Neutral Citation Number: [2018] EWHC 1047 (Ch)

Case No: HC-2017-002740

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

Royal Courts of Justice, Rolls Building
Fetter Lane, London EC4A 1NL

Date: 10/05/2018

Before :

Kelyn Bacon QC
(sitting as a Deputy Judge of the High Court)

- -

Between :

(1) AURORA DEVELOPMENTS LIMITED
(2) AMK ESTATES LIMITED
(3) ALEXEY SAKUN
(4) PSP-FARMAN HOLDING SA
(5) GELANECO HOLDINGS LIMITED
(6) LEXAFIN BUSINESS S.A.
(7) BLOOMING MARKET INVESTMENTS LIMITED **Claimants**

- and –

(1) DELTA HOLDINGS LIMITED
(2) MR ELI COHEN
(3) MR LIONEL COHEN
(4) MR CHRISTOPHER ROBIN HENSCHEL
(5) MR MARK GREAVES
(6) THE AURORA PROPERTY GROUP LIMITED
(7) INTERNATIONAL PROPERTY SOLUTIONS LIMITED **Defendants**

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Rupert Reed QC and Jonathan Chew (instructed by **Sherrards Solicitors**) for the **Claimants**
Michalis Pelekanos (Advocate at the Cyprus Bar) for the **First, Fourth, Sixth and Seventh Defendants**
The **Second Defendant** appeared in person
The **Third and Fifth Defendants** were not represented and did not appear

Hearing dates: 26–28 March 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

……

KELYN BACON QC

Kelyn Bacon QC (sitting as a Deputy Judge of the High Court):

Introduction

1. This is the hearing of the Claimants' application for summary judgment on various issues arising from a set of claims that allege a series of frauds perpetrated by the Defendants in relation to the Claimants' investments in two development sites in Scrubs Lane, Hammersmith. The Claimants acknowledge that obtaining summary judgment on a fraud claim is not straightforward. Nevertheless they say that the particular facts of this case, in which the fraudulent conduct is obvious from the face of the documents, make it appropriate to decide the majority of the issues in the case summarily. In the alternative they say that the relevant parts of the defences to the claims should be struck out.

2. The position of the various Defendants is as follows:

   i) The First, Second, Fourth, Sixth and Seventh Defendants have served defences to the claim and oppose the Claimants' application.

   ii) The Third Defendant, Mr Lionel Cohen, served a very brief defence but has made no response to the Claimants' application.

   iii) The Fifth Defendant, Mr Greaves, has not served a defence to the claim or responded in any way to the Claimants' application.

3. The Claimants' application is supported by two witness statements made by Mr Paul Marmor, a partner of Sherrards Solicitors. The main purpose of those witness statements is not to give primary factual evidence in relation to the dealings between the parties that give rise to the claims, but rather to set out the chronology of events and the contemporaneous documentation on the face of which, it is said, the various frauds are apparent, and which therefore forms the basis of the applications for summary judgment.

4. Opposing the application, the First, Fourth, Sixth and Seventh Defendants rely on a witness statement of the Fourth Defendant. He discusses the transactions that are said to have been fraudulent, and denies that the Claimants were defrauded. The Claimants say that this evidence is irrelevant, wrong in law, and/or so lacking in credibility given the contemporaneous documentary evidence that it can be rejected summarily at this stage.

5. The Claimants were represented at the hearing by Mr Rupert Reed QC and Mr Jonathan Chew. The First, Fourth, Sixth and Seventh Defendants have instructed a Cypriot lawyer, Mr Michalis Pelekanos, to represent them, and have been referred to in these proceedings as the "Pelekanos Defendants". They requested that Mr Pelekanos should be permitted to make submissions on their behalf at the hearing, and the Claimants did not oppose that request. I therefore permitted Mr Pelekanos to address the court on behalf of the Pelekanos Defendants. The Second Defendant appeared in person at the hearing and made brief submissions. The Third and Fifth Defendants did not appear at the hearing and were not represented.

Factual background

Preliminary comments

6. The alleged frauds arose from a series of transactions in late 2014 and early 2015, under which the two Scrubs Lane sites were sold to companies owned by Mr Henschel (the Fourth Defendant) in which the Claimants were induced to invest. The smaller site, referred to as the North Site, is at 93–97a and 99–101 Scrubs Lane. The larger South Site is at 115–129a Scrubs Lane. The price originally sought by the vendors was £9.5 million for the South Site and £3 million for the North Site.

7. The purchase of the two sites was promoted by the two Cohen brothers (the Second and Third Defendants) and Mr Henschel. The Cohen brothers are South African property developers, and Mr Henschel is a South African businessman. Of those three, Eli Cohen (hereinafter "Mr Cohen") played the most active role in the transactions described below. The promoters engaged Mr Greaves (the Fifth Defendant) to work for them. At the time he was based in Guernsey, and held himself out as a barrister and tax adviser.

8. By 16 September 2014 the promoters had negotiated an exclusivity arrangement with the vendors of the two sites, in return for which a non-refundable deposit of 1% of the total price (i.e. £12,500) was paid by Mr Henschel's company Syser Finance. Subsequently, the promoters became the middlemen in the transaction between the vendors and the investors. On one side, the promoters negotiated the mechanics of the purchase with the vendors. On the other side, the promoters negotiated with the investors who would fund the purchase. Those investors were introduced to the promoters through a Mr Boris Shemyakin, who also invested – or thought he was investing – in both properties through his company AMK (the Second Claimant).

9. From the outset, the understanding between Mr Shemyakin and the promoters was that the two sites would be split between different groups of investors. The main investor for the North Site was Mr Alexey Sakun (the Third Claimant), a family friend of Mr Shemyakin. The Claimants have referred to Mr Shemyakin/AMK and Mr Sakun together as the "North Site investors", and I will adopt the same terminology. The "South Site investors" were various companies whose interests now rest with the Fourth to Seventh Claimants, as set out further below.

10. The principal alleged fraud was that the two groups of investors were not told the true price of the properties as agreed between the promoters and the vendors. That is said to have facilitated a further alleged fraud, whereby surplus funds provided by the North Site investors were, without their knowledge, used to provide the source of funds for a loan purportedly provided to the South Site investors by a company owned by Mr Henschel. The various claims concern or are related to those alleged frauds.

11. Most of the narrative that the Claimants rely on for their claims is derived from the contemporaneous documentary record, which includes extensive email correspondence as well as draft agreements and final versions of

agreements between the various parties. It is convenient to divide the events into three periods of time: (i) the events leading up to the exchange of contracts for the properties; (ii) the events between exchange and completion; and (iii) the events after completion of the purchases.

