Neutral Citation Number: **[2024] EWHC 2186 (Ch)**

Case No: HC-2016-001261
BL-2018-000648

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (Ch D)

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

Date: Double-click to add Judgment date

Before:

MR SIMON GLEESON

- -

Between:

MR BERNARD JACOB CARL	**Claimant**
- and -	
(1) MR JOHN HAWKINS	**Defendant**
(2) SPECIALIST CARS OF MALDON LIMITED	
(3) MR RICHARD EDWARDS	
(4) MR ANDREW HOWARTH	
(5) MRS LORNA EDWARDS	
(6) MR GRAEME SCHOLES	
(7) LEFT HAND DRIVE LIMITED	
(8) MR CHRISTOPHER WILLIAMS	
(9) MR VIKASH LIMBANI	
(10) [NOT USED]	
(11) [NOT USED]	
(12) [NOT USED]	
(13) MR SCOTT DAVIS	
(14) MR SIMON GREENWOOD	
(15) MANSA LIMITED	
(16) PESCARA INTERNATIONAL LIMITED	

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The **Claimant** appeared in person.
Philip Williams (instructed by **Rippon Patel**) for the **9th Defendant,** and (by direct access) for the **4th Defendant.**
The **5th Defendant** appeared in person.
The other Defendants did not appear and were not represented.

Hearing dates: 6th-10th, 13th-16th and 19th May

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JUDGMENT

Mr Simon Gleeson:

1. Rich men seek diversions, and one of these diversions is the collection of historic sports cars. A flourishing infrastructure of dealers and intermediaries exists to satisfy this desire; its participants seeking to enrich themselves as they do so. Mr Carl, the claimant in this action, is one of the former, and the defendants are (with one exception) amongst the latter.

2. The essence of this action is that in pursuing his hobby, Mr Carl involved Mr Richard Edwards, reposing in him a degree of trust and confidence. Although a party to this action, Mr Edwards did not appear or give evidence, and I have therefore not had the opportunity of hearing "his side of the story", although the story itself has been set out in detail in this and some of the surrounding litigation. However, this action was conducted on the common basis amongst all those who did appear that Mr Edwards was, as Mr Justice Cooke described him in *Gray v Smith* [2013] EWHC 4136 (Comm), a "rogue", and observed that "Mr Gray has been duped and swindled by Mr Edwards and has lost a substantial amount of money" (at [155]). Mr Edwards' *modus operandi* appears to have been to offer to purchase cars for clients, to take money from them for that purpose, and to divert the money received into transactions entered into in his own name, (I think) in the hope that the profits received from those transactions would enable him to make good the defalcations. Since he appears to have specialised in purchasing cars in the UK for clients

based in the United States and abroad, this was an eminently practical strategy –even if a client did appear seeking to examine his car, an equivalent car could always be borrowed to show to him as if it were his own - Mr. Edwards evidence in his 2015 criminal trial that this is what was done to deceive Mr. Bauer as regards a Ferrari F50.

3. The other problem with Mr Edwards' business model was that these amounts were insufficient for his purposes. Mr Edwards has fairly ambitious goals as regards his personal wealth, and he used the defalcated amounts in part as downpayments on extremely expensive cars – which he hoped in due course to sell for even higher prices. The defalcated amounts therefore constituted the "equity" in these deals, which required to be leveraged in order to raise the total amounts involved. It was sometimes possible for Mr Edwards to raise loans of this kind through conventional sources – after all, he would have a valuable asset to pledge as collateral in the form of the vehicle itself. However, he was not – to put it mildly - known as a man of his word, and after a while his primary source of debt finance was – according to his own evidence – the "criminal underworld". This created difficulties both as to the cost of the financing available, and as to the debt collection mechanisms employed – all of which increased pressure on Mr Edwards to obtain more money by any means available.

4. This is, of course, a commonly encountered fact pattern in these courts. Mr Edwards did not deliberately set out to create a Ponzi scheme, but it would have been clear to him, had he considered the matter dispassionately at the time when the transactions before me were executed, that that was what he

was now engaged in. However, it is not clear to me that he ever felt that he had the option to simply put his hands up and admit his failure, and this may well have been a consequence of the business methods of his creditors.

5. It may be helpful to bear in mind the consequences of Mr Edwards' status as an undischarged bankrupt during this period. At the moment of his bankruptcy, any property owned by him ceased to be his and became vested in his trustee in bankruptcy. Any purported dealing by him with any such property thereafter is ineffective. The policy of the UK bankruptcy regime is that the bankrupt is encouraged to continue to earn a living during the period of their bankruptcy. However, by s s.307 of the Insolvency Act 1986 the trustee may also claim for the bankrupt's estate any property which is acquired by the bankrupt, or which devolves upon him, between the date of commencement of bankruptcy and the date of his eventual discharge. The bankrupt is also under a duty to notify his trustee of any property which he acquires during this period.

6. The primary cause of action against many of the defendants is that they assisted, either as conspirators or as joint tortfeasors, in unlawful actions taken or instigated by Mr Edwards. This requires me to consider both their actions and their state of mind, and in particular their beliefs as to what Mr Edwards was up to – that is, what it is that they thought that they were helping him to do. Mr Edwards, accidentally or deliberately, seems to have kept his affairs as complicated as possible, and I do not believe that anyone other than himself had a clear picture of his overall position. The argument, therefore, is not that they knew that Mr Edwards was engaged in wrongdoing and facilitated it, but

that they should have realised that the individual acts in which they participated or which they facilitated must have been dishonest.

7. Separately, it is necessary for me to determine the legal consequences of a dishonoured cheque written by Mrs Edwards. Strictly speaking this is a freestanding cheque action. However, the facts which I am required to determine in respect of it feed seamlessly into the determination of the issues before me, so I propose to merge the two determinations (no matter how logically unsatisfactory that may be). It is clear to me that the cheque was indeed drawn by the parties thereto, is regular on its face, and was a valid bill of exchange. The issue which arises is as to whether there are grounds for holding that Ms Edwards, although prima facie liable on this cheque, has some argument available to her that she need not pay it.

Procedure

8. I will have some things to say later in this judgement about the procedural history of this matter. However, there are a few facts that I should note at this stage.

