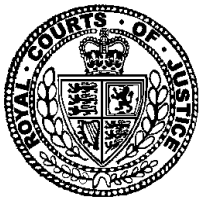

Neutral Citation Number: [2021] EWHC 2744 (Ch)

Claim No: BL-2020-000650

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

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

Date: 14/10/2021

Before :

CHIEF MASTER SHUMAN

- -

Between :

SCUDERIA PRESTIGE AUTOMOBILE LIMITED	**Claimant**
- and -	
MR IMRAN MALIK	**Defendant**

- -
- -

Stephen Brown (instructed by **Taylor Hampton Solicitors Limited**) for the **Claimant/Applicant**
Amit Gupta (instructed by **Noble Solicitors**) for the **Defendant/Respondent**

- -

Approved Judgment

.....

CHIEF MASTER SHUMAN

CHIEF MASTER SHUMAN :

1. The claimant applies for summary judgment on its claim and for summary judgment and/or strike out on the defendant's counterclaim. The application is made by notice dated 5 February 2021.

2. The issue in the claim concerns whether the defendant contracted to part exchange a Ferrari 599 GTO with the claimant, or a Ferrari 599 GTB which had been modified to give the appearance of a GTO. The difference in value is significant. A Ferrari 599 GTO is a limited production super car; it was given a part exchange price of £265,000 by the claimant. In contrast the Ferrari 599 GTB is a standard production car with a part exchange price in the region of £75,000.

3. The claimant relies on two witness statements: one made by Daniel Taylor, solicitor and partner, dated 1 December 2020 and the other by Chengru Hu, director of the claimant, dated 30 November 2020. The defendant has made three witness statements dated 29 April 2020, 29 January 2021 and 25 February 2021. He also relies on a witness statement of Floren Apostolesscu, a security guard at the development in which he lives, dated 7 May 2020. The defendant was granted relief from sanctions at the hearing of the summary judgment application in order to be able to rely on his second and third statements and the statement of Mr Apostolesscu.

THE CLAIM

4. The claimant is a company registered in England and Wales and carries on business as a car dealership, specialising in supercars. The defendant is a private individual.

5. The claimant's case is that on 21 April 2020 the parties entered into an agreement whereby the claimant would part exchange its McLaren 675LT Spider, registration number CA11 MSO, ("the McLaren"), priced at £230,000 plus £35,000 in return for a Ferrari 599 GTO, registration number LX57 KRN. It is agreed that there was an express term of the agreement that the "deal is subject to a full inspection" of both cars. In fact the defendant owned a Ferrari 599 GTB. It is the defendant's case that the agreement was for the part exchange of his Ferrari 599 registration number LX57 KRN, he denies that it was for a Ferrari 599 GTO.

6. It is agreed that on 23 April 2020 at 2pm Mr Franzini, a sales representative, and Axel Clarke, a general manager, attended the underground car park adjacent to the defendant's flat and delivered the McLaren and collected the defendant's car. The £35,000 was transferred to the defendant's bank account. There is a factual issue as to how long the claimants' representatives spent with the defendant's car.

7. On 23 April 2020 a mechanic inspected the defendant's car at the claimant's showroom and realised that although the outward appearance of the car suggested that it might be a GTO it was a GTB. That evening Mr Franzini telephoned the defendant and demanded the return of the McLaren and the sum of £35,000.

8. The defendant admits this telephone call but denies that he was in breach of contract. The defendant's response to the claim is encapsulated in paragraph 36 of his defence and is twofold,

i) "the only fundamental and shared assumption was that the claimant bargained for and bought the Ferrari registration number LX57 KRN manufactured and registered in 2007" and

ii) "while [the defendant] was operating under the misapprehension that the Ferrari was a GTO in reliance upon the information he was provided by Belvue cars who sold it to him, the claimant relies not on any description or representation but its own inspection of the Ferrari by George Franzini, specialist car sales executive and a person said to be Mr Clarke the claimant's general manager relying on its expertise and experience in the brand and the models produced by that specific manufacturer."

9. The claimant issued a claim seeking specific performance of the 21 April 2020 agreement. On 2 February 2021 the court granted permission to the claimant to amend its claim to plead in the alternative rescission for fraudulent misrepresentation or in the further alternative damages for breach of contract. The defendant had initially opposed the application but then consented to it being made and agreed for a costs order to be made against him.

10. The defendant counterclaims that the McLaren was not sold in a roadworthy condition. He relies on implied conditions pursuant to the Consumer Rights Act 2015 (the CRA), specifically sections 9, 11 and 23(2)(b). He seeks damages for breach of contract amounting to £16,850.07, including loss of enjoyment in the sum of £1,500.

11. The counterclaim is defended on a number of bases including that the defendant inspected the McLaren on 23 April 2020, his rights under the CRA are limited to a short time right to reject, which he did not exercise by 23 May 2020.