Events leading up to the exchange of contracts

12. In the negotiations between the promoters and the vendors during the course of September 2014, the proposal was that the beneficial owner of both properties would be Aurora Developments Limited ("ADL", the First Claimant), which was a company incorporated in Guernsey, with Mr Greaves as the sole director and Mr Henschel as the ultimate beneficial owner. The promoters sought, however, to arrive at a result where, at the Land Registry, the ownership of the two sites was split between different entities, with the total sum (£12.5 million) recorded as having been paid for the South Site, and only a nominal sum paid for the smaller North Site. ADL's solicitors Jaffe Porter Crossick ("JPC") repeatedly expressed concerns about this in correspondence with Mr Greaves. The reasons given by Mr Greaves for his proposals varied, but included confidentiality, planning purposes, and commercial reasons arising from negotiations with the owner of the plot located between the North and South Sites.

13. The structure eventually agreed with JPC, and in turn the vendors of the properties, was that ADL would be the purchaser of the South Site for £12.5 million, and the North Site would be purchased for a nominal sum by another Guernsey company Delta Holdings Limited ("DHL", the First Defendant), which would hold the property as the nominee for ADL. As with ADL, Mr Henschel was the ultimate beneficial owner of DHL, and the sole director was Mr Greaves.

14. The vendors were only willing to split the purchases in this way if there was, in some formal document, an express statement that there was a single overall transaction. Mr Greaves, however, insisted that the purchase contracts for the two sites should not refer to the fact that the transactions were linked. The vendors' solicitors Charles Russell therefore proposed that a single overarching Deed should be executed by all parties, i.e. the vendors, ADL and DHL, specifying that DHL was solely acting as nominee for ADL and that the properties were being sold together. Charles Russell commented that they were "concerned that no contract with just the bilateral parties should be executed without that prior overarching/master document". Mr Greaves accepted that proposal.

15. Meanwhile the promoters sought investors to fund the purchase of the two sites. Mr Cohen had had prior business dealings with Mr Shemyakin, and he therefore proposed that Mr Shemyakin should invest in the South Site. A development appraisal sent to Mr Shemyakin on 13 September 2014 for the South Site (with the North Site described as a "further" site) gave the purchase price for that site as £12.5 million. Mr Shemyakin agreed in principle to invest in the property. Mr Cohen then sent him a draft loan agreement, the purpose of which was for Mr Shemyakin's company AMK to loan ADL the funds required for exchange of contracts on the South Site, namely £1.25 million.

The loan agreement was signed on or around 16 September 2014. On 23 September 2014 the loan was made by AMK to ADL, via Syser Finance.

16. On 30 September 2014, ADL agreed to the overarching Deed setting out the relationship between the North and South Site purchases, although the parties agreed that it would not be executed until after the exchange of contracts. The following clauses of the Deed are the most material:

> "3.2 Aurora is a property developer and is seeking (subject to contract) to acquire not only the Properties but other sites in the vicinity of the Properties from third parties.
>
> 3.3 Given particular commercial sensitivities for Aurora:
>
> 3.3.1 Aurora does not wish to make all the acquisitions in its own name, but in certain cases it intended (subject to contract) that those acquisitions be made through nominees; and
>
> 3.3.2 Aurora is seeking to avoid price sensitive information in respect of its acquisitions, and especially the price of each acquisition, becoming public knowledge.
>
> 3.4 The aggregate sale price for the Properties is £12,500,002 (excluding VAT).
>
> 3.5 The Parties each acknowledge that there is a single overall commercial transaction in respect of both the Properties notwithstanding that more than one contract has been … used to effect the overall transaction. The sale and purchase of the First Property is inextricably linked to the sale and purchase of the Second Property in that neither the First Contract nor the Second Contract shall be completed unless both the First Contract and the Second Contract shall be completed simultaneously.
>
> 3.6 In initial discussions between the Parties, the figure for a possible sale price for the First Property was around £9.5 million and the figure for a possible sale price for the Second Property was around £3 million.
>
> 3.7 Due to the particular commercial sensitivities for Aurora mentioned above, Aurora required the overall transaction be structure in a particular way and Aurora was unwilling to enter into any contract at all unless its requirements were met. Aurora's requirements were and are that:

3.7.1 there be two separate contracts, namely, the First Contract and the Second Contract;

3.7.2 the First Contract and the Second Contract be entered into on the same date;

3.7.3 neither the first Contract nor the Second Contract be completed unless both the First Contract and the Second Contract are completed simultaneously;

3.7.4 any purchase of the Second Property be made by Delta as nominee for Aurora;

3.7.5 the sale price of the Second Property be reduced to £2, with a corresponding increase in the sale price of the First Property.

3.8 Aurora confirms that there was and is no other reason for these changes to the overall transaction other than the particular commercial sensitivities mentioned above.

3.9 In respect of the sale and purchase of the Second Property, Delta acknowledges and confirms that it acts solely as nominee for Aurora and Delta will not acquire any beneficial interest in the Second Property."

17. Exchange of contracts for both sites took place later on the same day. As agreed, ADL was the purchaser of the South Site, for a price of £12.5 million, and DHL was the purchaser of the North Site contract, for a price of £2. The North Site contract expressly provided, however, that DHL was buying the property as nominee for ADL, with ADL as the sole beneficial owner.

18. The Deed was then signed by the vendors and (separately) by Mr Greaves on behalf of ADL and DHL. Mr Greaves' signed copy was sent to JPC on 2 October 2014 and sent on to Charles Russell that day. On the same day Charles Russell sent the vendors' signed copy to JPC.

Events between exchange and completion

19. On 17 October 2014 Mr Cohen sent Mr Shemyakin a development appraisal for the North Site, specifying a purchase price of £3.5 million. The cover letter for the appraisal said that "We are very close now on the legals". No mention was made of the fact that contracts had already been exchanged on the North Site more than two weeks earlier, with a purchase price of £2 rather than £3.5 million.

20. In a text message exchange two days later, Mr Shemyakin asked Mr Cohen for a signed loan agreement for £350,000 "to make a transfer for exchange". Mr Cohen responded "Ok", and sent Mr Shemyakin a draft loan agreement a few

days later, specifying a loan of £350,000 "for the purposes of exchanging contracts on the purchase of the land known as 93–97a and 99–101 Scrubs Lane, London … and associated professional costs".

21. According to the Claimants, Mr Cohen subsequently told Mr Shemyakin that the price for the North Site had been increased by the vendor to £4 million. The required exchange loan was therefore supposedly £400,000. The final loan agreement for the North Site was executed on 30 October 2014, specifying the amount as £400,000. The loan was paid by AMK on 10 November 2014. Of course, as noted above, that sum was *not* actually required for the exchange of contracts on the North Site, since the exchange had already taken price and the selling price of the North Site was only £2.

