statement itself bore no indication that it had been read to the Applicant, and that he had not himself read it before signing. Whilst undoubtedly this reflects poorly on his solicitors, more importantly it creates some doubt as to the accuracy of his sworn evidence. This doubt was compounded by the very significant and unexplained change in his case regarding the weekly payments – referred to in more detail at paragraph 18 below – between service of the Revised Statement of Case on 21st September 2015 and the further revision on 16th January 2016, each version supported by his statement of truth.

14. While making due allowance for the length of time that has elapsed since the material events, the Applicant was exceptionally vague as to the timetable of the relevant events. For example, in his witness statement, he stated that a few weeks after reaching agreement with the Respondent – which was no later than May 2013 (and possibly as early as March) – he went to Turkey for 2 months. He continues: *“However, when I went I had not received any payments from the Respondent as agreed. Before I went to Turkey I attended at Kirkwoods’ offices to sign the TR1 which they were to hold in anticipation of exchange.”* He goes on to say this: *“25. When I returned from Turkey I had many discussions with Salman Koyonlu when I asked him to pay me money. On each occasion he made an excuse as to why he had not collected the money from the Respondent. He told me that he had a gas problem in the shop and that his daughter had been taken ill and he had to take her to hospital.*

I grew tired of these excuses which I felt were aimed at protecting the Respondent as opposed to being the truth. I became very angry that the Respondent had not stuck to his side of the deal. I had had enough.” Under cross-examination he accepted that he had gone to Turkey for 2 months during the summer holidays. He was shown certain passport entries suggesting that he had not returned to England until September 2013. He was unable to confirm when he had signed the TR1 and other documents, stating at first that it could have been before he went in the summer, but then saying that it might have been in the winter. He could not remember whether he had been to Turkey in December 2013, but thought it possible. In itself, some vagueness about dates would not necessarily be significant, but in this case his evidence does not tally with the documented facts. The draft documents were sent out to him for signature on 19th December 2013. It is known that they had been signed on or before 6th January 2014, on which day Mr Bridges pressed the Respondent for immediate completion. On the Applicant’s evidence, however, he had signed the documents before he went to Turkey (presumably in December), and on his return he had “*many discussions*” with Mr Koyonlu when he asked for him to pay the arrears of the £250 weekly sum. Given the timetable, this would have been quite impossible. There are many other instances where the Applicant was unable to give direct answers to direct questions, or took refuge in vague answers. Overall, I did not find myself able to accept the Applicant’s evidence at face value, save where it has been directly corroborated by unchallengeable contemporaneous documentation or other reliable evidence. This is a case where documented actions may speak louder than words, as will be seen.

15. The Respondent was cross-examined with great thoroughness and persistence by Ms Mattsson. He displayed an unattractive degree of truculence towards her, and on occasions it appeared to me that he was being obstructive in his answers. However, overall his oral evidence was consistent with his witness statement and notwithstanding his attitude his version of events was not shaken. There is one exception to this. In his witness statement he says that “*he never asked me to give him £250 per week, and I did not agree to this.*” Under cross-examination, however, he accepted that before the “*row*” – presumably the altercation at the end of May 2013 – Cemal Misiri had asked him to pay the Applicant £250 per week, but he had refused. He said that he had been cheated by the Applicant on the Kebab shop, which was the other business that they had been involved in. It was because they had fallen out over

the proceeds of sale of the Kebab shop that the agreement over the Wimpy restaurant was negotiated. However, the Respondent's case, that a weekly payment of £250 was never part of the deal, did not alter. Generally speaking, I am able to accept the Respondent's evidence, and prefer it where it conflicts with that of the Applicant.

FINDINGS

The terms of the Agreement for Sale

16. The agreement between the parties for the sale of the lease and business stipulated a price of £32,000, as apportioned in clause 3 of the Contract. The apportionment was not finalised until January 2014, but the total consideration was agreed at the outset in mid-May 2013. The first letter from Trinity Solicitors suggests a figure of £30,000, but there is no dispute that the agreed figure was £32,000. The Applicant contends that two additional payments were agreed: a sum of £15,500 to be paid in instalments over a period of 6-12 months, and a weekly payment of "wages" of £250 per week agreed (according to his witness statement) at the end of May 2013 through family intermediaries including Mr Koyonlu. He says that this was agreed at a meeting in a pub in Rickmansworth, at which the Respondent was not present but was represented by Mr Koyonlu. According to him, Mr Koyonlu said that he would personally collect the sum each week and hand it over to the Applicant. His evidence is supported by that of Mr Cemal Misiri and Mr Ismail Palit. It is the Applicant's case that he constantly pressed Mr Koyonlu to pay over the money, but he continually offered excuses and never did adhere to the agreement. It was for this reason that he decided, on 16th January 2014, to pull out of the sale.
17. There is no mention, in any document, of the alleged weekly payment of £250 per week prior to 19th August 2014, being the date of Mr Bridges's letter to Action Fraud reporting alleged criminal conduct by Mr Koyonlu. Although the alleged fraud was discovered on 20th January 2014, and numerous letters on behalf of the Applicant both by Mr Bridges and by Soulsby Williamson, setting out his detailed case both to the Respondent and other interested parties, this additional payment was never mentioned. Nor was the additional consideration of £15,500. Nor was there any reference to these additional payments in Mr Bridges's attendance note written after 20th January 2014. Thus, for a period of 8 months following the alleged fraud, this critical element in the Applicant's case was simply ignored. It is true that in the

attendance note of 21st January 2014 Mr Bridges records a discussion with the Applicant and Cemal Misiri to this effect: *“They confirmed that they would only consider proceeding with the sale if an additional payment is made”*. However, in the letter written to the Respondent’s solicitor by Mr Bridges on the same day he simply said: *“I can confirm that my client is not prepared to proceed with the sale to your client.”* There was no mention of any additional sum. Mr Bridges was unable to give any explanation for this. In view of the doubts which I have as to the accuracy of his attendance notes (see below), I can place no great weight on it.