9. First, the majority of the defendants have had their defences struck out and been debarred from defending as a result of failures to comply with unless orders. Some of these have had judgement in default entered against them. However, in all cases the question of liability has been left to me, as the trial judge, to determine. I am therefore required to consider the position of these defendants.

10. This litigation relates to a number of valuable cars which Mr Carl had purchased. It was commenced in 2015 as a simple action for recovery of the cars against the first, second and third defendants - Mr Hawkins, his company Specialist Cars of Maldon ("SCM"), and Mr Edwards. These proceedings were stayed by a Tomlin order dated 18 August 2016 on the basis that Mr Carl had commenced proceedings in respect of the same cars in the courts of New York. These US proceedings named a wider selection of defendants, on the basis that Mr Carl's researches as to what had happened to his cars had revealed the involvement of a large number of actors. Mr Howarth was amongst these. The US proceedings were dismissed on 21 February 2018 for lack of personal jurisdiction. Mr Carl then recommenced these proceedings here against the parties named herein, and the other parties were added by an application dated 15 May 2018. Separately, Mr Carl had brought an action against the fifth defendant Lorna Edwards (the then wife of Richard Edwards) for summary judgement on a cheque which she had written him, which has been conjoined with this action.

11. I note in passing that this timetable means that a number of the witness statements collected by Mr. Carl were prepared before the introduction of PD57AC (although all of the parties involved provided witness statements compliant with that direction). It is also the case that the statement of Mr Carl's expert witness, although prepared after this date, was in fact non-compliant with it.

12. When the UK proceedings were recommenced in 2018 most of the principal parties (apart from Mr Edwards) were represented, and pleadings were

prepared by Counsel which defined the legal issues between them. However, after some time this ceased, and in the run-up to this hearing all of the parties who appeared (apart from Mr. Limbani and Mrs Edwards) appeared in person.

13. It is a matter for some surprise that a litigant such as Mr Carl, who is not without personal means, should elect to conduct a complex case in person, even though he has had some experience as a trial lawyer in the United States. His explanation for this is that he was entirely clear that his costs incurred would never be recovered, since neither Mr Howarth, Mr Hawkins, Mr Edwards or Mrs Edwards had the resources to meet such a claim. Mr Howarth put this particularly bluntly to him in the hearing before Master Kaye of 15 July 2022, where he said, in effect, that if you pursue this action, I will simply go bankrupt, and shortly thereafter the slate will be wiped clean, and you will get nothing. Mr Carl, therefore, decided that he would dispense with the services of solicitors and administer the action himself.

14. It is fair to say that this did not go well – there are a series of interlocutory decisions by the various Masters who have dealt with the preliminary stages of this case, in which their exasperation with Mr Carl's continuing failures to present his case in accordance with the requirements of the rules of court is almost tangible. However, Mr Carl managed to administer his case – albeit chaotically – in such a fashion that it was never actually struck out. He was assisted – if that be the right term – in this by Mrs Edwards and Mr Howarth, who made regular applications for the case to be struck out for non-compliance with the various listing rules. The result was procedural trench warfare between litigants in person which has dragged on for far too long.

More importantly, Mr Howarth and Mrs Edwards' strategy of non-cooperation meant that there is no agreed bundle of documents, and what has been produced is simply a loosely catalogued assembly of what appears to be every document which has ever been disclosed or alluded to by any party. The result, unsurprisingly, was a shambolic mess.

15. One of the more curious aspects of the procedural history of this case has been Mr Howarth's extended and determined attempts to avoid service of process, and my attention was called to this by Mr Carl. The last and in some ways most entertaining manifestation of this was Mr Howarth's attempt to argue that he had not been served with a complete trial bundle, and that this was grounds for a further adjournment. Master Kay found that the documents which Mr Howarth argued were missing had in fact been served on his then solicitors in 2017. This is why I was not prepared to accept the points made on his behalf which turned on defective service of trial documents – in particular as to documents which were well known to him and six years old at the date of this trial, and appear to be available on the CE-file system.

16. A final point in this regard is that the facts of this case raise quite a large number of legal issues. I have had to deal with these largely without the benefit of counsel. Mr Williams, representing the 5th and 9th defendants (Mr Howarth and Mr Limbani), was instructed by Rippon Patel for Mr Limbani, and was also at a late stage and with the consent of Mr Limbani, instructed by Mr Howarth on a direct access basis. He appeared before me, and I was grateful for his assistance. However, not only was he instructed by Mr Howarth shortly before trial, but there were a number of points during the trial

where it was clear to me that he did not appear to have received complete instructions from his lay client and was therefore constrained in his ability to make appropriate representations.

17. The upshot of this is that I am required, as regards all of the defendants in person, to consider what legal arguments might have been put had they been represented, even though these arguments were not actually advanced and, more importantly, that the other parties involved have had no opportunity to controvert them. This is a difficult exercise for an English judge (although it would be familiar to a continental investigating magistrate). However, I think that where it leaves me is this. The mere fact that a litigant in person has not taken a particular point of law does not mean that I can disregard that point – as a judge, I must apply the whole of the law. However, it is not my role to identify every point which, if taken, might assist that litigant. I must therefore apply my own legal analysis, steering between the Scylla of advocacy and the Charybdis of failure to acknowledge established law. I have not found this an entirely straightforward exercise.

The Structure of this Judgement

18. This judgement addresses the alleged misappropriation of 8 different cars, and their proceeds, in different ways, by 13 different defendants. It also embraces a cheque action and competing claims for the repayment of a loan. It therefore has something of a matrix quality to it. I begin by setting out a summary of the facts. I then consider the quality of the evidence before me. I then go through the history of each car in more detail, identifying the points at which complaint is made of the conduct of the various defendants. I then consider the

key legal issues. In general, I regard it as unsatisfactory to have a separate section of a judgement labelled “legal issues”, but in this case it is necessary to determine the legal characterisation of relationships between the main parties in order to identify whether the actions of the individual parties contravened the terms of those relationships. I then explain how the findings as to legal relationships translate into actionable breaches of duty in respect of the dealings with each car. Finally, I set out what these findings mean for each individual defendant, and address the claims made against them in the pleadings, along with their consequences as to quantum and in costs.