22. While Mr Shemyakin had provided the funds for the exchange of contracts on the South Site, and had also subsequently provided what was said to be the funds for the exchange of contracts on the North Site, the intention was that he would find further investors for both sites, who would provide the funds for completion. Mr Sakun was identified as the investor for the North Site. For the South Site, completion funding was to be provided by Lexafin (the Sixth Claimant), which was part of the group of PSP (the Fourth Claimant), and by a company called Hitomi.

23. Mr Cohen provided the agreements for Mr Sakun's investment in the North Site, in the form of two loans to ADL, one of £1.48 million and the other £2.12 million. Both agreements provided that the sums borrowed would be used for the purposes of completing contracts on the North Site, and in both agreements the security set out in the agreements was that Mr Sakun would be given an interest in ADL. On 30 December 2014 the two loan agreements were signed by Mr Sakun.

24. On the evening of 31 December 2014, Mr Greaves sent Mr Henschel the following email:

> "Dear Chris
>
> I have been considering the position of Alex [Sakun] and his security over the loan he has provided and have taken the view that we should be completing on the purchase of 93–97a and 99–101 Scrubs Lane via a different company to Aurora Developments Limited. The reasons for this are as follows:
>
> 1. Aurora Developments Limited is currently completing on the purchase of both 93–97a, 99–101 and 115–129a Scrubs Lane. However, we now have different shareholders for each site and therefore each site should be owned in its own company.
>
> 2. Both sets of shareholders will want security over the shares of the company which owns the land and if we complete using Aurora Developments solely, Alex and AMK will not be provided with any security as we have already agreed to a deed of pledge with [Boris Shemyakin and PSP] over these shares.

> 3. From a tax perspective, I would prefer both sets of land to be in their own companies.
>
> 4. From an asset protection perspective, if something unexpected happened on the site of 115–129a Alex and AMK do not want their site affected which would be the case if both sites were owned by Aurora Developments.
>
> For this reason, I would recommend we complete on the purchase of 93–97a and 99–101 Scrubs Lane via a different Guernsey resident company. I have such a company ready to go for this purpose called Delta Holdings Limited. The current shareholder of Delta Holdings is The Aurora Property Group and I am the sole director. It is a clean company. The Guernsey Company Number is 59057.
>
> Alex and AMK can be granted options over 50% and 17% of the shares in Delta Holdings Limited respectively as security for this loan provided.
>
> Furthermore, the loan in place between Aurora Developments and Alex will be assigned to Delta Holdings so that Delta Holdings is responsible for repayment of the loan to Alex.
>
> At the time of exchange of contracts, we did not know how the equity investment would pan out hence why we are completing under the name of Aurora Developments solely. However, in light of the different shareholders the land has to be owned by different companies. … I have already spoken with our conveyancing lawyer and the above will not cause any issues or delay the transaction.
>
> To this effect, please find attached the signed option agreements for both Alex and AMK Estates.
>
> Kind Regards
>
> Mark"

25. This is a very odd email. As Mr Henschel knew, and contrary to the statements in this email, the purchase of the two sites was *not* being completed solely under the name of ADL. Rather, as set out above, DHL had already exchanged contracts as the purchaser of the North Site (albeit as nominee for ADL), and the relationship between ADL and DHL had been set out in that contract and in the Deed. The suggestion in this email that the involvement of DHL was a new idea on the part of Mr Greaves was therefore completely false. The various reasons given in the email for splitting the sites between two purchasers are also inconsistent with the explanations that Mr Greaves had given to JPC. Given these inconsistencies and the timing of this email, I consider that the only conceivable explanation for the document is that it was a contrived proposal whose aim was to induce Mr Sakun and Mr

Shemyakin/AMK, on the basis of the false information given in the email, to accept share options in DHL rather than ADL as security for their loans.

26. The option agreements that are referred to in that email were, presumably, sent on to Mr Sakun and Mr Shemyakin, and Mr Sakun duly transferred a total of £3.6 million to ADL in the two agreed tranches on 31 December 2014 and 6 January 2015. It later transpired that while the agreements purported to give the North Site investors options over a total of 67 shares in DHL, which were said to be held by The Aurora Property Group Limited ("APG", the Sixth Defendant), another company ultimately owned by Mr Henschel, there was in fact at the time only one share in DHL, owned by Mr Greaves rather than APG. The option agreements were therefore invalid as a matter of law.

27. Meanwhile, an issue had arisen in relation to the funding of the South Site, since the funds to be provided by Lexafin/PSP and Hitomi were not sufficient to provide the balance of the funds required for completion on that site. There was therefore discussion of a loan of £1.5 million to provide the difference. PSP asked Mr Greaves for assistance with arranging this. Mr Greaves indicated that he would be liaising with Mr Cohen. Subsequently, Mr Greaves told PSP that the loan would be arranged as bridging finance, with an arrangement and exit fee as well as monthly interest charges, and that the borrower would be ADL.

28. On 5 January 2015 Mr Greaves told the South Site investors that he had agreed terms for the bridging loan with a company called International Property Solutions Limited ("IPS", the Seventh Defendant), "a lender based in Hong Kong … who we have used before for similar transactions". The investors were also told that it was a condition of the loan that the balance of the investors' funds should be sent to the investors' solicitors by close of business on Wednesday 7 January 2015, "as IPS require 5 working days to process and make the loan". The investors agreed to proceed with the loan, and the loan agreement was executed by ADL and IPS. It was signed on behalf of ADL by Mr Greaves, and on behalf of IPS by a Mr Michael Horne, who was (at the time) the sole director of IPS. The security for the loan was a legal charge over the South Site, executed on 7 January 2015.

29. The South Site investors were not told that IPS was in fact another company owned by Mr Henschel, whose incorporation had been suggested by Mr Greaves. Nor were the investors told that IPS was not, in fact, in a position to advance any funds to ADL. In a director's leaving statement dated 18 August 2015, Mr Horne confirmed that he did not see, nor was he made aware of, any evidence showing that funds were actually transferred to ADL; that he did not establish any bank account for IPS nor was he aware of any bank account for the company; and that as far as he was aware no accounts had ever been filed for IPS or management accounts kept which included the existence of the loan as an asset of IPS.