18. Perhaps of more significance is the letter written on behalf of the Applicant to the Respondent by Soulsby Williamson on 23rd May 2014. This refers to the dispute and suggests an agreed solution. Far from claiming that the sum of £250 per week was owing to the Applicant, the solicitors wrote that: *“..... our client recognises that since you have been running the business for our client you have run it well and built up a considerable goodwill for which our client recognises that you should be paid fair value in order to assign that fair value to him.”* In cross-examination, both the Applicant and Cemal Misiri said that they had informed Mr Bridges, in their telephone call, of the reason why he did not want the sale to proceed. This is what the Applicant said: *“I said I didn’t trust him anymore. I mentioned it was because he didn’t pay.”* However, Mr Bridges said that he was never told about the additional payments, and these were never mentioned in any of the versions of his attendance note relating to the 16th January. I also draw attention to the way in which the case has been pleaded. The Applicant’s Statement of Case was originally served in [July 2015], and revised (with page references) on [September 2015]. A “Re Revised” version was served on 16th January 2016. All three versions carried a statement of truth signed by the Applicant. Paragraph 6 of all three versions of the Statement of Case reads as follows:

“On or about March 2013 the Applicant and the Respondent commenced negotiations for the sale of the business to the Respondent. The sale was to include goodwill of the Business, an assignment of the Lease, fixtures and fittings and stock. The agreed purchase was initially £32,000. Whilst it did not appear in any written agreement, the Applicant and the Respondent orally agreed that once the Business became established the Respondent would pay a further sum of £15,500 within 6-12 months making a total consideration for the goodwill of the business, fixtures and fittings and stock of £47,500. Further, it had been expressly agreed that:

- (1) *During the negotiations the Respondent would retain the profits of the Business and pay the Applicant £250 per week;*
- (2) *The Respondent would pay the freeholder, Mr Salah-Ud-Din Opel's legal cost.....”*

19. This pleading suggests that the payment of £250 per week was agreed directly between the Applicant and the at the outset of the transaction – it is certainly not made clear that it was agreed subsequently, and through third parties, as is stated in the Applicant's witness statement. Furthermore, it is pleaded at paragraphs 11 and 12 of the first two versions of the Statement of Case that: *“11. In January 2014 the Applicant sought to renegotiate the purchase price to £47,500 which sum was to include the additional payment of £15,500 referred to at paragraph 6 above. The Respondent did not agree to this reduction. 12. In light of the parties' failure to agree the purchase price, at around 12 pm on 16 January 2014 the Applicant telephoned Mr Bridges and instructed him not to proceed with the sale”*. In the “Re Revised” version of January 2016 amendments were made to paragraphs 11 and 12. The allegation that the Applicant attempted to renegotiate the purchase price in January 2014, and the failure to agree a new price led to the withdrawal of the instructions to complete, is deleted. Instead, it is pleaded that *“the Respondent had failed to pay the agreed sum of £250 per week referred to in paragraph 6(1) above and by that stage there were arrears just short of £5,000. The Applicant had numerous telephone calls with Salman Koyonlu who promised to pay this sum to the Applicant on behalf of the Respondent. However, no payment was ever made”*. In paragraph 12 it is pleaded that: *“In light of the Respondent's failure to pay the agreed sums ~~parties' failure to agree the purchase price, at around 12 pm on 16 January 2014 the Applicant telephoned Mr Bridges and instructed him not to proceed with the sale”~~*.

20. Evidence was given by the Applicant, Mr Cemal Misiri and Mr Ismail Palit as to the alleged pub meeting in May 2013 at which the payment of £250 per week was said to have been agreed. Their witness statements say that the payment of £250 was agreed during the course of the meeting, and that Mr Koyonlu represented the Respondent and agreed to the payment on his behalf. Under cross-examination Mr Cemal Misiri said something rather different. He said that he had visited the Respondent at the Wimpy restaurant prior to the meeting, with Mr Koyonlu, and it was on that occasion that the figure of £250 had been negotiated and agreed with the Respondent. He had

then gone to the meeting to inform the Applicant of this. Mr Palit's recollection of the relevant meeting was vague. He recalled that there was a long discussion at the pub, as a result of which the £250 payment was agreed, whereupon the Applicant and Mr Koyonlu shook hands. The Applicant also confirms this version. The Applicant was cross-examined at some length on the figure of £5,000 that is pleaded at paragraph 11 of the Re Revised Statement of Case. He was asked how this figure was calculated, bearing in mind his evidence that the weekly payment of £250 was agreed at the end of May 2013 and was to continue until completion. By 16th January 2014 some 40 weeks would have elapsed – producing arrears of £10,000 on the Applicant's own case. He was unable to provide any explanation for this anomaly, nor for the radical change in his case as between the last two versions of the Statement of Case.

21. Given the serious inconsistencies in the claim as it has been advanced since January 2014, and looking at all the evidence in the round, I have concluded that the Applicant's claim to a weekly sum of £250 "pending completion" is a fabrication on the part of the Applicant, and never formed part of any agreement with the Respondent. It is an invention, possibly intended to provide some sort of rationale for the alleged withdrawal from the transaction at such a late stage. It is no doubt based on a partial truth, in that the Respondent accepted that right at the outset of the dispute Mr Misiri had approached him (on the Applicant's behalf) to ask for a weekly payment, but he had refused. I accept that evidence. I appreciate that Cemal Misiri and Ismail Palit have given sworn testimony in which they have confirmed that a payment of £250 per week was agreed. Mr Misiri says that this agreement was reached with the Respondent directly at the Wimpy restaurant, but Mr Palit says it was reached in the absence of the Respondent in the course of the meeting at the pub. Mr Misiri's evidence can be partially reconciled with that of the Respondent, since I find that there was a discussion between Mr Misiri and the Respondent, at the outset of the negotiations in March 2013, in which the Respondent was asked to but refused to pay the £250 requested. Mr Palit is a childhood friend and business partner of the Applicant and was no doubt motivated by the desire to support his friend. On any footing, his recollection of the alleged meeting was very vague and at odds, of course, with Mr Misiri's recollection. For the same reasons I have concluded that there was no agreement to pay any additional sum of £15,500. Partners.

The role of Mr Koyonlu

22. The Applicant's evidence (see his witness statement at para. 16) is that Mr Koyonlu was present at the alleged pub meeting in his capacity as the Respondent's representative. According to him, he negotiated the agreement that he would be paid £250 per week pending completion of the sale, and that Mr Koyonlu would actually bring him the money each week in cash. He added that *"from this point all discussions with the Respondent relating to the sale of business took place through Salman Koyonlu acting as a go-between"*. The Applicant was cross-examined on the statement. He denied that Mr Koyonlu was acting for him, but confirmed that all discussions with the Respondent were conducted via him as a *"go between"*. It was also put to him that Mr Bridges was communicating with Mr Koyonlu throughout the transaction, and that Mr Koyonlu was speaking to Mr Bridges on his behalf. He replied that if this happened he was unaware of it. On the other hand, the Respondent's evidence was that Mr Koyonlu was involved in the transaction from the outset, for the purpose of assisting the Applicant and communicating with his solicitors. He says that the Applicant does not have a good command of English and normally communicates in Turkish, whereas Mr Koyonlu speaks both languages well.
23. It is common ground that Mr Bridges was given Mr Koyonlu's email address at an early stage in the transaction, no later than July 2013. He wrote the "Father10" email address on his file as the primary contact address. When he was pressed in cross-examination as to how he had received this, he concluded that he must have been given it by Mr Koyonlu himself, although he could not recall any specific conversation in which this had occurred. Indeed, his evidence was that he cannot distinguish between the Applicant and Mr Koyonlu when speaking on the telephone. However, it is apparent that from July 2013 he was regularly sending emails to this address, and attaching documents in the same way. The Agreement of Sale, the Assignment and Licence to Assign were actually sent by email to this address on 19th December 2013. Mr Bridges had several telephone conversations with "Hasan" on Mr Koyonlu's mobile phone number. He also met the Applicant on a number of occasions, including an occasion in early January 2013 when he attended to sign the very documentation which he had been sent by email. There was correspondence

December 2013 between Mr Bridges and the “Father10” address regarding the canopy – the removal of which was one of the Landlord’s conditions for consent.