1. The Facts

19. Mr Edwards, by his own account, has been a car dealer his entire life, and came to specialise in rare and expensive European sports cars. He does not appear to have been particularly commercially successful in his chosen profession - in June of 1995 he was declared bankrupt, did not co-operate with the bankruptcy trustee, and it was ordered that his discharge be suspended indefinitely. Somewhat curiously, this does not appear to have inhibited his ability to open bank accounts or to obtain loans from authorised firms, and by the early 2000s he appears to have been back in business as a sole trader in cars.

20. In 2007 Mr Edwards married Lorna Edwards. Mrs Edwards had some family money, and Mr Edwards ran through that in fairly short order.

21. In 2010 Mr Edwards met Mr Bauer, and in 2011 Mr Bauer gave Mr Edwards £200,000 towards the purchase of a Ferrari 288 GTO, which Mr Edwards

claimed to have bought for him. However, this money was – according to Mr Edwards - applied by him in part payment of the purchase price of a Ferrari California Spyder for himself, and no Ferrari GTO was ever acquired. In 2011 Mr Edwards met Mr Lock, and took £395,000 from him as the purchase price of a Ferrari Lusso. This money was paid to a Mr Broadhurst. Mr Edwards evidence was that he owed Mr Broadhurst £800,000, and that if that loan was repaid Mr Broadhurst would immediately grant a new loan of £1.2m, out of which he would have been able to repay Mr Lock and Mr Bauer. This did not happen, and in September 2011 Mr Edwards was again declared bankrupt. Once again, he appears to have declined to co-operate with the trustee in bankruptcy, and his discharge was suspended indefinitely. He is therefore a double-bankrupt.

22. Mr Edwards met Mr Carl in 2010. At this point Mr Carl was an established and well-known owner of classic European sports cars, and was both well-informed and knowledgeable on the subject. Mr Edwards was able to help him in respect of a claim arising out of a car, and Mr Carl clearly regarded Mr Edwards as a having done him a considerable favour.

23. Mr Edwards *modus operandi* seems to have been to convince others that he was a man of significant financial means, and therefore creditworthy. However, in reality this was far from being the case. In January 2012 Mr Edwards approached Mr Carl for a loan, admitting that he was in great difficulty with a number of deals, and that although – he said - he owned valuable cars worth considerably more than the amount requested, he had cash-flow problems.

24. Mr Carl seems to have been on good terms with Lorna Edwards, and, upon realising that Mr Edwards was in severe financial difficulty, advanced money directly to her to pay school fees for their children.

1.1 The £221,000 Loan

25. What Mr Edwards was looking for from Mr Carl was £221,000, which he said was owed to a Mr Broadhurst and a company called CSPL. Mr Edwards had told Mr Carl that the reason that he wished to repay this loan was that, once it was repaid, the Broadhursts would lend him another £3m, and this would enable him to repay Mr Carl and complete some other transactions.

26. Mr Edwards' explanation to Mr Carl of how he had ended up owing this money to CSPL was that he had taken over a loan of £221,000 due to them from Mr Broadhurst "after he got beaten up". However, this appears to have been another fiction. The true position is almost certainly as set out by CSPL's solicitors in correspondence with Mr Carl. They stated that Mr Edwards had sought a loan from CSPL in February 2012, but, because he had at that point been made bankrupt, CSPL were not prepared to make the loan to him, and therefore lent the money to Mrs Edwards – or, more accurately, in her name. I entirely accept Mrs Edwards evidence that she knew nothing at all of the arrangements with CSPL. The money from Mr Carl was needed to repay the loan from CSPL to Mrs Edwards – possibly because of the interest rate being charged on it.

27. In support of his request for a loan, Mr Edwards presented to Mr Carl a proposal in relation to a pre-war Alfa Romeo 8C said to have competed in the 1931-2 Mille Miglia. This purported to show that a car valued at $5.25m was

in the hands of a seller but in the process of being purchased by Chris Williams (trading as "Global"), with $4.65m already paid – thus, the making of the final payment of $0.6m would release the car. What Mr Edwards proposed was that Mr Carl should "purchase" the equity in the car, paying a £221,000 "commission" to CSPL as he did so. The idea was that if the money was not repaid, Mr Carl could pay the amount due to the seller (shown as $0.55m) and obtain the $5.2m car. His loan would therefore be effectively secured. This proposal was accompanied by a pair of invoices which purported to have been prepared by Mr. Wiliams. These invoices provided for a sale of the car from an owner ("Erlick") to "Global" – an entity operated by Mr Williams – and from "Global" to Mr Carl, with the invoice to Mr Carl providing for the payment of a commission of £221,000 to CSPL). The invoices for the sale to Mr Williams were purportedly signed by Erlick. In retrospect it is clear that these invoices were forgeries, but it is impossible to know whether they were forged by Mr Edwards (who admitted at his criminal trial to of forging invoices) or Mr Williams. Mr Edwards also knew perfectly well that in fact no such car existed, and the "Alfa 8C" which Mr Williams had procured was in fact a modern replica.

28. Mr Carl was not tempted by this proposal, and Mr Edwards then changed tack. He said to Mr Carl "I have explained the situation to [Mrs Edwards], and she will give you a charge on her apartment in London or sell it should I not repay you". On this basis, Mr Carl sems to have agreed to advance the £221,000 on the basis that Mrs Edwards would provide him with a cheque drawn on her bank account for that amount. The loan was to be for a few weeks at the longest, and was expressed to be provided "as a favour, and there is no interest

or other cost to you". The advance was made in March 2012, and was paid directly by Mr Carl to CSPL.

29. Mr Carl, like CSPL, was only prepared to lend to Mrs Edwards, and he seems to have wanted to talk to her to confirm that she was indeed the borrower. Mr Carl and Mrs Edwards therefore had a short telephone conversation about this payment, in which Mr Carl asked Mrs Edwards to send him an e-mail in the following terms.