30. The source of the funds for the purported IPS loan was, instead, the loan provided by Mr Sakun for the purported completion of the North Site purchase. £1.5 million from Mr Sakun's loan was transferred by ADL to JPC's client account, and Mr Greaves instructed JPC to use that sum to complete on

the purchase of the South Site, together with the balance of the funds provided by the South Site investors. The flow of funds in that regard is not denied by the Defendants. What the Pelekanos Defendants say is that the recycling of Mr Sakun's loan to fund the purchase of the South Site was justified by an agreement between DHL and IPS. I will deal with this below when I come to the claim in respect of the IPS loan.

31. Completion on the two sites was due to take place on 15 January 2015. The completion statement provided by Charles Russell for the North Site specified a total purchase price of £2, and a deposit of £0 described as "(one peppercorn) (if demanded)". The completion statement for the South Site specified a total purchase price of £12.5 million, less a deposit of £1.25 million.

32. Instead of sending the North Site completion statement to the North Site investors, however, those investors were sent a false completion statement concocted by Mr Cohen. That is evidenced by a curious sequence of emails on 14 January 2015, starting with an email at 19:34 from Mr Cohen to Mr Greaves with the subject line "DELETE PREVIOUS EMAIL USE THIS ONE". That email attached a completion statement for the North Site that resembled the true completion statement, but instead of the deposit figure of £0, the false completion statement set out a figure of £400,000, plus figures for acquisition legal fees and stamp duty that were not on the original statement. Mr Greaves then drafted a fresh email attaching the false completion statement, which he sent back to Mr Cohen at 19:54 on the same day. The text of the email read:

> "Hi Eli
>
> Further to your telephone calls today, I am really sorry to only be getting this completion statement for 93–97a and 99–101 Scrubs Lane to you now. As you know, I have been incredibly busy preparing for completion tomorrow but I do acknowledge this should have been sent earlier.
>
> Please extend my apologies to Boris [Shemyakin] and Alex [Sakun].
>
> Kind Regards
>
> Mark"

One minute later, Mr Cohen forwarded Mr Greaves' email to Mr Shemyakin, saying "Attached as requested. Eli."

33. These emails were (again) quite obviously contrived. The only possible reason for Mr Cohen to have sent the completion statement to Mr Greaves, only for Mr Greaves to send it back to him with a feigned apology, was that Mr Cohen and Mr Greaves wanted to give Mr Shemyamkin the impression that the statement was genuine.

34. Completion duly occurred on 15 January 2015. On the same day, APG resolved to transfer 69 shares in ADL to PSP and a company called Digiopia (associated with Hitomi) in consideration for the completion funds provided by the South Site investors.

Events after completion

35. The loans advanced by Mr Shemyakin's company AMK in order to exchange contracts on the South Site and (purportedly) the North Site were repaid to AMK on 27 January and 12 February 2015. Subsequently, during the course of 2015, Digiopia's shares in ADL were transferred to Gelaneco (the Fifth Claimant) and Hitomi's interest was assigned to Blooming Market Investments (the Seventh Claimant).

36. More significantly, some of the Claimants commissioned an audit report into the purchases of the Scrubs Lane properties. That, and information provided to the Claimants by Mr Greaves, started to provide the Claimants with a true picture of the events described above. The audit also indicated further discrepancies, including that various payments had been made from ADL to Capella Developments Limited, a company owned by Mr Henschel, without proper supporting documentation, and that rent had been paid for Mr Cohen.

37. On 21 July 2015 the North Site investors purported to exercise what they thought were their share options in DHL, and appointed a Mr De Wijs as a director of DHL. Mr De Wijs then purported to transfer the North Site to ADL, and ADL was registered as the proprietor of the property. This gave rise to two sets of proceedings issued in August 2016. In the Guernsey courts, the North Site investors brought proceedings seeking declarations as to their shareholdings in DHL and the validity of the appointment of Mr De Wijs. DHL, for its part, brought proceedings in the First Tier Tribunal, challenging the transfer of title for the North Site to ADL.

38. The Claimants now accept that the North Site share options were invalid for the reasons explained above. Accordingly it is accepted that Mr De Wijs was not validly appointed as a director of DHL. Nevertheless, ADL contends in the Tribunal proceedings that it remains entitled to the transfer of the North Site by reason of the Deed, the validity of which is one of the matters raised in its claims in the present proceedings. The Tribunal proceedings have therefore been stayed pending the determination of these proceedings.

39. As for the South Site investors, they obtained shares in ADL as described above, and subsequently exercised their security rights. The Pelekanos Defendants say that this share transfer was not consented to by APG, and have suggested that it was invalid as a matter of Guernsey law, but no action has yet been taken to challenge those share transfers in the Guernsey courts. I therefore have to assume, for the purposes of this judgment, that this share transfer was validly made. I do not, in any event, consider that the validity or otherwise of the ADL share transfer is material to the issues that I have to decide now.

40. On 19 September 2017 the Claimants issued their claim against the Defendants. They obtained orders for service out of the jurisdiction on the First, Fourth, Sixth and Seventh Defendants. Defences to the claims were filed by some but not all of the Defendants, as set out at paragraph 2 above. The Claimants' application for summary judgment was brought on 21 December 2017.

The applications for summary judgment/strike out

41. The claims allege a series of frauds and conspiracies arising from the events set out above. Summary judgment is not, however, sought on the entirety of their claim. There are, instead, three points on which the Claimants seek summary judgment or in the alternative the strike out of the relevant parts of the defences:

    i) Liability only in respect of the claims that the prices of the two sites were fraudulently misrepresented to the two sets of investors, that the surplus funds provided for the North Site as a result of those misrepresentations were then used to complete on the South Site, and that the North Site was represented as being available to purchase at a time when contracts had already been exchanged on it.

    ii) The claim that the Deed executed on 2 October 2014 was valid and binding.

    iii) The claim that the purported IPS loan was a sham.

42. The Claimants do not seek summary determination of the quantum of their losses in relation to any of their claims, but recognise that in that regard there is a genuine dispute of fact that is not suitable for summary determination. Likewise Mr Reed accepted at the hearing that it would be difficult to succeed on the claims that various payments are said to have been made during 2015 from ADL to Capella and/or the Cohen brothers without proper justification. Mr Reed also agreed that summary judgment should not be given against Mr Lionel Cohen, who appears to have had only limited involvement in the transactions.

43. The tests for summary judgment and strike out are well established, and are not disputed by the Defendants. Under CPR r. 3.4 a defence may be struck out if it discloses no reasonable grounds for defending a claim, and CPR r. 24.2 provides that the court may give summary judgment on a claim or a particular issue if it considers that the defendant has no real prospect of successfully defending the claim or issue. As Lord Hobhouse put it in *Three Rivers v Bank of England (No. 3)* [2001] 2 All ER 513, §158. "The criterion which the judge has to apply under Part 24 is not one of probability; it is absence of reality".