THE LAW

12. Pursuant to CPR 24.2 a court may give summary judgment on the whole of a claim or on a particular issue if:

> "(a) it considers that—
>
> (i) the claimant has no real prospect of succeeding on the claim or issue; or
>
> (ii) the defendant has no real prospect of successfully defending the claim or issue; … and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

13. Both counsel referred me to Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch). The principles applicable to summary judgment applications were set out by Lewison J, as he then was, and approved by the Court of Appeal in AC Ward & Sons Ltd v Catlin (Five) Ltd [2009] EWCA Civ 1098. In the context of an application for reverse summary judgment Lewison J at paragraph 15 said,

"i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 2 All ER 91;

ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]

iii) In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10]

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550 ;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63 ;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently

> before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725."

14. The evidential burden is on the applicant to establish that there are grounds to believe that the respondent has no real prospect of success and that there is no other reason for a trial. If credible evidence is adduced in support of the application then the respondent becomes subject to an evidential burden of proving some real prospect of success or some other reason for a trial. The standard of proof is not high.

15. It is no bar to summary judgment that the allegations are based on fraudulent misrepresentation. However, Mr Gupta cautions me that the court is faced with two competing sets of facts and the defendant's case is not inherently improbable. He referred me to Global Metals AG v Colony Capital Ltd [2020] EWHC 336, which itself, at paragraph 24, cites the judgment of Sir Geoffrey Vos, as he then was, in Allied Fort v Ahmed [2015] EWCA Civ 841, specifically paragraph 81,

> "Although summary judgment is not precluded in a case in which the honesty of one or more of the parties is in issue, particular caution should be exercised before depriving a party of the opportunity of rebutting allegations of dishonest conduct"

16. He also referred to Sir Igor Judge P's observations in Wrexham Association Football Club Ltd v Crucialmore Ltd [2006] EWCA Civ 237, specifically paragraphs 51, 57 and 58.

> " [57] I do not underestimate the importance of a finding adverse to the integrity to one of the parties. In itself, the risk of such a finding may provide a compelling reason for allowing a case to proceed to full oral hearing, notwithstanding the apparent strength of the claim on paper, and the confident expectation, based on the papers, that the defendant lacks any real prospect of success. Experience teaches us that on occasion apparently overwhelming cases of fraud and dishonesty somehow inexplicably disintegrate. In short, oral testimony may show that some such cases are only tissue paper strong. As Lord Steyn observed in *Medcalf v Weatherill (2003) 1 AC 120* at paragraph 42, when considering wasted costs orders:"
>
> "The law reports are replete with cases which were thought to be hopeless before investigation but were decided the other way after the Court had allowed the matter to be tried".
>
> And that is why I commented in *Esprit Telecoms UK Ltd and others -v- Fashion Gossip Ltd*, unreported, 27 July 2000 that I was

> "troubled about entering summary judgment in a case in which the success of the claimant's case involves, as this one does, establishing allegations of dishonesty and fraud, which are strongly denied, and which cannot be conclusively proved by, for example, a conviction before a criminal court."
>
> [58] This collective judicial experience does not always, or inevitably, provide a compelling reason for allowing the case to proceed to trial, nor for that matter require the judge considering the application to reject the conclusion that there is no real prospect of a successful defence of the claim if he is satisfied that there is none. That is not what the Rules provide, and if that had been intended, express provision would have been made. It is however a factor constantly to be borne in mind, if and when, as here, the reason for concluding summary judgment is appropriate is consequent on a disputed finding, adverse to the integrity of the unsuccessful party.

17. Mr Gupta accepts that the test for summary judgment in respect of allegations of dishonesty is no higher but he says where such allegations are strongly denied, as here, the claimant ought to prove the dishonesty conclusively or to a high standard. It strikes me that analysis is heading in the direction of adopting a different test in cases involving dishonesty. That is not the law. However an allegation of fraud is a serious allegation and one that, if subsequently proved to be unfounded, can still carry a stigma and reputational harm. It is for that reason that safeguards are put in place before it can be pleaded: instructions must be clear, there must be reasonably credible material supporting the allegation and the allegation must be properly particularised. Perhaps a more accurate description of the evidential test for the person alleging the fraud is that it is amplified. As Lord Nicholls of Birkenhead said in Re H & Ors [1996] AC 563 at 586,

> "Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."

18. As Sir Geoffrey Vos said in Allied Fort v Ahmed at paragraph 81,

> "Although summary judgment is not precluded in a case in which the honesty of one or more of the parties is in issue, particular caution should be exercised before depriving a party of the opportunity of rebutting allegations of dishonest conduct."