24. It seems to me to be far more likely than not that Mr Koyonlu was assisting the Applicant with the transaction, and that his contact details were willingly given by the Applicant to Mr Bridges to enable him to do so. I consider it inherently improbable that Mr Bridges and the Applicant could possibly have remained unaware, over a period in excess of six months, that Mr Koyonlu was receiving communications intended for the Applicant if these communications were concealed from the Applicant, and the documents and other information were not being passed on. For example, Mr Bridges met the Applicant in person after sending the emails regarding the canopy, and attaching the formal sale documents, and it is inconceivable that some mention of this would not have been made at the meeting. A finding that Mr Bridges was deceived by Mr Koyonlu into accepting an unauthorised contact address necessarily means that right from the very outset of the transaction Mr Koyonlu was intending to practice a fraud on the Applicant. Given that it would be very likely that the deceit would be detected – it would simply require Mr Bridges to ask the Applicant if he had received a particular email and why he had not replied – this seems improbable, particularly since it could not have been anticipated in July 2013 that the Applicant would wish to withdraw from the transaction in January 2014. I therefore conclude that there is a simple explanation for Mr Bridges having Mr Koyonlu’s contact details – namely, that this was done with the Applicant’s consent and for the purpose of enabling Mr Koyonlu to assist him with the transaction, as the Respondent said. The Applicant and Mr Cemal Misiri both agreed that the Applicant’s command of English was poor, so that Mr Misiri would frequently assist him with business dealings. Indeed, the critical telephone call made to Mr Bridges on 16th January 2014 was initiated by Mr Misiri. The alternative explanation – that it was done by Mr Koyonlu with a view to facilitating a fraud some six months later – is in my view wholly improbable. I appreciate that when Mr Koyonlu telephoned Mr Bridges he would call himself “*Hasan*”. However, I do not regard this as evidence of attempted impersonation, more that he was identifying the person on whose behalf he was acting. It seems quite extraordinary that Mr Bridges, having met the Applicant on numerous occasions, and spoken to him over the phone on others, was unable to distinguish between the two men. Quite apart from anything, the Applicant’s

command of English is very limited – hence the need for an interpreter at the hearing, and his self-confessed need for assistance in business transactions by others (such as Cemal Misiri) whose knowledge of English is better. I do not see how Mr Koyonlu, throughout the numerous conversations with Mr Bridges, could reasonably have known that Mr Bridges believed that he was the same person as the Applicant.

The extent of the authority given to Mr Bridges

25. I shall consider the legal principles regarding a solicitor's authority in due course. For present purposes, however, I shall concentrate on the facts. It is common ground that the Applicant attended the offices of Mr Bridges – in late December 2013 or early January 2014 – in order to sign the relevant documentation, namely the Agreement for Sale, the Licence to Assign and the Assignment in form TR1. Within a matter of days – on 6th January 2014 – Mr Bridges was writing to the Respondent's and Landlord's solicitors to inform them that he was holding the signed contract and associated documents and wanted to complete that day. Although Mr Bridges said in cross-examination that he would have checked with the Applicant again before actually exchanging contracts, this does not ring true. According to him, he did not have a contact number for the Applicant, and it is not clear how he would have been able to contact him as a matter of urgency. Furthermore, having had a meeting with the Applicant in which he was instructed to exchange and complete on that day why would he need to obtain further instructions, assuming that nothing had changed? Mr Bridges does not appear to be an over-cautious or excessively conscientious solicitor. This is borne out by the fact that he initiated the completion process on 16th January – by paying funds to the Landlord – without any further instructions from his client (and despite having received a confused and confusing phone call from him in the morning). In my judgment, therefore, everything points to the fact that Mr Bridges had been given actual authority by his client, at some time on or prior to 6th January 2014, to exchange contracts and complete the sale on the terms that had been agreed between all three parties. The precise mode and timing of exchange and completion would be within the discretion of the solicitor, but the underlying instructions were clear. This authority will have continued until validly and effectively terminated by the client.

Did the Applicant inform Mr Koyonlu that he had withdrawn his instructions to Mr Bridges?

26. The Applicant's evidence is that on 16th January he was driving his car back from a meeting with his printers in Edmonton, with Mr Cemal Misiri. He asked Mr Misiri to telephone Mr Bridges. He did so and put his phone on loudspeaker. He says that he told Mr Bridges "*that the deal was off and that I did not want to sell the Respondent my business. Mr Bridges laughed After the call with Mr Bridges I asked Mr Misiri to call Mr Koyonlu which he did. Again, he put the telephone on loudspeaker as I was still driving. I told him that I had called my solicitor and that the deal was off. He asked why and I told him it was because I had not been paid my wages. I ended the call.*" These conversations are confirmed by Cemal Misiri in his witness statement and in the answers he gave in cross-examination. His statement says this: "*The Applicant then asked me to call Salman Koyonlu. I again put the telephone on loud speaker. The Applicant told Mr Koyonlu that the deal was off and I then terminated the call. My mobile phone bill showing these calls is at page 1.*" Page 1 is a print-out of the voice calls made on his mobile on 15th to 17th January 2014.

27. In cross-examination, Cemal Misiri was asked about the call to Mr Koyonlu. It was put to him that there is no record on the print-out of any call made to Mr Koyonlu on 16th January 2014. There is a record of three calls made to Kirkwoods and both the Applicant and Camal Misiri believe that the last call, made at 11.50, effected the withdrawal of instructions. However, there is no record of any call made immediately after this call – indeed, as I have said, there is no record of any call to Mr Koyonlu on that day. When this discrepancy was pointed out to him, Mr Misiri said that possibly he was using another phone, and it may be that the battery in his other phone had run out. However, his witness statement states that the call to Mr Koyonlu is recorded on the exhibited print-out, which manifestly is not the case. When he was taken through the numbers that he had called, he said that he could not remember Mr Koyonlu's telephone number, and in any case he had deleted it. The Applicant said the same. I found these answers to be unconvincing.