> "Dear Mr Carl
>
> Please could you send the proceeds from the £221,000 cheque I wrote out to you, on my behalf, to Consolidated Steel Products Inc.
>
> Many thanks
>
> Lorna Edwards"

30. It appears that the purpose of this was that, since Mr Edwards was an undischarged bankrupt, any money received by him would potentially be swallowed up by his bankruptcy. The object of the request was therefore to ensure that the loan (a) appeared to be made to Mrs Edwards, not Mr Edwards, and (b) could not be appropriated by Mr Edwards trustee in bankruptcy.

31. Mr Carl received an e-mail in this form from Lorna Edwards on the 8th March, received the cheque on the 9th March and made the payment to CSPL on the 12th March.

32. It rapidly became clear to Mr Carl that there would be no second loan forthcoming (and indeed there probably never had been a prosect of any such loan), and that he was therefore unlikely to be repaid anytime soon. On the 2nd April he therefore presented the Cheque for payment. It was dishonoured.

1.2 The Alfa 8C

33. There was indeed an Alfa 8C – of a sort. The particular car concerned was a replica manufactured by a firm called Pur Sang in Argentina. Pur Sang replicas are very high-quality cars in their own right, and this particular model was sold by Pur Sang to Mr Williams in April 2012 for $360,000. However Mr Williams and Mr Edwards represented to a number of investors that it was in fact a pre-war original car, which would have been worth in the region of $5m.

34. As part of this campaign, in August of 2012 Mr Williams showed the car (at that time in Sovereign Cars' showroom) to a Mr Foster, with the aim of borrowing £150,000 against it from a Mr Myers. Mr Foster did some due diligence into the ownership of the car, and seems to have been told by Mr Williams that he was acting for Mrs Edwards, who in turn was acting as a "front" for Mr Edwards. He reported this to Mr Edwards' trustee in bankruptcy, a Mr Goldfarb, who was granted an injunction over the car on 14 August 2012.

35. In Autumn 2012 Mr Edwards again approached Mr Carl for a loan – this time for a loan of USD 600,000. He again offered the Alfa 8C as security for it. Mr Carl, having established that the car was a replica, unsurprisingly declined the offer to participate in the venture.

36. Shortly afterwards Mr Edwards again asked Mr Carl for help, this time to rescue the 8C from the hands of his trustee in bankruptcy. The scheme that he proposed was that Mrs Edwards should enter into a security bill of sale over the replica in favour of Mr Carl purporting to secure the obligation to repay

the £221,000 advance made by Mr Carl to CSPL (expressed in the bill of sale as an obligation of $350,000). The bill was executed by Mrs Edwards on 22 February 2013.

37. The bankruptcy proceedings were eventually settled by the surrender of the replica to the trustee in bankruptcy, and Mr Carl's waiving any rights which he may have claimed to have had over the car. His decision in this regard is very likely to have been taken on the basis of an expectation that the trustee in bankruptcy would have succeeded in arguing that the replica was in fact part of Mr Edwards bankrupt estate (since Mr Williams was acting on behalf of Mr Edwards) and that the granting of the security bill of sale by Mrs Edwards in such circumstances would have been invalid.

1.3 The arrangement between Mr Carl and Mr Edwards

38. Mr Edwards clearly saw Mr Carl as a significant source of possible funding, and repeatedly approached him with offers of cars to purchase. Mr Carl, however, appears to have been considerably warier than Messrs Bauer and Lock as regards his dealings with Mr Edwards. He declined to buy cars directly from Mr Edwards – not least because he was fully aware at that point that Mr Edwards was an undischarged bankrupt. Mr Carls position was clearly that he wished to avail himself of Mr Edwards deep knowledge of and contacts in the classic car market, but did not wish to allow Mr Edwards to have any control of his assets or his money. In November 2013 he therefore set out in a document referred to as the "term-sheet" the terms on which he would do business involving Mr Edwards.

39. The proposed acquisition of the cars raised the question of where they were to be kept whilst in the UK. Mr Carl's evidence is that he determined, based on background research, that Specialist Cars of Maldon (the 2nd Defendant), acting through its principal, John Hawkins (the 1st defendant), would be an appropriate custodian. Mr Hawkins' evidence is that he was introduced to Mr Carl by Mr Edwards, and there is no reason to doubt this. Mr Carl's evidence is that at the outset of the relationship he had a telephone conversation with Mr Hawkins in which they both agreed that the cars were provided on consignment, and that SCM could market them whilst they were with them on the basis of a 5% commission.

40. Between 2012 and 2015 a number of cars were purchased by Mr Carl through Mr Edwards and delivered to SCM for storage. Eight of these are the subject of these proceedings.

Car	Value per statement of claim (£'000)	Approximate value per experts reports in 2015 (£'000)
Ferrari F40	£297*	£850
Lamborghini Miura S	£384*	£750
Alfa Romeo Montreal	£15	£40
Porsche White RS Touring	£625	£350
Porsche Orange RS Touring	£495	£525/550
Porsche RS Lightweight	£750	£650
Porsche 959 Touring	£650	£650
Ferrari 365	£165	£175

*These figures are the actual purchase prices paid rather than a valuation of the cars.

1.4 Mr Carl's Cash Crunch

41. Mr Carl's daughter was married in an extended wedding ceremony covering the last weeks of June 2015. In the run-up to that ceremony he knew that he would be required to pay a large number of bills in cash to various suppliers, and that these bills contained substantial penalty clauses. Consequently, since he had a large amount of his wealth tied up in cars, he sought to liquidate some of them to raise cash.

42. Mr Carl's immediate focus seems to have been on the Lamborghini Miura. I think the key communication here is his e-mail of 20 March to Mr Edwards, in which he said that if Mr Edwards could not find a buyer for the Miura, it should be transferred to another dealer, Joe Macari, wo he believed would be able to sell it. This request was a potential disaster for Mr Edwards and Mr Hawkins, because there was no Miura. In order to fend off the request, Mr Carl was told that the Miura had been sold. When no money appeared, Mr Edwards said that the buyer had gone off. The problem that this created was that they had previously told Mr Carl that the buyer had paid a £50,000 non-returnable deposit, and Mr Carl now demanded that this money be paid to him. He also, of course, still needed to have the car sold. On 8 June he had been told that the car had been sold for $750,000, and that he would receive $300,000 of this immediately, and that this money would be paid to Mr Hawkins. He was sent a copy of an e-mail, purportedly from Mr Edwards to Mr Hawkins, instructing the latter to pay this money to Mr Carl immediately. It arrived on 3 August by way of a bank transfer from Mr Howarth, which bore the legend "Lamborghini".