19. The claimant seeks in the alternative to strike out the counterclaim. Pursuant to CPR 3.4(2),

> "3.4(2) The court may strike out a statement of case if it appears to the court—
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;"

20. Examples of cases which are suitable for strike out include those where the claim must fail as a matter of law, where the claim or defence raises an unwinnable case without any possible benefit to the respondent and would waste resources on both sides. A statement of case is not suitable for striking out where it raises a serious live issue of fact which can only be properly determined by hearing oral evidence. The court must be certain that the claim is bound to fail.

21. Both parties agree that the law is as summarised in Civil Fraud, 1st Ed, A, 1-003, and that a claim in fraudulent misrepresentation (or in the tort of deceit) arises when: (a) the defendant made a representation which was false; (b) the defendant knew that the representation was made and that it was untrue, or was reckless as to its truth or falsity; (c) the defendant intended that the representation would induce the claimant to act or refrain from acting; (d) the claimant was in fact induced by the representation to act or refrain from acting; and (e) the claimant thereby suffered loss.

22. Mr Brown set out some uncontroversial propositions of law that are pertinent to the application before me.

23. There is a presumption that "if the false statement is of such a nature that it would be likely to play a part in the decision of a reasonable person it will be presumed that it did unless the representator satisfies the court to the contrary"; Barton v County Natwest Ltd [1999] WL 477744 (CA) paragraph 54, Morritt LJ.

24. The remedy for misrepresentation is usually rescission of the contract. A bar to this remedy is affirmation, summarised in Civil Fraud paragraph 22-049,

> "The "right" to rescind a transaction will be lost if the wronged party affirms it; and an election to affirm is final. But there can be no affirmation for these purposes without full knowledge of the facts that give rise to, and the existence of, the right; and the party said to be affirming must be free from the relevant vitiating factor (so, for example, any undue influence must have come to an end, and the victim of a deceit must know the true facts)."

25. The possibility that a claimant may have discovered the true facts is no defence to a claim. In Stover v Harrington [1988] CH 390 Sir Nicolas Browne-Wilkinson VC said at page 21,

> "… that if it is once shown that a misrepresentation has been made, it is no answer for the representor to say that the representee has been negligent and could have found out the true facts if he had acted otherwise. The representee is under no duty of care to the representor to check on the accuracy of the

> representation. The representor is bound by his representations, however careless the representee may have been. That is one view which has considerable force."

26. Similarly contributory negligence is no defence to a claim for damages. Chitty on Contracts 33rd Ed, paragraph 7-045,

> "Can the damages be reduced on the ground that the representee was contributorily negligent in not discovering the truth? Contributory negligence is not a defence to an action of deceit and the Law Reform (Contributory Negligence) Act 1945 does not apply. There are also dicta in cases in which the misrepresentee was claiming damages for negligence to the effect that it is irrelevant that the representee could have discovered the truth for himself. …. ; but it would not be just and equitable to reduce the damages when the representor had intended, or should be taken as having intended, that the representee should act in reliance on the answers which had been given to his questions."

27. The object of the remedy of rescission is to restore the parties to their original positions. A helpful summary of the applicable principles is set out in Civil Fraud, paragraphs 22-054 to 22-059. Mr Brown also referred me to Salt v Stratstone Specialist Ltd (t/a Stratstone Cadillac Newcastle) [2015] EWCA Civ 745 as an example of practical justice in a rescission case. The purchaser of a car had driven it for a while, ignorant of their right to rescind. Neither depreciation nor intermittent enjoyment was a bar to rescission: paragraph 22.

28. Section 13 of the Sale of Goods Act 1977 provides that where there is a contract for the sale of goods by description there is an implied term that the goods will correspond with the description. This is unaffected by the provisions of section 11 of CRA which deals with statutory rights under a goods contract. In the well-known case of Beale v Taylor [1967] 1 WLR 1193 a car was advertised as a 1961 Herald Triumph. The plaintiff went to see the car, had a trial run as a passenger in the car and saw that the car had a 1200 badge on the rear. He purchased the car and drove it away. It transpired that the car was made up of two cars, the front being an earlier 948 model and the rear a Triumph Herald 1200 model. The plaintiff brought a claim under section 13 of the Sale of Goods Act 1893 as not corresponding with the description. It was held that the car was sold not merely as a specific thing but as a thing corresponding to a description. The buyer bought the car on the basis of the advertisement and the disc on the rear of the car and as the car did not conform with the description the plaintiff was entitled to damages for breach of implied condition.

THE APPLICATION

29. The claimant's case is that it bought a supercar from the defendant because he stated to Mr Franzini that it was a GTO, a rare and limited-edition model in immaculate condition. The GTO was first manufactured in 2010. Mr Brown submits that there is irrefutable evidence that the defendant knew that his statement was false and that his car was a GTB, a far less valuable model.

30. For the purposes of this application the claimant relies on its claims for rescission or alternatively damages for breach of contract. The claimant quite properly accepts that the issue between the parties, as to whether an inspection took place at the car park adjacent to the defendant's premises, is a question of fact and, although denied, is not suitable for summary determination.