44. It may, for that purpose, be necessary to consider the evidence in some detail. While a complex dispute of fact may mean that it is inappropriate to decide the issue summarily, the court is not precluded from giving summary judgment simply because some delving into the factual material may be required. The

Claimants rely in that regard on the approach of Barling J in *Zumax Nigeria v First City Bank* [2017] EWHC 2804, §256, where he commented that:

> "I am conscious that at first sight there is a paradox when the hearing of a summary judgment application takes some nine days in court, and requires detailed analysis of the documents and written evidence. One might have been tempted simply to hold that there were too many documents and issues to enable the court to avoid an inappropriate 'mini trial' on the papers. However, in my view this is one of the cases where it would have been wrong to shrink from looking carefully into whether there existed any substance in the defences and other objections raised by [the Defendant]. Save possibly in relation to one issue …, I have been able to conclude that the defences are entirely without merit, and a trial of this case (which would have taken many months of court time and huge financial resources) is wholly unwarranted in respect of any of the issues raised by [the Defendant] in opposition to the claim."

45. I agree that this is the correct approach to adopt in the present case. For the reasons set out below I have concluded that it is right to give summary judgment for the Claimants in respect of the three aspects of their claims set out at paragraph 41 above.

The alleged misrepresentations

46. The claims of fraudulent misrepresentations are made by all of the Claimants save for ADL. There are four main alleged misrepresentations:

    i) that the Defendants fraudulently misrepresented that the North Site was available to purchase, when in fact DHL had already exchanged contracts on it;

    ii) that the Defendants fraudulently misrepresented the price of the North Site as being £4 million whereas in fact the price originally sought by the vendors was £3 million and the eventual contractual price was only £2;

    iii) that the Defendants fraudulently misrepresented that the North Site funds would be used to complete on the North Site, when in fact they were recycled and used to complete on the South Site; and

    iv) that the Defendants fraudulently misrepresented the price of the South Site as being £12.5 million whereas in fact the price originally sought by the vendors was £9.5 million, and the eventual contractual price of £12.5 million was only agreed in circumstances where, in a related transaction, the South Site was being sold for a nominal sum.

47. In all cases it is said that the representations were made by (in particular) Mr Cohen and Mr Greaves, acting on behalf of Mr Henschel and his company APG.

Legal principles

48. There was not any dispute as to the elements of the tort of deceit. As summarised in the judgment of Jackson LJ in *ECO3 Capital v Ludsin* [2013] EWCA Civ 413 at §77 there are four ingredients to the tort, namely that (i) the defendant makes a false representation to the claimant; (ii) the defendant knows that the representation is false or is reckless as to whether it is true or false; (iii) the defendant intends that the claimant should act in reliance on it; and (iv) the claimant does act in reliance on the representation and in consequence suffers loss.

49. The representation is what a reasonable person in the position of the representee would have understood from the words in the context in which they were used: Toulson J in *IFE Fund v Goldman Sachs* [2007] 1 Lloyd's Rep 264, §50. A representation may also arise from a failure to disclose the full truth. *Peek v Gurney* (1873) LR 6 HL 377 at 403 refers to "such a partial and fragmentary statement of fact, as that the withholding of that which is not stated makes that which is stated absolutely false". It may also be appropriate to consider the conduct of the representor, where that is such that a reasonable representee would "naturally assume that the true state of facts did not exist and that, had it existed, he would in all the circumstances necessarily have been informed of it": *Geest v Fyffes* [1999] 1 All ER (Comm) 672, recently endorsed by the Court of Appeal in *Property Alliance Group v Royal Bank of Scotland* [2018] EWCA Civ 355.

50. Where (as in the present case) joint liability is alleged, it is sufficient for a person to be liable as a joint tortfeasor if another commits a wrongful act pursuant to a common design between the two of them that such act be committed: *Dadourian Group International v Simms* [2009] 1 Lloyd's Rep 601, §84. A principal may also be liable for fraud committed by his agent in various circumstances, including where the principal authorised the agent to make false representations, and where the agent made a false representation fraudulently, within the scope of his actual or apparent authority and within the course of his employment: see *Bowstead & Reynolds on Agency* (21st edition, 2018), §8–185.

51. In relation to reliance, there is in law a rebuttable presumption that if a fraudulent misrepresentation is made, it is intended to be relied upon (*Goose v Wilson* [2001] 1 Lloyd's Rep 189, §47).

52. It is common ground that the establishment of loss is a necessary element of the tort of deceit. The Pelekanos Defendants rely on this point, in particular, to contend that it is not possible for summary judgment to given in relation to the fraud claims, since the Claimants accept that the loss arising from the various pleaded misrepresentations cannot be determined summarily but will need to be established separately. That does, certainly, mean that I cannot determine at this stage that the elements of the tort of deceit have all been established. It is, however, possible to give summary judgment on an issue or issues, as opposed to the whole of a claim. There is therefore nothing preventing the court from determining, under a Part 24 application, that the defendant has made (or has

been party to) a misrepresentation that was false, known to be false, intended to be relied upon and was relied upon.

53. In the present case, for the reasons set out below in relation to each of the four alleged misrepresentations, there is no doubt at all that Mr Cohen, Mr Henschel, Mr Greaves, and APG made or were knowingly party to representations to the Claimants that were both false and were known to be false, and that those representations were relied upon by the relevant Claimants and were intended to be relied upon.

The North Site representations

54. It is convenient to deal with all three of the alleged representations regarding the North Site together, because they turn on the same set of facts.

55. As I have set out above, the development appraisal for the North Site sent by Mr Cohen to Mr Shemyakin on 17 October 2014 was accompanied by a cover letter in which Mr Cohen said that he was "very close now on the legals". The appraisal specified a purchase price of £3.5 million, and the draft loan agreement subsequently sent to Mr Shemyakin referred to a loan of £350,000 specifically for the purposes of exchanging contracts on the North Site. Those documents could have been understood in no sense other than conveying representations that (i) exchange had not yet occurred, and (ii) the purchase price of the North Site was £3.5 million. Likewise the final loan agreement between ADL and AMK dated 30 October 2014, specifying an amount of £400,000 again specifically for the purposes of exchanging contracts on the North Site, could only have been understood as representing that (i) exchange had still not occurred, and (ii) the purchase price for the site was by then £4 million.