43. This, of course, raises the question of where the $300,000 paid by Mr Howarth had in fact come from. The answer, in summary, is that one of the cars which SCM held for Mr Carl – the White Porsche RS Touring – had been sold to a German dealer named Michael Roock, and the purchase price had been used in part to fund the $300,000 payment.

44. Mr Roock purchased the White Porsche for £390,000 – to be composed of £140,000 in cash plus a Porsche 993 RS, which seems to have been agreed to be worth £250,000. The valuation evidence that I have seen suggests that this was a substantial discount to the true value of the White Porsche. The result of this was that (a) Mr Howarth was paid £140,000 in his own name, and (b) the 993 RS was delivered to him and promptly on-sold for £240,000 to another dealer, those proceeds being also paid to Mr Howarth's account. It is the latter which seems to have funded the payment of $300,000 to Mr Carl.

45. Mr Carl's problems then began to snowball. He had looming bills to pay with substantial penalties for late payment, and his assets, although unencumbered and valuable, were in a form which banks are generally unwilling to lend against. He therefore found himself seeking to borrow against these assets from the car dealers who held them. Thus he obtained £200,000 from Landmark cars as an advance on a sale or return agreement in respect of a Porsche speedster, owned by him and held by them, with a value of £275,000. He also obtained $150,000 from another dealer, a Mr Hamann, in circumstances which are the subject of ongoing litigation in the United States. Finally, he sought to borrow £198,000 on the strength of the cars which he held with Mr Hawkins. This resulted in the loan from Mrs Edwards which we

will come to in due course. It is notable that over this period Mr Edwards and Mr Hawkins sent a series of e-mails to Mr Carl to the effect that they had received monies on his behalf and had given instructions for them to be paid to him, expressing astonishment that these sums had not been received into his bank account in the US and blaming the banking system. These representations were, as they both knew, untrue.

1.5 The £198,000

46. The challenge that Mr Edwards and Mr Hawkins faced in trying to come up with cash for Mr Carl was not simply to source the cash, but to find a way of transmitting it to him in some way which might be recoverable. Mr Carl was already owed a great deal of money, and any cash actually paid to Mr Carl would be regarded by him as being in satisfaction of these debts. This seems to have been the origin of the story about the legacy. It is clearly correct that Mrs Edwards had relatively recently received a legacy of approximately this amount out of her fathers' estate. This seems to have been appropriated by Mr Edwards, and (he says) delivered to Mr Howarth to finance the purchase of Porsches. However, what Mr Carl was given to understand was that legacy remained intact and – for some reason – was being held by Mr Howarth, and that Mrs Edwards was prepared to lend this to him to help with his cash flow crisis. There is an e-mail from Mrs Edwards to Mr Carl to this effect, in which she says:

> "…thank you for confirming that it has nothing to do with more cars. As you know, it was my safeguarding from my mother and so, as long as I can keep it "safe", I am happy. You I consider "safe".".

47. However, the significant piece of evidence in this regard is Mr Carls own email in reply which, after thanking Mrs Edwards for her agreement, went on "Your money is not being used for anything to do with cars and I assure you will I will get it back to you (or wherever you want it to go) promptly.". Despite the fact that this exchange occurred on the 12 June, the money did not actually arrive with Mr Carl until the 3 July. It seems fairly clear that the reason for this was that it was only on that date that Mr Howarth succeeded in obtaining the loan secured against the Orange Porsche, and it was the proceeds of that loan which funded the payment made to Mr Carl.

48. When Mr Edwards sent a note to Mr Howarth suggesting that he arrange the loan, he began by saying that this should be done "If we can't access Lorna's £198,000". I do not think that this note was ever intended to be anything other than a private communication between Mr Edwards and Mr Howarth. Consequently, it does seem that both Mr Edwards and Mr Howarth accepted that "Lorna's £198,000" had some existence – or, specifically, had been employed for some purpose by Mr Howarth but could not be accessed. Mr Carl suggests that Lorna Edwards told him that this money had been applied in the purchase to two Porsche cars, and Mrs Edwards evidence is that what she thought that she was doing was that "I asked Andrew via Richard to lend my £198,000 to the Claimant."

49. It should be noted that Mr Carl has accepted in open correspondence that he received this payment, and accepts that he is under an obligation to give credit for it. The question here is simply as to who that obligation is owed to.

1.6 The Breakdown of Trust

50. Mr Carl eventually managed his cash crisis by selling securities (and incurring a substantial tax bill on that sale). Hereafter his communications with Mr Edwards become more peremptory, and it is clear that he was seeking to significantly reduce his exposures. At the end of August he sent a schedule to Mr Edwards listing the amounts owed to Mr Edwards on the various cars, as well as other payments made between them. Mr Carl also became more insistent that his existing cars – particularly the Miura - be sold.

51. Mr Edwards was prosecuted for the transactions involving Mr Bauer and Mr Lock, and his trial came on in July 2015. Mr Edwards convinced Mr Carl that he had acted entirely honestly in these transactions, and Mr Carl assisted him in preparing his case for court and appeared as a witness for Mr Edwards, testifying to normal practice in the sports car market. Mr Edwards was acquitted – I assume on the basis that the Jury were not satisfied that his actions had been dishonest to the criminal standard.

52. Mr Carl's evidence is that "I was genuinely shocked by what I heard at the trial, including repeated admissions by Mr Edwards that he had forged documents, misled his clients and misused monies that they had entrusted to him". Mr Carl says that he discussed his misgivings with Mr Edwards and Mr Howarth.

53. On 16 September Mr Carl's solicitors wrote to Mr Hawkins demanding the return of the cars. Mr Hawkins response on the 18th was as follows:-

> "We have issued a sales contract for the second time for the Miura for a price of $650,000 the original contract to a S African purchaser being for $750,000.
>
> Approximately $380,000 was paid to Mr Carl towards the $750,000 sale price by the S Africans.
>
> The funds for the Muira from the second contract have been received.
>
> We have agreed to sell the 2.7 RS Lightweight for £665,000,2.7 RS Touring Orange for £570,000 and F40 for £640,000 to the same purchaser of the Miura and issued sales contracts accordingly.
>
> As of today no funds have been remitted by the purchaser.