31. There is now no issue between the parties that the defendant's car is a less valuable GTB.

32. Turning to the evidence in this case but cautioning myself that it is impermissible to conduct a mini-trial I look first at how the agreement arose.

33. On 16 April 2020 the defendant rang the claimant. Mr Franzini returned his call, that conversation was recorded. The defendant takes no issue with this transcript: a point I double checked with Mr Gupta during the hearing. The material parts are as follows with IM being the defendant and GF Mr Franzini.

> "IM: Erm yep I was ringing around enquiring regarding a car, you got a 675 LT for sale?
>
> GF: No problem at all yeah how can I help
>
> IM: Would you consider… firstly, is that a sale or return car or is that actually your car
>
> GF: No that is a stock car. We're talking about the one with the amazon paint job
>
> IM: Great yeah. I have an imported Ferrari 599 GTO – would you consider that as [inaudible – 'puppy ex'?]
>
> GF: 599 GTO? Erm I'll be honest with you I can't let you know off the top of my head but I can run a few figures on the car but I can have a chat with my director and see if its something we can look to take in
>
> IM: Yeah please do er it's a 2010 car
>
> GF: 2010? What's the mileage?
>
> IM: Think its 16,000 km left hand drive, about 10,000 miles I think. In storage at the moment
>
> GF: Ok what's the condition looking like?
>
> IM: Its amazing. Immaculate. Its been in the garage quite a while. I don't really use it, I want a Spider, one of my friends had an LT and I've proven it, I've loved it and I have a potential deal with McLaren at the moment but because they're shut they can't get the car delivered
>
> GF: Oh ok"

34. The telephone conversation continued. The McLaren had a part exchange price of £230,000. When Mr Franzini asked about any balancing payments the defendant commented, "Ah, well, my car's worth more than yours!(laughs)," He confirmed that there was no finance and that the claimant could deliver the McLaren to him on a trailer and then collect the defendant's car. He went on to state,

> "IM: Yeah I'll send you the log book of the car as well so you've got it. It's a primary reg, 2010, its an imported vehicle, its got full Ferrari history, it is due a full service by Ferrari – £2000-3000 I think it'll cost – whatever it is I'll pay for it or whatever, you can knock it off the bill so, but the car is immaculate, just absolutely breath.. from the factory so
>
> GF: Well, look, what's the reason for selling it, just out of interest?
>
> IM: I want something I can actually enjoy, a convertible mainly. I've just had it two and a half to three years now and I don't really use it much, its just more of a garage queen than anything else and I want a car that I can sort of hammer on the track, but I've put HRE alloys on the car, HRE-fitted springs on the car that I spent.. just the alloys cost me 12,000, spent 5000 on suspension springs on the car, the dampeners and all that kind of stuff, I've got a spacer kit on the car as well, so it handles on track perfectly, my car does. I've only tracked it once, so it hasn't really…
>
> GF: Where did you take it?
>
> IM: Er, Spa in Belgium"

35. On the same day the defendant provided a HPI Check certificate confirmation which gave the model as 599 GTO V12 and the year of manufacture as 2007. He also provided the V5C from the DVLA which records that the defendant's car was declared manufactured in 2010 but goes on to state that the first registration was 1 December 2007 and that the car model is 599 GTO V12. It states that the defendant acquired the car on 24 February 2018. There is some doubt about the provenance of the documents, but the claimant does not rely on this for the purposes of its application.

36. On 20 April 2020, timed at 18:50, the defendant emailed Mr Franzini, subject heading "599 GTO PX", forwarding or extracting (I am not sure which) email correspondence between himself and Graeme Woodward, the group training manager of another dealer, Park's of Hamilton[1], who was offering £260,000 as the part exchange price. In that correspondence the defendant says that he has "a 599 GTO", a "2010 car" and "in perfect condition". Although they are said to have carried out checks on the defendant's car it is unknown what those checks were and it takes matters no further forward.

[1] The address of Mr Woodward is given as 14 Bothwell Road, Hamilton ML3 0AY.

37. On 21 April 2020 Mr Hu wrote to the defendant confirming the terms of the agreement. His evidence is that he relied on the defendant's representation that he owned and wished to part-exchange a Ferrari 599 GTO in immaculate condition.

> "I am writing to confirm the part exchange of your Ferrari 599 GTO …
>
> The deal that has been agreed is as follows,
>
> "Scuderia Prestige will take the Ferrari 599 GTO into stock in exchange for
>
> McLaren 675lt Spider (£229,995)
>
> Registration plate: CA11 MSO (£0) Valued at £3000
>
> £35,000 GBP (Transferred from Scuderia Prestige Automobile)
>
> This deal is subject to a full inspection of the Ferrari 599 GTO from Scuderia Prestige's mechanic …"

38. On 22 April 2020 Mr Franzini sent the part exchange agreement to the defendant. The description of the defendant's car is typed on the agreement as "Ferrari 599 Gto V12 Coupe 6.0 Manual Petrol". To the right of that description is typed,

> "I confirm that I am the seller/or authorised to sell the part exchange vehicle at the stated price and the details adjacent are true and accurate…
>
> It has not been involved in any incident resulting in a total loss claim or serious accidental damage…"

The agreement is then signed by the defendant and dated 22 April 2020. The agreement is signed in three other places by the defendant and dated.