28. That is the state of the evidence regarding the alleged telephone call to Mr Koyonlu. He himself has not given evidence. He did write to the Applicant's solicitors on 11th

March 2016, denying any wrongdoing, but neither side has seen fit to serve a witness summons on him. This may be understandable, for a number of differing reasons, but I do not have his evidence as to the events of 16th January 2014. Based on the evidence called by the Applicant, however, I am unable to find that either he or Cemal Misiri called Mr Koyonlu on 16th January to inform him that the deal was off. Both witnesses were very specific, that the call was made just after the call to Mr Bridges, and on Mr Misiri's phone. The phone records disprove that evidence. I regard Mr Misiri's attempted explanation – that he might have been using a different phone – as totally implausible. First, because this has never been mentioned before. Secondly, because he specifically stated in witness statement that he had used the same phone and produced the print-out in support. Thirdly, because it would make no sense to use a different phone. The battery was clearly functioning since the print-out shows that other phone calls were made immediately after the call to Mr Bridges. I therefore find that whatever may have been said to Mr Bridges at 11.50, Mr Koyonlu was not informed at any time prior to 16.34 on that day that the Applicant wished to withdraw from the transaction.

Did the Applicant withdraw his instructions to Mr Bridges on 16th January 2014?

29. It is common ground that Mr Koyonlu spoke to Mr Bridges after 16.30 on January 16th. The fact of the call is recorded in the internal email sent to Mr Bridges at 16.34, asking Mr Bridges to call "Hasan" on Mr Koyonlu's number. The return call must therefore have been after 16.34. By this time Mr Bridges had already transferred the funds (held to the Respondent's order pending completion) from his client account to the Landlord. In his first attendance note – prepared some time after 20th January 2014 (after the Applicant had alleged that the completion had been procured by fraud) – Mr Bridges wrote as follows: *"At 4.30 pm we received a telephone message requesting us to call Hasan. We called Hasan and he confirmed to us that he had personally removed the canopy which had been removed by him on the 26th December 2013. We pointed out that he had advised us previously that he had done so. He then informed us that he had changed his mind and he did wish the sale to proceed."* This was the issue that had been delaying completion, since the Landlord was insisting that the canopy should be removed as a condition of granting a licence to assign. At paragraph 14 of his witness statement, Mr Bridges recalls a different (untimed) conversation about the canopy. *"Later in the afternoon, I received a phone call from*

Mr Koyonlu telling me he was Hasan. He told me that the Landlord was now agreeable to proceed with the assignment. He said that the canopy had been removed by him personally. I asked him about his earlier instructions and he told me that his differences had been resolved and he now wanted to proceed.” He places this conversation at some time prior to 16.00, since he says that: “After this I prioritised the file that afternoon. I needed to speak to the Landlord’s solicitor for confirmation that the Licence could proceed. He confirmed this to me and asked me to send the monies to his client account to hold to order. I spoke with the Respondent’s solicitors to obtain authority to send the monies to the Landlord’s solicitors and to try and complete that day. I was able to send monies to the Landlord’s solicitors at 4.00pm which was shortly before the deadline.”

30. At paragraph 17 of his witness statement, he refers to the conversation at 16.34 “*with someone who sounded very much like the Applicant since he had what appeared to be a Turkish accent. I introduced myself and he confirmed he wanted to go ahead with the sale to “Josh”, the Respondent. I explained that I needed to obtain the authority of the Landlord’s solicitors. He was keen for the matter to complete that day. I believed I was talking to Hasan Karaaslan... I then telephoned Vymans but I was advised that Mr Mercadante had already left for the day but they had received the funds. So far as I can recall I was speaking to the accounts department. I telephoned the Applicant on 07950 733450 to check that I was still instructed to exchange and complete.”* According to this witness statement, therefore, he in fact had three separate telephone conversations with “Hasan”.

31. Mr Bridges was cross-examined very thoroughly on these passages in his witness statement, and on the events of 16th January 2014, as one would expect. A number of documents were put to him, the following in particular:

- a. A letter to his indemnity insurers dated 3rd April 2014, in which he recorded the events of 16th January. The particular passage reads: “*Subsequently on the same day [16th January] I received a message to call Hasan. I telephoned the number. The person who answered confirmed he was Hasan and confirmed to me that he had had further discussions and wished to proceed with the transaction. A query had been raised with regard to the canopy and the person claiming to be Hasan confirmed that he had personally removed the*

canopy. He told me that he had changed his mind and did wish to proceed with the sale.”

- b. A letter dated 19th August 2014 to Action Fraud making a criminal complaint about Mr Koyonlu. In this letter he identified the fraud as taking place in the course of a telephone conversation, described thus: *“Subsequently I received a further telephone call. I had been left a message to telephone Hasan Karaaslan. I telephoned him and he clearly knew all about the matter. He confirmed he was Hasan Karaaslan. He advised me that he had changed his mind and was happy to proceed with the sale..... The instructions to proceed with the same were not received from Hasan Karaaslan, my client, but from Salman Koyonlu who fraudulently impersonated Mr Karaaslan.”*
- c. A letter written to the Respondent’s solicitors on 14th October 2014. There had been a hiatus in correspondence between Mr Bridges and Bowling & Co because another solicitor (Soulsby Williamson) had been instructed by the Applicant due to the potential conflict with Mr Bridges. This is what Mr Bridges wrote: *“At 4.30 pm I received a telephone message from a member of my staff. The message purported to be from Hasan. He left a telephone number “07950 733 450”. When I called to speak to him he confirmed he was Hasan and he confirmed that he had personally removed a canopy which had been causing difficulties with the Landlord. He informed me that he had changed his mind and now wished to proceed with the sale to Mr Das. He authorised me to exchange and complete the sale.”*
- d. There were no less than three versions of the Applicant’s Statement of Case, dated 23rd July 2015, 21st September 2015 and the final version dated 14th January 2016. In all three versions it is pleaded that the deception occurred in the course of the following telephone conversation: *“At 4.30pm on 16 January 2014 Mr Bridges received a message for him to call the Applicant on number “07950 733 450 “. When Mr Bridges returned the phone call he was told that he was speaking to the Applicant. The man on the phone stated that he had removed a canopy from the Premises (which was the condition of the granting of an assignment of the lease by the freeholder) and then instructed Mr Bridges to proceed to an immediate and simultaneous exchange and completion...”*

32. Mr Bridges was asked how it was, if the fraudulent instructions were not given until after 16.34, he had already initiated completion by virtue of transmitting funds (held to the Respondent's order) to the Landlord's solicitors at 16.01. His response was that *"with the benefit of hindsight I was authorised earlier.... I was deceived earlier. Deception took place throughout the transaction. The instruction I received in the afternoon after lunch was from Koyonlu... I was authorised in the afternoon. Before 4.30. The final check was after 4.30"*. When it was put to him that an earlier call from Mr Koyonlu had never previously been mentioned, he could offer no explanation – his response was simply: *"I hear what you say"*.
33. In the light of this evidence, what findings can I make as to the events on 16th January 2014? I shall begin by making one or two observations about Mr Bridges and the evidence which he gave. He is obviously both professionally and personally embarrassed by his conduct of the transaction in issue. It is manifestly deficient, and fell short of normal standards, in several respects. By way of example. at the outset of the transaction, he failed to complete the Client/Matter Inception form (for money laundering purposes). The only information inserted into the form was the client's name. Although Mr Bridges said the Applicant was an existing client he has not ticked this box on the form, and he accepts that he had never previously acted for the Applicant, although his partner had. No contact details are given on the form, and Mr Bridges explained that the firm did not have a central computerised or other record of client details. Apart from the attendance note relating to the 16th January – which I shall return to – there are no attendance notes on the file relating to the progress of the transaction, not even recording the fact of the various meetings with the client that Mr Bridges referred to. It was only when examining the original conveyancing file at court that it became apparent that the primary contact details given for the Applicant were in fact the email and telephone numbers of Mr Koyonlu. This information had never previously been made known by Mr Bridges. The Respondent's solicitors had been requesting sight of the file from 13th May 2014 onwards, including any relevant attendance notes. An attendance note relating to the events of 16th January 2014 was eventually disclosed on 11th September 2015 as a result of further requests from Bowling & Co. On receipt, the solicitors took the point that *"this note was not prepared on that day – see the comment in square brackets in the middle of the first page and the reference in the last paragraph on that page to a meeting with Mr*