For the reasons set out below, Mr Hawkins must have known that none of this was true.

54. When Mr Carl enquired on the 30 September who these buyers were, Mr Hawkins responded "they are my buyers", and asserted that they were nothing to do with Richard Edwards. However, in later correspondence, SCM's then solicitors (Gordons) observed that:

> "SCM's reference to issuing sales contracts in his email of 18 September is a reference to Mr Edwards informing Mr Hawkins/SCM that sales had been agreed, No other invokes, or sales contracts., were issued by SCM in relation to the Muira."

55. This letter also raised the claim that the cars were held under sale or return agreements ("SRAs"), and that these entitled Mr Hawkins to retain and sell the cars. This was the first time that he SRAs had been mentioned to Mr Carl, and he therefore enquired as to their substance. On 28 September Mr Hawkins forwarded to Mr Carl a series of SRAs relating to Mr Carl's cars. All of these were signed "Richard Edwards on behalf of B.J. Carl". Mr Carl challenges the

validity of these agreements, asserting that they were forgeries created somewhere between the 18 and the 28 September for the purpose of resisting the application to remove the cars. The essence of the SRAs is that (a) SCM is authorised to sell the car as the owner's agent, (b) the owner can only recover his car on 90 days' notice, and (c) the owner may not recover his car once SCM has entered into a binding contract for the sale of the car.

56. Mr Hawkins continued to resist Mr Carl's requests for delivery of the cars, on the basis that he had entered into contracts of sale for some of them, and the remainder required 90 days' notice under the SRAs before they could be removed. Mr Carl therefore decided to resort to formal legal proceedings. Mr Hawkins and SCM were therefore served with notice of an application for an order for delivery up of the cars on Friday 9 October 2015, with a hearing date set for the following Tuesday 13th October. The draft order, with which they were provided, was addressed to SCM, Mr Hawkins and Mr Edwards, identified the eight cars which Mr Hawkins claimed to hold, and contained provisions in the usual form to the effect that "Any other person who knows of this Order and does anything which helps or permits the Defendants to breach the terms of this Order may also be held in contempt of court and may be imprisoned, fined or have their assets seized."

57. At this point it must have been clear to both Mr Edwards and Mr Hawkins that desperate measures were needed, since the process of enforcing the order would necessarily reveal that a number of the cars that Mr Hawkins had claimed to be holding for Mr Carl were in fact missing.

58. At this stage, Mr Carl believed he owned the cars identified in the table below, all of which Mr Hawkins had confirmed that SCM was holding for him. The details for each car are set out in more detail below, but the overall position is summarised here.

Car	Represented to Mr Carl	True position
Ferrari F40	Purchased in 2014 for EUR 450,000, held at SCM	Never purchased
Lamborghini Miura S	Purchased in 2014 for EUR 470,000; held at SCM	Never purchased
Alfa Romeo Montreal	Purchased in 2014 for EUR40,000; held at SCM	Never purchased
Porsche White RS Touring	Purchased in 2014 for EUR 240,000 held at SCM	Sold to a German dealer in July 2015.
Porsche Orange RS Touring	Purchased in 2014 for EUR 500,000; held at SCM	Pledged to a moneylender in July 2015, subsequently seized by Howarth
Porsche RS Lightweight	Purchased for EUR 350,000 in 2014; held at SCM	Held at SCM, seized by Edwards
Porsche 959 Touring	Purchased for EUR 350,000 in 2014; held at SCM	Held at SCM, seized by Edwards
Ferrari 365	Purchased in 2014 for EUR 195,000; held at SCM	At Sovereign Motor Sales, offered for sale from August 2015, delivered to Edwards in early 2016.

1.7 The “Raid”

59. On 9 October 2015 – a Friday - Mr Carl applied for a court order for delivery up of the cars which he believed Mr Hawkins and SCM held for him. It seems that he notified Mr Hawkins and Mr Edwards of the fact that the application was to be heard the following Tuesday 13th. The result of this was the “raid” of the 12th. Mr Hawkins version of events is that Mr Edwards, accompanied

by “4 to 5 hefty men and a car transporter”, arrived at SCMs premises, threatened him personally, and removed Mr Carl’s cars. Mr Edwards then provided Mr Hawkins with a handwritten note to the effect that he had collected “all cars belonging to Mr B.J. Carl as Mr Carl’s agent”. It may be noted that this fatally undermines Mr Edwards and Mr Hawkins argument that either of them believed at that time that Mr Edwards had any kind of ownership interest in the cars.

60. The aftermath of the raid was somewhat curious. Mr Edwards telephoned Mr Carl immediately to tell him that he had taken the cars, but refused to tell him where he was taking them. Very shortly thereafter Mr Hawkins also called Mr Carl to tell him the same thing. Mr Carl’s evidence is that the number on which Mr Hawkins called him, which was the same as the number on which Mr Edwards had called him, was not a number which Mr Hawkins would have had. I therefore think it highly likely that Mr Edwards provided Mr Hawkins with the number, and that the “raid” was a co-operative endeavour between Mr Hawkins and Mr Edwards. I do not believe that Mr Hawkins was in fact threatened – indeed it would have been extremely foolish of Mr Edwards to threaten Mr Hawkins given what Mr Hawkins knew about his activities.

61. After these two calls, Mr Carl sent Mr Hawkins an e-mail expressing regret for what had happened and assuring Mr Hawkins that he – Mr Carl – had had no knowledge of Mr Edwards intentions or activities. He did, however, also make the point that:

> “I never authorized Richard to pick up the cars on any basis nor did I authorize you to turn them over to Richard. In fact, I think I specifically instructed you not to do so. Had I meant him to

> get the cars, I would not have made it a point to tell you not to turn them over to him."

62. Mr Carl proceeded to apply to have the delivery up order made permanent. This order was made on the 20 October. Copies of the sealed final order were served on (inter alia) Mr Howarth and Mr Scholes.