39. On 23 April 2020 Mr Franzini and Mr Clark attended the defendant's residential premises delivering the McLaren and collecting the defendant's car. The defendant's case, in his first witness statement, is that the car was inspected by the claimant's mechanic for over an hour and then the balancing payment was transferred to the defendant. The claimant's account is very different but for an interim hearing I cannot determine whether an inspection took place or not, as Mr Brown accepts and indeed he does not seek to persuade me otherwise.

40. Later that day the car was inspected at the claimant's showroom by a mechanic. It was found that the car's appearance had been changed to look like a GTO by the bumper and bonnet being changed and a GTO badge attached. However inspection, particularly of the car's interior and engine, revealed that it was a GTB.

41. Mr Franzini telephoned the defendant on the evening of 23 April 2020 to inform him that the car was not a GTO but a far less valuable GTB and demanded the return of the McLaren and the balancing payment. In an email at 18:43 the defendant said he had

spoken to his solicitor who had advised him not to return the McLaren and told the claimant that they should seek legal advice.

42. On 24 April 2020 the claimant contacted HR Owen, the registered distributor for Ferrari in the UK, who confirmed that the chassis number of the car was that of a GTB. The claimant applied and obtained a without notice injunction on 24 April 2020 restraining the defendant from disposing of the McLaren. This was discharged by consent on 30 April 2020 as the defendant gave acceptable undertakings.

43. The defendant's evidence, paragraph 17 of his first statement, is that Mr Franzini rang to cancel the deal because the end client did not want to buy the car,

> "He then went on to accuse me of selling a car that was a "GTO", saying it was a "GTB" model of Ferrari. I found these accusations incredible and was amazed and shocked by what was being said. I said that I refused to believe what he was telling me. I said that all the documents and the DVLA database, HPI centre database showed it was a "GTO" and contradicted what he was saying."

44. The defendant's case, at that stage, was that he sold the car to the claimant as a GTO. He stated he was a private consumer, he purchased the car as a GTO in 2018 for £450,000 and "in the last 2 years I have been driving it without any problem"[2]. The defendant refused to return the McLaren and the balancing payment.

45. In the defendant's first and second witness statement he maintained that he believed that the car was a 599 GTO: although his pleaded case is that he simply agreed to sell a Ferrari 599. In the defendant's third witness statement he takes issue with the fact that his signature is not below the description of the vehicle but to the side of it and that the former is "common industry practice". However the defendant in his first witness statement, which was filed for the return date of the injunction, says he had been provided with the Ferrari's maintenance records, which were stamped by Ferrari Moscow showing that the car was a 599 GTO owned by a Mikhail Novikov. He says that he purchased the car from Ngai Tsui care of Belvue Cars Ltd for £450,000, paid on 26 February 2018. The defendant says that on 1 April 2020 he approached Parks of Hamilton to part exchange a McLaren 675LT for his Ferrari 599 GTO. He alleges it was checked and he had an offer of £260,000. The defendant is clear in his evidence that he agreed to sell "my Ferrari 599 GTO" to the claimant. It is not plausible for the defendant to advance the latest argument to support his pleaded contention that he agreed to sell a Ferrari 599, without reference to GTO. An application for summary judgment does not require the court to suspend belief and accept all that the defendant says when it flies in the face of the evidence, when it is inconsistent with evidence that the defendant himself has adduced, that would be to derelict the court's duty, even when the defendant strongly denies the fraud.

46. It is only in his third witness statement that the defendant admits that he knew the car was not a GTO when he purchased it, describing it as a Ferrari 599 GTO Evocazione,

[2] Defendant's first witness statement, paragraph 19.

> "This means that at some point prior to purchase by me had undergone the Evocazione programme. The Evocazione programme is the adaptation of the Ferrari GTB motor vehicle to give it the alter its appearance, largely by modification of the body work to give it the appearance of a GTO."[3]

The defendant says that he believed that he was able to refer to the car as a GTO but crucially neither in the telephone conversation nor subsequently did he refer to the car as a GTO Evocazione or a GTB that had undergone works to give the appearance of the more expensive GTO model. The change in the defendant's evidence is not explained and I consider that his evidence on his description of the car is inherently implausible.

47. There are further elements of the uncontested evidence that fatally undermine the defendant's defence, so that he has no real prospect of defending the claim.