56. The price representations continued in the loan agreements concluded between ADL and Mr Sakun on 30 December 2014, in which the loan amounts were specified as being £1.48 and £2.12 million, specifically for the purposes of completing contracts on the North Site. Again, given the "exchange funds" of £400,000 already paid by Mr Shemyakin's company AMK, the completion loan agreements could only have been understood as representing to Mr Sakun that the purchase price for the site was £4 million, and that his loan would be used for that specific purpose.

57. It is not disputed that contracts had in fact already been exchanged on the North Site on 30 September 2014, more than two weeks before the very first development appraisal sent to Mr Shemyakin for that site. It is also undisputed that the purchase price for the site was only £2, as confirmed by (among other things) the genuine version of the North Site completion statement. The North Site investors' funds were therefore not required for the purchase of the North Site, and would never be used for that purpose. Mr Cohen, Mr Henschel (and through him APG) and Mr Greaves were all well aware of the true state of affairs, as they were the ones that had negotiated the reallocation of the purchase prices with the vendors of the two properties. The representations to Mr Shemyakin/AMK and Mr Sakun regarding the North Site were therefore comprehensively false and known to be false.

58. It is also clear from the documents that the representations were made with the purpose of inducing the North Site investors to advance funds, and the North Site investors did so: Mr Shemyakin/AMK provided £400,000 on 10 November 2014, and Mr Sakun's £3.6 million was transferred on 31 December 2014 and 6 January 2015.

59. The existence and falsity of the representations, as well as the intended and actual reliance by the North Site investors, are therefore all apparent on the face of the contemporaneous documents.

60. The response of the Pelekanos Defendants and Mr Cohen is essentially to claim that Mr Shemyakin (and therefore also Mr Sakun, for whom Mr Shemyakin was acting in the negotiations with the promoters) knew exactly what had been agreed with the vendors, including that the prices of the two sites had been manipulated, and that the funds provided by AMK and Mr Sakun were not going to be used for the purposes of exchange and then completion on the North Site, but were in fact simply going to be put into ADL, to provide funds for developing the site in due course.

61. Neither Mr Pelekanos nor Mr Cohen was able to point to any evidence whatsoever in the extensive documentary record that supported these claims. Instead, Mr Cohen said that Mr Shemyakin must have known what was going on, since he attended all of the relevant meetings and knew that the sites were to be split between two sets of investors. At the hearing Mr Cohen relied on an undated text message exchange on his phone which he said supported his claims regarding Mr Shemyakin's role and knowledge. Mr Pelekanos observed that the funds advanced by AMK were repaid to that company in early 2015, which he said was also evidence of Mr Shemyakin's knowledge.

62. I consider that the Defendants' claims in this regard are utterly implausible. While it is clear that Mr Shemyakin was aware from fairly early on in the negotiations that there were two sites for sale, and it is also clear that his intention was to find separate investors for each of the sites, there is no evidence (including in the text message exchange produced at the hearing) that it was ever revealed to Mr Shemyakin – or any of the other investors – that £12.5 million was the *total* price sought by the vendors for both sites. Nor is there any indication that Mr Shemyakin was aware that contracts had already been exchanged on the North Site by the end of September 2014. Indeed, if these facts had been known by Mr Shemyakin all along, and if he and Mr Sakun had understood that their funds were simply to be used to capitalise ADL, there would have been no need for them to advance the funds when they did so, still less would there have been any need for the various loan agreements to refer (as they did repeatedly) to the funds being used specifically for the purposes of exchange and completion on the North Site. The fact that those loan agreements did refer specifically to those purposes is compelling evidence that the North Site investors did not know the true facts.

63. Mr Shemyakin's understanding of the situation is also apparent from his text message to Mr Cohen on 19 October 2014 asking for the loan agreement "to make a transfer for exchange". The wording of that message clearly indicates that he believed that his funds would be used for the purpose of exchanging

contracts on the North Site. It is fanciful to suggest that he used that language while being fully aware that the North Site contracts had already been exchanged and knowing that his funds would therefore simply be ploughed into ADL for development purposes.

64. The lack of knowledge of the North Site investors is also evidenced by the email sent by Mr Greaves to Mr Henschel on 31 December 2014, giving what both of them must have known was false information about the status of the transaction, and the email from Mr Greaves to Mr Cohen on 14 January 2015 attaching a false completion statement for the North Site, which was then forwarded to Mr Shemyakin. I have already found that both of these emails were contrived documents whose only possible purpose can have been to deceive the North Site investors as to the true state of affairs.

65. Mr Pelekanos claimed that Mr Henschel thought that the false completion statement had been demanded by Mr Shemyakin for the purpose of showing his banks in order to move the relevant funds. That claim lacks all credibility, not least because (as Mr Henschel would have known) the false completion statement was sent over a week after the final tranche of the North Site funds had been transferred by Mr Sakun, and more than two months after Mr Shemyakin's contribution had been paid.

66. I also reject the submission that the Mr Shemyakin's knowledge of the true facts should be inferred from the fact that Mr Shemyakin/AMK's contributions to the North and South Sites were repaid during early 2015. It is not clear from on the contemporaneous materials before the court exactly why those sums were repaid. Nor does Mr Henschel's witness statement shed any light on the matter. The repayment of these contributions therefore remains unexplained. But the fact of those repayments does not say anything at all about Mr Shemyakin's state of knowledge at the time of the loans made by AMK and Mr Sakun.

67. I therefore find that the contemporaneous documentary record establishes beyond any doubt that Mr Cohen and Mr Greaves, acting on behalf of Mr Henschel and Mr Henschel's company APG, made a series of knowingly false representations to the North Site investors as alleged by the Claimants, with the intention of inducing them to invest in the North Site; and that the North Site investors did indeed rely on those representations by investing funds in that site. The various defences advanced by the Pelekanos Defendants and Mr Cohen do not, I consider, have any reasonable prospect of success and indeed are wholly implausible.

The South Site representations

68. The representations to Mr Shemyakin/AMK and the South Site investors regarding the price of the South Site are also evident on the face of the contemporaneous documentation. The development appraisal for the South Site sent by Mr Cohen to Mr Shemyakin on 13 September 2014 specified a purchase price of £12.5 million, as did a revised appraisal sent on 27 September 2014. The draft and final loan agreements sent to Mr Shemyakin referred to a loan of £1.25 million, which (as with the similar loan agreements

for the North Site) could have been understood in no sense other than a representation that the purchase price of the South Site was £12.5 million. Likewise, an email from Mr Greaves on 2 December 2014 to Hitomi and PSP recorded that the "final price agreed" was £12,500,000, and stated "N/A" in response to a question as to whether there were any conditions to the contract. A subsequent email on 7 January 2015 from Mr Greaves to PSP, copied to Mr Henschel, confirmed that "[t]he purchase price is £12.5m".