Karaaslan. Can you please confirm when the note was prepared?" On 12th October the Applicant's solicitors wrote; *"Mr Bridges of Kirkwoods advises us that the attendance note dated 16 January 2016 was dictated by him on or about 20 January 2014 after our client had visited Kirkwoods' offices. We are advised by Mr Bridges that no further attendance notes exist."* In fact, Mr Bridges accepted that the attendance note disclosed in September 2014 was the second revision of a note originally prepared some time after the 20th January 2014. The original note appears in the paper file, with subsequent manuscript amendments. The manuscript amendments were then incorporated in a typed-up version apparently prepared in September 2015 prior to the specific disclosure in this litigation. The fact that the attendance note had been revised at least once was not made known to the Respondent's solicitors. The kindest thing that can be said about this conduct is that it is cavalier to say the least. Mr Bridges appeared to have no concept of the function of an attendance note. It should not be a proof of evidence, refined for the purposes of litigation, but a genuine, unaltered and unvarnished record of an event. Mr Bridges's attendance note is anything but that. Overall, for these and other reasons, I have not been able to accept Mr Bridges's evidence at face value unless it is directly corroborated by unchallengeable contemporaneous documentation or other evidence. This is not to say that he is a dishonest witness – but I consider that he is now so closely involved with the events, which have a direct bearing on his own professional position, that he is unable to distinguish between an actual and an imagined recollection of those events and has convinced himself as to the truth of the latter. This is not a conclusion that I have come to lightly. Had he kept genuine attendance notes of the material events in the transaction, and conducted it in a more professional manner, he might not find himself in this unfortunate position.

34. In the light of the evidence, my findings are as follows:

- a. The Applicant spoke to Mr Bridges at 11.50 on the morning of January 16th with regard to the transaction. The total time of the call was less than 3 minutes, to include the time it took for Cemal Misiri to be put through to Mr Bridges and then to hand the call over to the Applicant. The Applicant may well have intended to explain to Mr Bridges that he wanted to withdraw from the transaction for whatever reason. He may well have been frustrated by the delay. Even though the Respondent had never agreed to pay a weekly sum

pending completion, clearly that had been in his mind some months earlier and the longer the delay the more aggrieved he may have felt. Whatever he said to Mr Bridges – and it is common ground that his command of English is poor – the reaction of Mr Bridges to this conversation was to laugh. This was the Applicant's own evidence (albeit revised in cross-examination). This suggests to me that Mr Bridges did not interpret the conversation as an instruction to withdraw. He may well have regarded it as the Applicant simply letting off steam. Out of the blue, the Applicant (having had a meeting with Mr Bridges a week or so earlier in which he had given instructions to complete immediately) was complaining about the Respondent and, perhaps, that he was out of pocket (although Mr Bridges said that he was not told about any additional payments). It is unsurprising that Mr Bridges did not interpret the conversation – which can only have lasted a couple of minutes – as an unequivocal instruction to withdraw.

- b. If Mr Bridges had understood that he had been instructed to withdraw from the transaction, I think it inconceivable that he would not immediately have communicated this to his opposite numbers at the Respondent's and the Landlord's solicitors. As the emails on 14th and 15th January demonstrate, all three solicitors were working towards an imminent completion of the transaction. Indeed, Mr Bridges himself was putting pressure on the other parties to complete, and pressing for completion as recently as 6th and 10th January 2014. Mr Mercandante was unable to complete on 15th January but was expecting to do so on 16th – see his email. There had been attempts to complete on several earlier occasions, the failure to remove the canopy being the only substantive reason for the delay. If one of the principals was now withdrawing from the transaction, this would have been communicated, as a matter of courtesy if nothing else. He was in regular and continuing email contact with both Mr Misiri and Mr Mercandante and the absence of any communication is striking.
- c. In my judgment, that is the explanation for the fact that Mr Bridges initiated completion by transmitting the funds to the Landlord at 16.01 on the same day. I appreciate that the funds were still held to order on receipt – and could be recovered if completion did not take place – but it makes absolutely no sense for him to have done this if he believed that the Applicant had

withdrawn from the transaction. It follows that he did not think that the transaction had been called off at that stage. I am unable to accept his evidence in cross-examination that there was a phone call from Mr Koyonlu prior to 16.00, impersonating the Applicant. This is contrary to all the statements made by Mr Bridges prior to January 2016 (assuming that his somewhat equivocal witness statement does refer to an earlier call), including the revised attendance note written within a few days of the relevant events. There is no credible reason why he would not have mentioned this earlier conversation if it had taken place. I regret to say that his evidence in cross-examination was an attempt – perhaps more or less unconscious – to rationalise the timeline in a way consistent with his client’s case.

- d. When Mr Koyonlu telephoned him at 16.34, the purpose of the call was to deal with the one outstanding issue, namely the removal of the canopy. On the previous day (15th January at 12.49) Lynsey Attwood (on behalf of Mr Bridges) emailed “Hasan” to “*ensure that when you do meet with the Landlord, the canopy has definitely been removed.*” At 14.13 on the same day the Respondent’s solicitor emailed Mr Bridges and Mr Mercandante to say that “*I understand that the Landlord has visited the property and confirmed that the canopy has been removed.*” It was entirely natural for Mr Koyonlu to have telephoned Mr Bridges on 16th January to assure him that the canopy had been removed, and therefore that there was no further barrier to exchange and completion, which both parties had been pressing for. I do not accept the evidence of Mr Bridges that Mr Koyonlu, in the course of this conversation, had said that he had changed his mind and now wished to complete the transaction. First, because there is no evidence that Mr Koyonlu was aware that the Applicant had changed his mind. Secondly, because Mr Bridges’s attendance note makes no sense. This is what he wrote: “*We called Hasan and he confirmed to us that he had personally removed the canopy which had been removed by him on the 26th December 2013. We pointed out that he had advised us previously that he had done so. He then informed us that he had changed his mind and he did wish the sale to proceed.*” According to this note (written within days of the conversation), therefore, the primary purpose of the call was to inform Mr Bridges that the canopy had been removed. There would be no point in informing him of this fact unless the matter was

proceeding. If, as Mr Bridges now says, Mr Koyonlu knew that instructions to complete had been withdrawn, and he was fraudulently impersonating the Applicant, it seems improbable that he would not have said at the outset of the call that he had changed his mind, rather than going directly to the canopy issue. It is much more likely, in my judgment, that the question of completion was raised by Mr Bridges. Indeed, this is accepted in his witness statement: *“I asked him about his earlier instructions and he told me that his differences had been resolved and he now wanted to proceed.”* Mr Bridges may have been confused as to the Applicant’s instructions as a result of the morning conversation, but (as I have found) he did not consider that his instructions were withdrawn. If Mr Bridges raised the point with Mr Koyonlu, the latter may well have said that the matter was to proceed, since he was unaware that anything had changed.