48. His evidence is that he purchased a modified GTB in 2018, a GTO evocation, as described by his counsel. However the contemporaneous evidence is that he commissioned a body-shop, X Scuderia Limited ("the body-shop") (which has no connection with the claimant), to affix a GTO body-kit to his car, the defendant supplied the kit. The invoice is dated 28 May 2019. He then brought proceedings against the body-shop in the County Court Money Claims Centre issued on 14 April 2020 under claim number G4QZ92E2 alleging faulty workmanship and that delays in completing the conversion lost him a sale of the car for £170,000 ("the body shop claim"). In those proceedings he relied on a report prepared by Tony Simpson of AGS Claims Consultants dated 4 June 2019 and prepared for him for the court proceedings. The report describes the vehicle as a Ferrari 599 GTB and goes on to say, "On both my physical inspection and examination of the vehicle I note that it is a 2007 Ferrari 599 GTB …. My client had commissioned a full body respray and the fitment of a GTO body kit to the vehicle, to Scuderia Performance Cars in London". His opinion was that the works required to the car would cost £4,015 plus VAT. In the defendant's solicitor's letter of claim it is stated that the car was delivered to the body-shop in February 2017, the promised completion was June 2017 but the car was only delivered in July 2019.

49. In the body-shop claim it is pleaded at paragraph 3 of the Particulars of Claim that, "At all material times, the Claimant was the owner of a 2007 Ferrari 599 GTB Fiorano, registration number LK57 KRN…. The Claimant had purchased the car in or around the summer of 2017 in order to get it re-fitted and sell it at a profit." At paragraphs 5 to 8 it is pleaded that the defendant and the body-shop agreed in December 2017 that the latter would assemble, fit and install the GTO body kit supplied by the defendant. It was agreed that the price of the works was £9,000 and that they would be completed by summer 2018. At paragraph 21(2) the claimant's case is that the value of the car, as at 9 April 2020, was £124,950. The claim was pleaded by counsel and dated 9 April 2020, the statement of truth is signed by the defendant. The proceedings, I am told, have yet to conclude.

50. Six days later the defendant had the conversation with Mr Franzini, extracts of which are referred to in paragraphs 33 and 34 above. These can be seen in the light of the defendant's pleaded claim, signed by him with the statement of truth which says that "I

[3] Paragraph 8.

understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth". It is reasonable to infer that his solicitors at the time would have explained the meaning of such a statement to him, although the wording is very straightforward. Counsel had the material upon which he pleaded the claim as he did and the defendant signed the statement of truth. So when the defendant states to Mr Franzini that he has a GTO, he knows that his car is a less valuable GTB. Whether he purchased the car in the belief that it was a GTO is irrelevant: the evidence is irrefutable when he made the representation to Mr Franzini he knew that the car was a GTB, not a GTO. When he says that the condition is "amazing. Immaculate… but the car is immaculate, just absolutely breath … from the factory" that is untrue. The defendant had a GTO body kit put onto the car and was so unhappy with the quality of the work that he was suing the body-shop. He had an accident in the car in June 2018 and "the damage was extensive …. There was both bodywork and engine damage."[4] When he says that the car has been "in the garage quite a while" and more of a "garage queen" that was true but not in the way he meant it. The car had indeed been in the garage for quite a while, at the body-shop garage and another garage; he was suing the body-shop. From the body-shop claim the car was in the garage from December 2017 to May 2019, although he now says that period was wrong and was from summer 2018. His comment that "my car's worth more than yours" was untrue. He knew the McLaren price was £235,000 and that in his pleading he had pleaded a claim that the car had a value of £124,950.

51. In the light of the other uncontested evidence the representations made by the defendant that he was selling a GTO were untrue and he knew them to be false. They were made to induce the claimant to enter into the agreement. Perhaps the pandemic was simply opportunistic; I am satisfied that had the defendant delivered the car to the claimant's showroom before the agreement was entered into a mechanic would have seen that the car was not a far more valuable GTO, as represented by the defendant and the outward appearance suggested, but the less valuable GTB. In those circumstances the claimant would not have entered into the agreement.

52. Mr Brown also submits that the defendant was creating a narrative around the car, which I accept. Otherwise it is difficult to see why the defendant forwarded the correspondence with Park's of Hamilton. Mr Gupta had some difficulty in submitting that the representations made by the defendant were not false, the evidence before me is overwhelming. Mr Brown went on to illustrate how the defendant has advanced different version of events. In particular:

    i) The defendant stated that the car was a Ferrari 599 GTO, that is the basis on which the claimant entered into the agreement. The transcript of the conversation with Mr Franzini and the agreement signed by the defendant is clear. However the car was in fact a Ferrari 599 GTB. He knew that his statement was false. In the body-shop claim it was pleaded that he owned a GTB. Mr Gupta made a valiant effort at explaining this inconsistency by submitting that to the professional eye an expert would say the car was a GTB. The defendant's evidence in this claim, originally, was that he owned a GTO and that he was "amazed and shocked" at the suggestion that his car was the less valuable GTB. That statement rings hollow, not least when in his third statement he admits that