69. None of the documentation sent to Mr Shemyakin or the South Site investors revealed that the purchase price originally sought by the vendors for the South Site was only £9.5 million, or that the £12.5 million purchase price ultimately agreed with the vendors reflected the fact that the total price for the two sites had been allocated to a single property at the request of the promoters. Nor was there any mention of the fact that the critical precondition for the sale of the South Site at £12.5 million was that there was a single overall transaction for both properties, such that (as recorded in clause 3.5 of the Deed) the sale and purchase of the South Site was "inextricably linked" to the sale and purchase of the North Site. There is, on the materials before the court, no evidence that Mr Shemyakin or the South Site investors were ever aware of the existence of the Deed or its contents, at the time that they made their investments in the South Site.

70. The omission of that information made the price representations regarding the South Site absolutely false. Any reasonable person would have understood from the representations above, especially when read together with Mr Greaves' representation that there were no relevant conditions to the contract, that the purchase price sought by the vendors was £12.5 million for the South Site alone, and that this was not linked to any other transaction. This was, however, manifestly not the case.

71. As with the North Site price representations, it is clear that the false representations were made to Mr Shemyakin and the South Site investors with the purpose of inducing them to invest funds, and they proceeded to do so: Mr Shemyakin/AMK provided £1.25 million on 23 September 2014, and Lexafin and Hitomi contributed a total of £9.217 million on 15 January 2015.

72. Again, as with the North Site price fraud, the response of the Pelekanos Defendants and Mr Cohen is to claim that Mr Shemyakin knew that the prices of the two sites had been manipulated. As I have already found, that claim is wholly implausible.

73. My conclusion on the South Site representations is therefore the same as for the North Site representation: the contemporaneous documentary record establishes beyond any doubt that Mr Cohen and Mr Greaves, and through them Mr Henschel and APG, made knowingly false representations to Mr Shemyakin and the South Site investors, with the intention of inducing them to invest in the South Site; and Mr Shemyakin and the South Site investors did indeed rely on those representations by investing funds in that site. I also find that the submissions of the Pelekanos Defendants and Mr Cohen do not have any reasonable prospect of success and are indeed, as noted above, wholly implausible.

Validity of the Deed

74. The Claimants' case in relation to the Deed claim is that the Deed is valid and created a trust under which DHL held the North Site as nominee for ADL. All that was required to create a trust in respect of the beneficial interest in the North Site was that the declaration of trust should be in writing and signed by DHL: s. 53(1) of the Law of Property Act 1925. Those requirements were met by the Deed, which was signed by Mr Greaves as the director of DHL. The North Site contract also expressly provided that DHL was buying the property as the nominee for ADL. That being the case, ADL says that it was entitled to call for the transfer of the North Site to it and terminate the nomineeship and/or trust under which DHL held that site: *Lewin on Trusts* (19th edition, 2015) §24–002. ADL called for that transfer in a letter of 13 January 2016, and repeated its claim to the transfer in its reply in the Tribunal proceedings initiated by DHL.

75. None of the Defendants dispute the legal principles relied on by the Claimants to establish a trust and the entitlement to call for a transfer of the North Site. Instead they raise a miscellany of other factual and legal defences. I agree with the Claimants that none of those Defences have any merit at all.

76. First, there is a pleaded objection that the Deed was executed in counterparts. As a matter of common law, however, a deed may be executed in counterparts regardless of whether or not the instrument provides for this (see e.g. Halsbury's Laws vol 32 at §204).

77. Secondly, there is an objection that there is no evidence of the delivery of the two signed versions of the Deed, and a suggestion that Mr Greaves' version of the Deed may have been forged in or around July 2015. Those objections are manifestly unfounded. JPC's files contain the original counterpart signed by the vendors, as well as a cover letter enclosing the version signed by Mr Greaves (a copy of which is also on JPC's files), which was apparently sent by DX to Charles Russell on 2 October 2014. There can be no doubt, therefore, that the vendors' version of the Deed was sent to and received by JPC, and that the ADL/DHL version of the Deed signed by Mr Greaves was received by JPC and forwarded on to Charles Russell. There is, moreover, no objection to the validity of the North Site sale contract, which contained an express provision recording that DHL was buying as nominee for ADL.

78. Thirdly, there is a suggestion that Mrs Greaves' signature on the Deed (as a witness to Mr Greaves' signature) was forged. The Pelekanos Defendants rely in that regard on an expert report in Greek, for which no permission has ever been sought or granted, nor any translation supplied, despite the fact that it is dated 2017. In those circumstances I do not consider that I can place any weight on this report. Furthermore, even if Mrs Greaves' signature was not genuine, as noted above the only requirement for the creation of a trust over the North Site, in favour of ADL, was that the declaration of trust should be in signed writing. That requirement was met by both the Deed and the North Site sale contract.

79. Fourthly, it is said that the trust never came into being because the intention was to put the two sites into the hands of two separate companies; that the Deed was executed purely to meet the concerns of the vendors; and that the Defendants did not ever intend the Deed to be binding as between ADL and DHL. This argument is, in effect, that the Deed does not reflect the true agreement between the parties.

80. The difficulty with this argument is that it is simply not supported by the contemporaneous emails between Mr Greaves and JPC, at the time that the structure of the transaction was being debated. On the contrary, Mr Greaves said repeatedly that the idea was that ADL should be the beneficial owner of both sites. It is also absolutely clear that the vendors shared this intention; indeed the Deed setting out this structure was a document that the vendors insisted on having if the selling prices of the two properties were to be altered as proposed by the promotors. The parties' intentions in this regard are also consistent with the terms of the North Site sale contract. Even if the Defendants agreed the terms of the Deed and the corresponding provisions of the North Site sale contract purely in order to meet the requirements of the vendors, it would underscore that the nominee arrangement set out in those documents did indeed represent the agreement between the parties.

81. Fifthly, it is argued that the Deed was not supported by consideration. That is plainly wrong: the consideration for the Deed was (on all sides) the entry into the contract for sale, which imposed obligations on all parties.

82. Sixthly, it is claimed that the Deed was rescinded or waived by agreement. Again, however, that argument falters on the fact that the vendors of the properties have not at any time agreed that the Deed should be rescinded or varied (still less that there should be any variation to the terms of the North Site sale contract).