- e. Nor do I accept Mr Bridges’s evidence that there was a further telephone conversation with Mr Koyonlu, at around 18.00, for confirmation that exchange and completion could go ahead. This alleged conversation is mentioned in the attendance note, but given doubts about the provenance and accuracy of that document I can give it little weight. It is also mentioned in the witness statement made in January 2016 – some two years after the day of completion. Prior to that time, he had consistently stated that the operative instructions had been given in the conversation at 16.34 – see, for example, the documents referred to at paragraph 23 above. If indeed the final instructions to complete were given at 18.00 that would have been the operative fraud, yet it was not worthy of mention by Mr Bridges for nearly two years. In any event, and having received express instructions to complete at 16.34 (according to Mr Bridges) no further contact with the Applicant would have been required.

The telephone call to Mr Koyonlu on 20th January 2014

35. It is the evidence of Mr Bridges and the Applicant that when the Applicant arrived at the meeting on 20th January 2014, he was surprised to discover that completion had already taken place. When Mr Bridges explained that he had had a telephone conversation on the afternoon of 16th January, they decided to telephone the number of “Hasan”, as it had been written on his file as the contact number for the Applicant

and noted on the Kirkwoods internal email timed at 16.34 on 16th January. Not surprisingly, the person who answered the call was Mr Koyonlu. He readily admitted that he was the person who had spoken to Mr Bridges on the previous Thursday, having left a message for Mr Bridges to call him back. He made no attempt to disguise who he was, and even answered to the name Hasan. The Applicant, and Mr Bridges, cite this as evidence of fraudulent impersonation. However, it seems to me that there is another interpretation, namely that Mr Koyonlu was simply continuing to act, as he had done openly throughout the transaction, as an intermediary between Mr Bridges and the Applicant. If, as the Applicant contends, Mr Koyonlu had been carefully laying the groundwork for his fraud, by deceitfully passing himself off as the Applicant, it seems extraordinarily guileless for him to have continued the deception even after he knew that it would be discovered. On the Applicant's case, Mr Koyonlu knew on 16th January that he had perpetrated a fraud on the Applicant and Mr Bridges – yet he was readily admitting “impersonation” to the same individuals on 20th January. This does not ring true and is an implausible explanation.

The meeting at Kirkwoods on 22nd January 2014 attended by Mr Koyonlu

36. This is what Mr Bridges says at paragraph 24 of his witness statement: *“On 22 January 2014 I had a meeting with the Respondent regarding his proposed purchase of a shop.... In the course of this meeting a man walked into my office. He told me that he was Salman Koyonlu. He handed me his passport and a note written in Turkish... he told me that he was the person who had authorised the sale of the Premises and that he knew that the Applicant did not want to proceed with the sale”*. He also prepared an Attendance Note, the relevant part of which reads as follows: *“Attending Veysel Das by appointment to discuss a purchase of a shop. In the course of the interview a man walked in to the office. He introduced himself as Salman Koyonlu and produced his passport and a copy of a document which he told me was written in Turkish..... He confirmed to me that he was the person who had authorised the sale of 7 Money Hill Parade and not Hassan. He confirmed he was aware that Hassan did not wish to proceed with the sale. He was somewhat smug in the course of the brief time he spent in the office and when he left he said to me “please call me anytime you have my number”. There was no indication from Veysel Das that he was not aware of the situation.”* He sent a letter to the Respondent's solicitor shortly afterwards, setting out the same account of events. As I have said, the

Applicant was advised to obtain the advice of independent solicitors, and Soulsby Williamson were instructed. Mr Bridges was asked to write to them, setting out his recollection of the material events. This is what he said about the meeting on 22nd January: “*Subsequently, after completion, Mr Veysel Das attended at my office on another matter. During that interview, Salman Koyonlu attended. He walked into my office unannounced! In the presence of Mr Das he confirmed that he had fraudulently advised me that he was Hasan Karaasalan and confirmed that he had been impersonating him from time to time in the course of the transaction.*” Mr Das, in his witness statement (see paragraphs 21 to 32), disagrees with some of this. He accepts that Mr Koyonlu came to the meeting with Mr Bridges, because the allegation of fraud had already been made known to him by this time, and he wanted to explain the situation to Mr Bridges. According to Mr Das, Mr Koyonlu simply explained that he had been assisting the Applicant with the transaction, and gave him a document which both he and the Applicant had signed, together with his passport. He never said anything to suggest that he knew that the Applicant had withdrawn from the sale and never used the words “deception”, “impersonation” or “fraud”. Mr Koyonlu invited Mr Bridges to speak to him further if he had any questions, and then left. Mr Bridges then carried on with the meeting with Mr Das in relation to the other matter.

37. Mr Bridges was cross-examined on his evidence of the meeting on 22nd January. It was put to him that Mr Koyonlu had come to the meeting in order to explain that he had the Applicant’s authority to assist him in the transaction. He did not accept that he had impersonated the Applicant or that his conduct had been fraudulent. Mr Bridges was reluctantly driven to accept that he did not confess to deceiving him, merely that he accepted that he had given Mr Bridges his number and that he had been dealing with him on the Applicant’s behalf. The answers that Mr Bridges gave were instructive. It was put to him that Mr Koyonlu accepted that he had given his phone number to Mr Bridges he responded “*I’d already discovered that*”. When it was put to him that Mr Koyonlu said that he had authority from the Applicant he replied “*if he was just an agent you wouldn’t call yourself Hassan*”. Clearly, Mr Bridges has chosen to interpret Mr Koyonlu’s willing acceptance that he was involved in the transaction in order to assist the Applicant as an admission of fraud. However, his admission could bear an entirely different and innocent interpretation. It was certainly not true or accurate to write, as he did to Bowling & Co on 1st May 2014:

“Will you please note that Mr Salman Koyonlu has attended this office and confirmed that he fraudulently authorised on the telephone the transaction to proceed contrary to the actual instructions of Mr Hasan Karaaslan. He confirmed he was impersonating Hasan Karaaslan on the telephone on several occasions.” Or to Soulsby Williamson on 7th July 2014: *“In the presence of Mr Das he confirmed that he had fraudulently advised me that he was Hasan Karaaslan and confirmed that he had been impersonating him from time to time in the course of the transaction.”* These were a grossly misleading statements, which once again casts doubt on the accuracy of Mr Bridges’s recollection of the material events. Not for the first time, it seems to me that Mr Bridges has assumed wrongdoing on the part of Mr Koyonlu and has interpreted the facts in such a way as to fit in with that view.