[4]The defendant's third witness statement, paragraph 16

he knew that the car was a GTB. I have already dealt with the defendant's argument that he could refer to his car as a GTO because it was an evocation of a GTO.

ii) The defendant states that the car was manufactured in 2010, which is consistent with it being a GTO. In the body-shop claim the defendant pleaded that it was manufactured in 2007 and he relied on an expert's report stating that the car is a Ferrari 599 GTB manufactured in 2007. Mr Gupta submits that the HPI check and the V5C are key documents that support the claim going forward to trial, I disagree. Whilst there are some inconsistencies with the HPI check and the V5C, they certainly are not sufficient to provide the defendant with a realistic defence, especially when taken with the other evidence.

iii) The defendant says that he purchased the car in 2018. Exhibited to his first witness statement is an invoice from "Ngai Tsui c/o Belvue Cars Ltd" dated 23 February 2018 recording that the sale price was £450,000. I note that save for an address on the top of the page there is no company registration number or VAT number, I do not know if the latter is applicable. However in the body-shop claim the defendant pleads that he purchased the car in or around the summer of 2017 and entered into an agreement with the body-shop in or around December 2017. Mr Gupta submits that the defendant accepts "that he erroneously stated that (a) the date of purchase was February 2017 (it was February 2018) and (b) that the vehicle went for works in December 2017 (when it was in June 2018)". He relies on the sales invoice, an invoice from A2B Recovery saying that the car was damaged and the job was completed in June 2018 and the HPI certificate which is dated 26 February 2018. The date of purchase in 2017 is more consistent with the defendant's conversation with Mr Franzini on 20 April 2020 and the body-shop claim. However for an interim application I cannot determine what date the defendant purchased the car but there is evidence, not least from the defendant himself, which casts some doubt on his statement that he purchased it in 2018.

iv) The statement that the car is in "amazing" "immaculate condition" "just absolutely breath … from the factory" was untrue. In fact in the defendant's third witness statement he admits that he had an accident in the car in June 2018. He had taken the car to a drag strip near Hemel Hempstead, lost control and crashed it. "The damage was extensive"[5]. I do not know if this is the drag strip he is alluding to when he says that "I've only tracked it once…. Spa in Belgium". If so both statements cannot be true.

v) The car was not more valuable than the McLaren priced at £235,000; the defendant had pleaded that it had a value of £124,950.

vi) I have dealt with the statements about the car being in the garage, true but not in the sense that the defendant meant.

vii) The defendant says that he purchased the car from a friend, he says both that he was Japanese or a "really wealthy Chinese guy". The invoice that he relies on

[5] Defendant's third statement, paragraph 16.

says that he purchased it from Belvue garage. I cannot determine this issue on an interim application and I do not consider it material for current purposes.

viii) The defendant pleads in the body-shop claim that he purchased the car in 2017 to have it refitted to look like a GTO to sell on quickly for a profit. In his third statement he says that he purchased the car as an investment.

53. Mr Gupta criticised the steps taken by the claimant in advance of the agreement and thus, I infer, he argues that it is a triable issue whether the claimant was induced by the defendant to enter into the agreement and whether it did rely on that statement. For example, he said it was for the claimant to ask whether the car had been in a collision, yet the defendant stated in effusive terms that the car was immaculate, "absolutely breath …from the factory." Mr Gupta relied on the fact that the claimant could have checked the chassis number of the car before it was collected, that would have revealed (he accepts) that it was a GTB. There is some force in Mr Brown's submission that the defendant chose to weave an elaborate story and it ill-behoves him to turn around and say the claimant should have investigated to verify whether his story was untrue.

54. Mr Gupta also relied on the alleged inspection by the sales manager and general manager of the claimant. Mr Brown was quite clear in his submissions, the claimant was not mounting an argument that there was no inspection before the car was taken to the claimant's showroom, that is a factual dispute between the parties. His case was simple – the defendant made a statement that he knew to be false which induced the claimant to enter into the agreement. When this was discovered, on the same day that the car was collected from the defendant, the claimant sought to rescind the agreement but the defendant refused. I accept Mr Brown's submission that the right to rescind arose when the fraud was discovered, that was when the car was taken back to the claimant's showroom and inspected by a mechanic. As Mr Brown also rightly submits even if an inspection, as contemplated by the agreement, took place at the car park next to the defendant's flat the fraud was sufficiently sophisticated that it was not discoverable when the cars were exchanged. Therefore Mr Apostolesscu's evidence is irrelevant for my purposes.