83. There is a related claim that ADL terminated the nominee relationship by an email from Mr Greaves to Mr Henschel on 31 December 2014. I have already found that this email was a contrived document. Even taken at face value, however, it certainly did not have the effect of terminating the nominee arrangement set out in the Deed and the North Site sale contract, since it was nothing more than a proposal by Mr Greaves to Mr Henschel as to the way in which the purchases of the two sites should proceed. The email made no reference at all to any trust or nominee arrangement as between DHL and ADL; indeed any such reference would have contradicted the impression given by the email that ADL was (at the time) the sole named purchaser of the two properties. This email is therefore of no assistance whatsoever to the Defendants in relation to the Deed claim.

84. Finally, there are complaints about the circumstances in which the North Site investors attempted to exercise their security rights in DHL and procure the transfer of the North Site from DHL to ADL. Those matters are, however, irrelevant to the question of the validity of the Deed, and they certainly do not give rise to any estoppel as suggested by the Pelekanos Defendants.

85. I therefore find that the various defences to the Deed claim have no reasonable prospect of success. The Claimants are therefore entitled to a declaration that the Deed is valid and binding on the parties to it.

The sham IPS loan

86. The final issue on which the Claimants seek summary judgment/strike out is their claim that the IPS loan was a sham. The legal test in this regard is not disputed. A sham may arise where acts are done or documents are executed which are intended to give third parties or the court "the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create": Diplock LJ in *Snook v London and West Riding Investments* [1967] 2 QB 276, at 802. That is not an exhaustive definition of the situations in which a sham transaction may be present, but it is the particular type of sham relied upon in relation to the IPS loan.

87. Both parties have referred me in that regard to the judgment of Arden LJ in *Hitch v Stone* [2001] STC 214, which at §§65–9 summarises the following propositions from the authorities:

    i) The court is not restricted to examining the "four corners" of the document that is said to be a sham, but may examine external evidence, including the parties' explanations and circumstantial evidence such as evidence of the subsequent conduct of the parties.

    ii) The parties must have subjectively intended to create different rights and obligations from those appearing from the relevant act or document, and must have intended to give a false impression of those rights and obligations to third parties.

    iii) There is a distinction between an agreement that is unfavourable to one party, or artificial, and a situation where the parties do not intend the agreement to bind their relationship, but intend some other arrangement to bind them.

    iv) The fact that parties subsequently depart from an agreement does not necessarily mean that they never intended it to be effective and binding, but could instead mean that they agreed to vary the agreement.

    v) The intention must be a common intention.

88. The Claimants say, applying this test, that it is evident on the face of the documents that there was no genuine loan from IPS to ADL; rather, the purported loan was an arrangement concocted in order to disguise the fact that the North Site funds were in fact being used to finance the purchase of the South Site.

89. None of the Defendants deny that the source of the funds presented as the IPS loan was, in fact, the funding provided by the North Site investors. The Pelekanos Defendants and Mr Cohen claim, however, that this was entirely

legitimate. Mr Cohen said that, rather than sitting around not being used, it was better to use the funds productively for the South Site. Mr Pelakanos submitted that the North Site investors' funds were assigned from ADL to DHL, which then lent £1.5 million to IPS, with the purpose that it should then be lent back to ADL. He relied on an unsigned loan agreement dated 6 January 2015 between DHL and IPS, which was produced for the first time by Mr Henschel after these proceedings commenced, and which stated that the loan from DHL would be drawn by IPS in a single tranche on 6 January 2015 from the JPC client account. Mr Pelekanos also submitted that the charge over the South Site, registered in favour of IPS, was designed to protect Mr Sakun's investment.

90. I consider that the Claimants' characterisation of the purported loan is clearly and obviously correct, and the account of (in particular) the Pelekanos Defendants is wildly implausible. IPS did not draw down any funds from the JPC client account, nor did it transfer any funds to ADL. It had no means of doing either of those things, since it had, at the time, no bank account. Nor have I seen any accounts for IPS referring to any loan, whether from DHL to IPS, or from IPS to ADL. There is, moreover, no record of the supposed loan agreement between DHL and IPS ever having been signed, nor is there any evidence of it being sent to anyone at the relevant time.

91. The difference between the terms of the supposed loan from DHL to IPS and the terms of the supposed loan from IPS to ADL is also very striking. Whereas the DHL loan provided for interest of 2% per annum, to be rolled up and repaid together with the repayment of the loan, and provided that there would be no security for the loan, the IPS loan provided for interest of 2% per month (payable monthly), an arrangement fee of 1% of the loan, an exit fee of another 1% of the loan, and security in the form of a legal charge over the South Site.

92. The suggestion that all of this was simply an attempt to use DHL's funds productively is, quite clearly, a complete fiction. If the promoters had genuinely wished to set up a loan from DHL to ADL they could have done so directly. The difficulty with that, however, would have been that it would have revealed to Mr Shemyakin and the South Site investors that the funds transferred to ADL by the North Site investors were not being used to complete on the North Site, which would in turn have revealed the North Site frauds. That is why IPS was interposed: it was a device to disguise the true source of the funds, as well as enabling the promoters to extract substantial funds from ADL by way of interest charges and other fees for the purported loan – charges that were, conspicuously, not required by DHL in its supposed loan to IPS. Securing IPS' supposed interest by way of a charge on the South Site did nothing at all to protect Mr Sakun's funds, given that Mr Sakun had no interest in IPS. His interest was, he thought, in DHL, although even that turned out to be invalid as explained above.

93. Mr Pelekanos suggested that Mr Horne (who signed the IPS loan agreement on behalf of IPS) might nevertheless have believed that the IPS loan was genuine. There is not a shred of evidence in the material before me to suggest that this was or might have been the case. Quite the contrary, the one

statement that Mr Horne has made confirms (as I have recorded above) that he was not aware of any evidence showing that funds were transferred to ADL, or any accounts recording the existence of the loan to ADL as an asset of IPS. Nor is there anything to suggest that Mr Horne was ever sent, or was aware of, the supposed DHL/IPS loan agreement.

94. I therefore find unhesitatingly in favour of the Claimants on this issue. The Defendants' arguments have no reasonable prospect of success, and the Claimants are entitled to a declaration that the IPS loan was a sham and is therefore void and ineffective.

Consequential matters

95. By way of consequential relief, I am asked by the Claimants to dismiss the Tribunal proceedings, on the basis that although the transfer of DHL to ADL was made by a person that did not in fact have the power to make that transfer, ADL is nevertheless entitled to be registered as the proprietor of the North Site and has called for the transfer of the property. The Claimants also seek an order under paragraph 2 of Schedule 4 to the Land Registration Act 2002, correcting the register by discharging the IPS charge.

96. The court's power to grant both aspects of that relief has not been disputed by any of the Defendants. It follows from my conclusions above that the Claimants are entitled to the consequential relief sought, and I will therefore make those orders.