38. It is also inherently improbable that Mr Koyonlu would have taken the trouble of attending the meeting on 22nd January merely for the purpose of confirming that he had behaved fraudulently. Such conduct makes no sense. It is more probable that he was there to explain and justify his actions, as Mr Das stated. As a final point, Mr Bridges did not appear to consider that there was any difficulty or conflict in his continuing to act for Mr Das in this new transaction. If he genuinely considered that Mr Das had been a willing accomplice in a fraud it seems incredible that he would not have ceased to act for him. At the same time he was prepared to provide information to his other client – the Applicant – regarding a meeting he had held with Mr Das in the other matter. Once again this highlights the difficulties of Mr Bridges’s position from the very outset of the dispute.

ACTUAL AUTHORITY – THE LAW

39. In her Skeleton Argument, Ms Mattsson sets out the following principles, which are broadly accepted by Mr Stancliffe for the Respondent. An agent can have express, implied or apparent/ostensible authority to bind his principal. I shall consider apparent or ostensible authority later in this Decision. For present purposes, actual authority can be conferred either directly, or by necessary implication from the instructions given to the agent. If an agent purports to act without the principal’s authority, and in the absence of ostensible authority, the agent will be liable for breach of warranty of authority, but the principal will not be bound. Ms Mattsson submits that a conveyancing solicitor who does not have express authority to exchange

contracts does not have implied authority to do so, citing Suleman v Shahsavari [1989] 1 EGLR 203 (at 206-7) as authority. The agent's belief in the existence of his own authority is immaterial. This is so whether the belief extends to an authority which the agent believed he had but in fact never had, or an authority which the agent did have but was subsequently ceased without his knowledge or means of knowledge – see Yonge v Toynbee [1910] 1 KB 215 (CA) and Simmons v Liberal Opinion Ltd; Re Dunn [1911] 1 KB 966.

SUMMARY OF THE FINDINGS AS TO ACTUAL AUTHORITY

40. I find that the Applicant had authorised Mr Bridges to exchange and complete the sale on or prior to January 6th 2014, and those instructions continued until completion. He was of course at liberty to withdraw those instructions at any time. However, whether he did or not must be a matter of objective analysis. Clearly Mr Bridges did not understand that his authority had been withdrawn since he proceeded to completion regardless. Whatever was said by the Applicant in the short telephone call, and in his poor English, was not interpreted by Mr Bridges as a change of instructions. I therefore hold that the instructions remained in force. This not a case like Yonge v Toynbee, where the client ceased to have mental capacity and the authority was automatically revoked. It matters not that a client may subjectively believe that he has withdrawn authority given to his solicitor, if in fact, objectively construed, he has not effectively done so. When Mr Bridges initiated completion on 16th January, and effected exchange and completion at 6 pm, he was operating on the basis of the original instructions given to him by the Applicant no later than 6th January 2014. Furthermore, when Mr Koyonlu spoke to Mr Bridges after 16.34, the purpose of the call was to reassure him that the canopy had been removed, and therefore that completion could take place. Insofar as he said anything to Mr Bridges which was interpreted a confirmation of the existing instructions to complete that was in any event within the continuing scope of Mr Koyonlu's authority, since he was authorised to assist the Applicant in the transaction and had dealings with Mr Bridges in that capacity. Since he had received no contrary instruction from the Applicant he had no means of knowing that he had changed his mind. However, the operative instructions were those given by the Applicant. Had Mr Koyonlu not telephoned at all, exchange and completion would have been effected.

OSTENSIBLE OR APPARENT AUTHORITY – THE LAW

41. If I am wrong about Mr Bridges's actual authority, that leaves the Respondent's alternative submission, namely that Mr Bridges had apparent (or ostensible) authority to exchange and complete the sale, and his client is bound by that authority. The legal principles which Mr Stancliffe relies on are as follows:

- a. An agent has apparent authority, and can bind the principal, if (in the definition of Lord Diplock in Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480) a representation is "*made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal of a contract of a kind within the scope of the "apparent" authority, so as to render the principal liable to perform any obligations imposed upon him by such contract.... The representation, when acted upon by the contractor by entering into the contract with the agent, operates as an estoppel, preventing the principal from saying that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.*" (p.503).
- b. Per Lord Diplock at pp 503-4: "*The representation which creates "apparent" authority may take a variety of forms of which the commonest is representation by conduct, that is, permitting the agent to act in some way in the conduct of the principal's business with other persons. By doing so the principal represents to anyone who becomes aware that the agent is so acting that the agent has authority to enter on behalf of the principal into contracts with other persons of the kind which the agent so acting in the conduct of his principal's business has usually "actual" authority to enter into.*"
- c. The reasoning behind the doctrine of apparent authority is obvious: namely, that "*the reasonable expectations of honest men must be protected*" – see First Energy (UK) Ltd v Hungarian International Bank Ltd [1993] Lloyd's Rep 194.
- d. A direct verbal or written representation from the principal to the contractor is not required. Indeed, in a conveyancing transaction it would be rare indeed for either principal to make any direct representation to the other as to the scope of the solicitor's authority. Once solicitors are instructed in a conveyancing transaction, at the point where they inform their other party that they are holding signed documentation from their client, in the absence of some express reservation I consider that apparent authority will be inferred in

accordance with the guidance given by Lord Diplock cited in (b) above. Our system of conveyancing, with telephonic exchange of contracts between solicitors, would be unworkable if this were not the case.

OSTENSIBLE OR APPARENT AUTHORITY – THE EVIDENCE

42. Against that background, I shall now turn to the relevant evidence. The critical date is 6th January 2014. On a date unknown on or shortly before 6th January 2014, Mr Bridges had met the Applicant. In the course of the meeting the Applicant signed all the documents required for completion, and had agreed all outstanding issues. This was the evidence of Mr Bridges, and can be inferred from the terms of the email sent to the Respondent's solicitor (set out in full earlier in this Decision) in which Mr Bridges confirmed: (1) the Applicant's agreement as to the apportionment of the purchase price; (2) the final wording for Schedules 1, 2 and 3 of the sale contract; (3) that the Applicant had signed the documentation and Mr Bridges was holding the signed documents; (4) that the Applicant wished to complete on that day. The Applicant accepted in cross-examination that the purpose of giving the signed documents to Mr Bridges was to enable him to complete the sale. Unsurprisingly, Mr Bridges conceded that the email and its contents were sent in accordance with and within the scope of his instructions. On the same day he wrote to the Landlord's solicitor stating that his client wished to complete that day. From that moment on he was clothed with apparent authority to complete the transaction on behalf of his client. Unless and until the other parties were informed that his authority had been revoked, they were entitled to rely on the apparent authority. Manifestly, if Mr Bridges had purported to complete on his client's behalf on 6th January the Applicant would have been bound. Unless it can be established that the Respondent was aware of the withdrawal of the Applicant's instructions (if such withdrawal occurred, as to which see my findings above) on or prior to 16th January, there is no reason why the doctrine of apparent authority should not apply.