55. Mr Gupta submits that further evidence might come to light: that is suggesting that the court should permit the defendant to embark upon a speculative fishing expedition. He points to the fact the Mr Franzini has not filed a witness statement yet. However that ignores the fact that there is a transcript of the material telephone conversation between Mr Franzini and the defendant, which the defendant has not contested. Mr Gupta's argument is not sufficient for summary judgment purposes, the defendant must show by evidence that material in the form of documents or oral evidence is likely to exist and can be expected to be available at trial which will show the current evidence in a different light. I am satisfied that there is no new line of enquiry or further evidence that will be adduced, or is likely to be adduced, at the trial. A trial judge will have the evidence that is before the court on the application.

56. This is an unusual case in that the evidence before me does not come from two sets of facts advanced by the opposing parties. Instead the evidence before me comes from the defendant or events that only the defendant was involved with. I am entitled on a summary judgment application to look at that evidence with a critical eye, not simply to accept it at face value. The central plank in this claim turns on the representation by the defendant that his car was a GTO. He undoubtedly made an unequivocal

representation that he wished to part exchange his 2010 GTO for the McLaren. That was a representation that he knew to be false and I am satisfied that the defendant made that statement intending the claimant to rely on it and the claimant did indeed rely on it. This 'charade', to use Mr Brown's word, continued even after it had been revealed that the car was a GTB, the defendant only latterly changing his story.

57. I am satisfied that the claimant is entitled to rescission of the agreement and that the defendant should have returned the McLaren and £35,000 on or about 23 April 2020. The McLaren has now depreciated in value and the claimant is entitled to an enquiry as to the diminution in value and an award of damages in that amount. It is no bar to that claim that the defendant is said to have carried out works to the McLaren.

58. If I analyse the case on the alternative basis of breach of contract I reach the same conclusion. It was an implied term of the agreement that the car corresponded to its description as a Ferrari 599 GTO: such term implied by section 13 of the Sale of Goods Act 1979. The claimant entered into the agreement on the basis that they were part exchanging the McLaren and £35,000 with an immaculate GTO, which they ascribed a part exchange value of £265,000. In fact, the defendant's car was a GTB altered to give the appearance of a GTO and the defendant was in breach of contract.

59. The breach gives rise to the claimant being entitled to rescission or alternatively damages to be put in the position it would have been in had the defendant performed his contractual obligations. Instead of supplying a car with a value of £265,000, said to be in immaculate condition, the defendant supplied a car with a value of £75,000, which had suffered crash damage and on the defendant's case poor quality work when the GTO body kit was fitted.

60. I am satisfied that the defendant has no realistic prospect of successfully defending the claim, his defence carries no conviction. I have considered whether the serious allegations in this claim provide a good reason why the claim should go to trial. However, it is clear beyond question that the defence is contradicted by documents and other material so that the factual basis of the defence is fanciful. This claim warrants an early disposal which will save costs and delay in trying the issue when the outcome is inevitable. I therefore grant the claimant's application for summary judgment and rescind the agreement. I will hear argument on the precise wording of the order and what inquiry there should be into the deprecation of the McLaren.

61. Neither counsel spent much time dealing with the counterclaim in their submissions. The counterclaim is inextricably linked to the claim. As is summarised in Civil Fraud at paragraph 22-059,

> "The innocent party is not required to give counter-restitution if it is because of the defendant's own wrongdoing that he cannot be fully restored to his previous position, or the benefit is one which the defendant was bound to confer in any event. An innocent party is also probably not required to compensate a fraudulent purchaser of an asset for improvements made to the asset before rescission, since (having knowledge of his own deceit) the purchaser is on notice of the defect in his title."

62. As I have granted rescission the alterations said to have been made to the McLaren by the defendant amount to wrongful interference with the claimant's property. The claimant is an innocent seller and is not required to compensate a fraudulent purchaser of an asset for improvements said to have been made since the purchase. The defendant was on notice of the defect in his title when he entered into the agreement with the claimant and knew from 23 April 2020 that the claimant sought recission of the agreement.

63. Mr Brown also went on to make two further submissions. The alleged breach of the terms of the CRA gives rise to statutory remedies, which does not include a claim for contractual damages: which I accept. Those remedies give rise to a short-term right to reject, a right to request the claimant to repair or replace the car and a right to a price reduction (which does not arise here). On the defendant's own case he inspected the McLaren on 23 April 2020, then sent it to a garage on 1 May 2020 and 16 May 2020. In the agreement the defendant confirmed that, "I understand that it is my responsibility to return the vehicle to the seller in the event that I require a statutory repair or wish to exercise my statutory right to reject". The defendant did not exercise his rights under the CRA and simply pleaded as a counterclaim that he had had works done to the McLaren and had a claim for damages in the sum of £16,850.07.

64. The defendant has failed to plead a counterclaim that has any prospect of success and there is no other compelling reason why the counterclaim should proceed to trial. In the circumstances I do not need to go on to consider whether the counterclaim should also be struck out, although had I done so I would have also struck out the counterclaim under CPR 3.4(a) for the reasons articulated above.