63. Mr Edwards version of what happened immediately after the "raid" is that he immediately sold all of the cars to "a group of people I know who belong to … the criminal underworld". He claims to have received £800,000 as a result of this sale. This is almost certainly false.

64. Mr Edwards witness statement for his committal trial claims that he delivered the cars to a location in London on the instructions of someone called "Vic", who he described as working for Trevor Smith. He provided a mobile number for "Vic" which is the mobile number for the 9th defendant, Vikash Limbani, who was at the time the driver for Mr Trevor Smith. Mr Smith was the 10th defendant in this action, but is now dead. Mr Smith appears to have been another member of the "criminal underworld", but was also a long-standing associate of Mr Edwards.

65. It is entirely possible that Mr Smith may have lent £800,000 to Mr Edwards on the security of the cars appropriated in the "raid", and if this was the case it is entirely plausible that Mr Limbani, who was clearly more than merely a driver, might have played some role as an intermediary. However, if Mr Smith (or whoever else the lender may have been) wanted his loan repaid, he would have had to have given Mr Edwards a free hand to sell the cars, so it is not at all surprising that, having ascertained that they actually existed and were in Mr Edwards' control, he would have agreed that they be redelivered to Mr

Edwards house. They were so delivered, and appear to have remained there for a period.

1.8 The aftermath of the "raid"

66. A few days after the "raid" Mr Carl's solicitor contacted Mr Edwards, who is reported to have said that he would release the cars back to Mr Carl in exchange for a payment of £700,000. In his statement for his criminal trial Mr Edwards implied that there were sums owing to him from Mr Carl which accounted for some or all of this demand, but this does not appear to have any substance to it. Mr Carl made an offer to Mr Edwards that, if Mr Edwards returned the cars, he would submit any dispute about amounts owed to arbitration or mediation, but Mr Edwards declined this offer.

67. Mr Carl's solicitor met Mr Edwards again on 14 December 2015. Mr Edwards now said that he only had four cars left, and listed them on a napkin – the 959, the Orange Porsche, the White Porsche Lightweight and the Ferrari 365. This list is of some significance. Mr Edwards offer on this occasion was that he would return these cars (collectively worth around $2m) to Mr Carl if Mr Carl agreed to pay him £550,000 and to drop all legal proceedings against him. It is clear that Mr Edwards said to Mr Carl that if he did not agree to these terms he would, as Mr Edwards wrote, "never see any cars". Mr Edwards subsequently reduced his demand to £400,000, but Mr Carl again rejected this.

68. Mr Carl then sought to have Mr Edwards committed for breach of the delivery up order. Mr Edwards, after having sought to argue that he was not at fault for not complying with various orders because he always ignored legal documents, now came up with a number of new defences for his actions. In

particular, this was (I think) the first time Mr Edwards suggested that he had been in partnership with Mr Carl, and that he therefore had some proprietary claim to the cars. It seems that the court dealt with the application by adjourning the application into the new year and requiring the relevant information to be provided to the Police. The application was not renewed – in part due to the extraordinary conduct of Mr Carl's then solicitor – and it therefore lapsed.

2. The Fate of the individual Cars

69. Having established the overall picture, it is now necessary to turn to the origins and destinations of the vehicles concerned. The reason that this is necessary is that each car followed a different trajectory though this period, both as to how it was dealt with prior to the "raid" and as to its fate thereafter.

2.1 The F40

70. The F40 was initially offered for sale by ANTEA cars of Yokohama, Japan, and was identified by Mr Edwards to Mr Carl as a potential purchase in 2014. The terms of the purchase were to be an EUR 150,000 deposit with a final payment, to be made after some repair work was done, of EUR 300,000. It was agreed that Mr Hawkins would facilitate the transaction since he had experience of buying cars in Japan. Mr Edwards then suggested the employment of Graham Scholes, the 6th Defendant, the sole proprietor of the seventh defendant, Left Hand Drive Ltd. Mr Scholes role was to be to manage the foreign exchange process, translating USD into JPY. At the time Mr Hawkins was holding for Mr Carl the sale proceeds of a number of cars which

had been sold on his behalf, and Mr Carl requested that EUR 150,000 of these funds be applied to fund the deposit on the F40.

71. The way in which this payment was supposed to have been made was that Mr Hawkins was to pay EUR 150,000 to his currency transfer firm, Hi-FX. Hi-FX was to transfer this money on to Mr Scholes' currency transfer firm, Currencies Direct, who were in turn to pay it to ANTEA's currency transfer firm in Tokyo, JPC Trade.

72. Mr Carl was concerned that the money would pass through this chain, and that he would have no control of it. He therefore sought assurances from Mr Edwards that Mr Scholes would not release the money without his explicit authorisation. Mr Edwards sent Mr Carl copies of his e-mails to Mr Scholes instructing him not to release the money without Mr Carl's express instructions. There is no way of knowing whether these e-mails are authentic or not.

73. The EUR150,000 was paid out in the 29 July, and on the 31 July Mr Hawkins sent Mr Carl a confirmation that "the F40 deposit has arrived". Mr Hawkins then sent an SCM invoice for the car to Mr Carl, showing a sale price of EUR 450,000 with a deposit of EUR 150,000 paid.

74. On 16 October, Mr Edwards asked for a further £93,126 in respect of this transaction to cover potential currency shortfalls, transport costs and other incidentals. Mr Carl paid this amount to LHD's account at Currencies Direct.

75. On 26 November, Mr Scholes invoiced Mr Carl for the balance of the purchase price. Mr Carl transferred the balance due to LHD's account at Currencies Direct, and Mr Scholes acknowledged receipt of this amount.

76. On 16 February 2015 Mr Edwards e-mailed Mr Carl to the effect that "F40 from Japan arrives tom will be taken to Hawkins", and on 19 February Mr Hawkins confirmed that "the F40 is being collected next week". This was also one of the cars which Mr Hawkins, in his e-mail of 12 March, confirmed that he was holding for Mr Carl.