43. Ms Mattsson, for the Applicant, submits that there was no actual or apparent authority in this case. I have made my findings about actual authority above. As to apparent or ostensible authority, she accepts that this may arise where an agent is authorised to conduct the principal's business, but submits that the mere instruction of a solicitor in a conveyancing transaction does not create apparent authority to enter into a contract

on the principal's behalf. She cites the decision of the High Court in Suleman v Shahsavari (see above), upon which she relies heavily. The facts of this case were relatively simple. Mr and Mrs Shahsavari were the joint owners of a property, and decided to sell it. Their agents found a buyer – Mr Suleman – and an agreement as to price was reached, subject to contract. Mr and Mrs Shahsavari instructed a solicitor, Mr Martinez. Although he corresponded with both of them, most of his conversations took place over the telephone and were exclusively with Mrs Shahsavari. He never met or spoke to her husband. Matters proceeded with a view to exchange of contracts in the usual way. However, shortly before the time when both parties were ready to exchange, Mr Shahsavari went abroad, having instructed his wife not to sign anything in his absence. About two weeks later, the buyer's solicitors indicated to Mr Martinez that their client had approved the contract and they were ready to exchange. On the following day, there was a telephone conversation between Mr Martinez and Mrs Shasavari. Although their accounts of the conversation differed markedly, the Judge held that Mrs Shahsavari had authorised Mr Martinez to sign the contract on behalf of them jointly, and then to exchange the signed contract with the buyer's solicitors. Exchange took place on 10th July. The Shahsavaris refused to complete, and Mr Suleman sued them for specific performance, and also (in the alternative) Mr Martinez for breach of warranty of authority. The court held that the contract did not bind the Shahsvaris, so refused specific performance, but found for Mr Suleman on his claim against Mr Martinez.

44. The Judge held that Mr Shahsavari never authorised Mr Martinez to sign the contract on his behalf, and, therefore, the contract could not bind him. There was no express authority – Mr Shahsavari never spoke to Mr Martinez or wrote to him – and Mrs Shahsavari could not confer that authority on Mr Martinez because she was not authorised by her husband to do so. Indeed, his instruction to her was not to sign anything during his absence abroad. He also held that there was no implied authority: *“when Mr and Mrs Shahsavari instructed Mr Martinez to act as their solicitor, I accept that they conferred on him implied authority to do many things, like obtaining local authority searches, but they certainly did not thereby confer on him implied authority to conclude a binding contract of sale as their agent.”* It followed that Mr Martinez did not have ostensible authority to contract on the sellers' behalf, and even

though Mr Martinez held himself out as having that authority, he could not thereby bind his principal – see the Freeman & Lockyer case at p. 505.

45. In my judgment, however, the situation in the present case is very different. It is trite law that where a transaction is still under negotiation, or an agreement has been reached “*subject to contract*”, general instructions to a solicitor do not include authority to conclude that contract on behalf of the client: see Suleman v Shahsavari and the cases cited in Emmett on Title at 2-42. It seems to me that the situation is entirely different where the client has seen his solicitor, signed all the relevant documentation, agreed the price apportionment and final wording of the documentation and instructed him to press for immediate completion. There is nothing left for the client to do other than exchange and complete: the transaction has reached the final stage. When, following the meeting, the solicitor then notifies his opposite number of the intention to complete “today” it must be inferred that he had received express instructions to exchange and complete. Having made that representation clear to the buyer’s solicitor, on his client’s instructions, it was obvious that it will be relied upon by the other party engaging in the exchange. Mr Bridges gave evidence that he did not need express instructions to send the letter of 6th January – hardly surprising in the circumstances. However, he also said that he would have sought further instructions before finally completing. I do not accept that. Given that Mr Bridges had no telephone contact number for the Applicant it is simply incredible that he would have required a further instruction from him on 6th January before completing. He also informed the other parties of his client’s desire to complete on 10th January, but there is no evidence that he had any actual contact with the Applicant until the conversation on 16th January. His behaviour on 16th January also belies this evidence. The fact that he was not able to effect exchange and completion until 16th January makes no difference. Clearly, the purpose of the meeting between the Applicant and Mr Bridges prior to 6th January was to finalise all outstanding issues with a view to imminent completion. The Applicant must have been aware that completion would take place at the earliest possible date and that nothing further was required from him. A solicitor has implied authority to choose the mode and timing of exchange and completion: see Domb v Isoz [1980] Ch 548. In my view, and having regard to the stage which the transaction had reached, the situation is much closer to Domb v Isoz than to Suleman v Shahsavari. Accordingly even if, contrary to

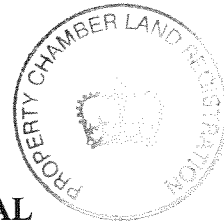
my findings above, Mr Bridges did not have actual authority, the Applicant is bound by the exchange of contracts and completion effected by Mr Bridges within the scope of his apparent authority.

CONCLUSIONS

46. I have therefore concluded that the Applicant is bound by the exchange and completion effected on his behalf by Mr Bridges on 16th January 2014. In my judgment, Mr Bridges either had actual authority from the Applicant or, if not actual authority, he had ostensible or apparent authority such as to bind his principal. I shall therefore direct the Chief Land Registrar to give effect to the Respondent's application in Form AP1 dated 5th September 2014 to register the TR1, and to the further application in Form RX3 dated 24th November 2014 to cancel the restriction. I see no reason why costs should not follow the event, but I shall allow the Applicant the opportunity of making written submissions on costs no later than Wednesday 20th July 2016, and the Respondent may respond 7 days thereafter. I assume that the level of costs justifies a detailed assessment, but I am open to persuasion on this point.

Dated this 11th day of July 2016

Owen Rhys



BY ORDER OF THE TRIBUNAL



REF/2015/0403

**PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002**

BETWEEN

HASAN KARAASLAN

APPLICANT

and

VEYSEL DAS

RESPONDENT

Property Address: Ground Floor, 7 Money Hill Parade WD3 7BQ

Title Number: HD507202

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place London WC1E 7LR

On: 16th and 17th May 2016

ORDER

IT IS ORDERED that the Chief Land Registrar shall give effect to the Respondent's applications in Form AP1 dated 5th September 2014 and in Form RX3 dated 24th November 2014

Dated this 11th day of July 2016

Owen Rhys

BY ORDER OF THE TRIBUNAL