77. Thus as far as Mr Carl was concerned, he had bought an paid for an F40 which was being held for him at SCM.

78. The reality was very different. There is clear evidence that neither of these amounts were paid to ANTEA, who therefore cancelled the transaction and sold the car elsewhere. Mr Scholes distributed the amounts which he received from Mr Carl - he says, on the instructions of Mr Edwards – to a variety of persons. A reconstruction of Mr Scholes payments in this regard, undertaken by the Claimant after disclosure of Mr Scholes' financial records, reveals payments to Mr Edwards (paid into the account of Mrs Edwards), Mr Hawkins (through SCM), Mr Scholes (through Currencies Direct), to Mr Sweeney, and to others. None of this money was returned to Mr Carl.

79. Mr Hawkins evidence is that an SRA was entered into in respect of the car with Mr Edwards, signing "on behalf of B. J. Carl", on 5 March 2015.

80. In August 2015 Mr Carl suggested to Messrs Edwards and Hawkins that he wanted to have the F40 transferred to the United States for his personal use. Mr Hawkins resisted this request on the basis of the SRAs.

81. Since for our purposes this car had never existed, that is the end of its story.

2.2 The Lamborghini Miura S

82. The Miura was located by Mr Edwards in France. However, the initial approach to Mr. Carl seems to have been through Mr Sweeney, who Mr Carl believed to be handling the transaction on behalf of the French owner of the car. In fact, the French owner was represented by a French agent – a M. Prudhomme, with whom Mr Carl later confirmed the true facts, and the interposition of Mr Sweeney appears to have been a ploy to extract a commission for him. Again, Mr Edwards suggested to Mr Carl that Mr Scholes handle the payments involved. On 4 November 2014 Mr Scholes therefore asked for a deposit payment of EUR 60,000, to be followed by a further payment of EUR 450,000. It seems that of this EUR 60,000, only EUR 45,000 was paid over to the seller, with the remainder paid away by Mr Scholes on the instructions of Mr Edwards.

83. On 17 November, the seller appears to have changed his mind about the sale and cancelled the transaction with Mr Scholes. As a result, on 21 November, the EUR 45,000 deposit was returned to Mr Scholes. Mr Scholes did not inform Mr Carl of the cancellation of the transaction, and paid this money away on the instructions of Mr Edwards.

84. In February 2015, Mr. Scholes invoiced Mr Carl for the EUR 450,000 payment, and Mr Carl made that payment. Again, Mr Scholes appears to have disbursed this money on the instructions of Mr Edwards.

85. In March 2015 Mr Edwards represented to Mr Carl that he had a South African buyer for the Miura who was prepared to pay $750,000 for it. However, nothing came of this. Mr Carl was told that a $50,000 non-refundable deposit had been taken in respect of this transaction, and on 14 April Mr Hawkins sent an e-mail to the effect that this money had been paid to Mr Carl's bank account. This was, of course, untrue.

86. On 12 March 2015 Mr Carl e-mailed Mr Hawkins asking him to confirm which cars he held for him, and Mr Hawkins sent a response identifying the "orange Miura" and the "red Montreal" as being amongst the cars which he held for Mr. Carl.

87. In May 2015 Mr Hawkins reported to Mr Carl that he had another buyer for the Miura – also South African. This transaction was to have involved a substantial non-refundable deposit payment. At this point Mr Carl was fast approaching his cash crunch, in severe need of immediate funds, and he had therefore threatened to instruct Mr Hawkins deliver the Miura to another dealer – Joe Macari – who believed he had an immediate buyer for it. This would, of course, have revealed the deception as to its purchase, and it was necessary for Mr Edwards and Mr Hawkins to take measures to protect themselves. The strategy that they appear to have developed was to tell Mr Carl that the sale was ongoing, that a deposit of $300,000 had been received, and to send him $300,000 on that basis- the idea being to relieve the cash

pressure on Mr Carl and to buy them some more time. This, of course, required the raising of $300,000, and this was done by the sale of the White Porsche (see below) through Mr Howarth. However, although Mr Howarth knew perfectly well that it was the White Porsche which was being sold (since he was organising the sale), when he sent the relevant payment to Mr Carl the legend which was applied to it was "Lamborghini".

88. The strategy was successful, in that Mr Carl allowed further time for the sale of the Miura, which he believed to be ongoing, to complete, and it was only on 3 August that he decided to terminate the transaction. He therefore reached out to Joe Macari to sell the car. Mr Macari was prepared to take the car into his showroom in London, and Mr Carl sent an e-mail to Mr Hawkins on 13 September asking him to release the car. However, Mr Hawkins refused. To be specific on this point, Mr Macari wished to send a car transporter to SCM to pick up the Miura (and the F40), but Mr Hawkins indicated that he was not prepared to release the cars if such a transporter arrived. Mr Macari therefore cancelled the transporter. Mr Hawkins justification for this was that he had again sold the car – this time to a South Asian buyer.

89. Mr Hawkins sent an e-mail to Mr Carl's solicitors explaining that the Miura had been sold for $650,000 and the purchase price received. There is no evidence of any such sale, and it seems to me to be more or less certain that Mr. Hawkins statements were untrue – they were part of a smokescreen intended to avoid Mr Carl's discovering the true state of affairs as regards the Miura. Curiously, Mr Edwards now asserted that his South African buyer had reappeared and demanded to complete the sale by the delivery of physical

currency – a photograph of a gym bag full of currency being provided to Mr Carl to support this story. The purpose of this exercise seems to have been to give Mr Carl the impression that these buyers were people who were part of the criminal underworld, and who it would be dangerous for Mr Carl to cross. Mr Edwards story was now that the South Africans had delivered £292,000 in specie, and that Mr Edwards proposed to retain £42,000 of this and to launder the remaining £250,000 through the good offices of Mr Sweeney – the idea being that Mr Carl would provide false invoices for building work which could be used as the justifications for the payments. Mr Carl, unsurprisingly, refused to have anything to do with such a transaction.

90. By this time Mr Carl had involved solicitors, and this in due course led to the "raid". The Miura was one of the cars which was covered by the delivery up order, and which Mr Hawkins claimed that Mr Edwards had removed. Since it had never existed, this was also clearly untrue.

2.3 The Alfa Romeo Montreal.

91. The Alfa Montreal was to have been purchased from M. Prudhomme as a package together with the Lamborghini Miura S described above – the price for the two together being $510,000. Mr Hawkins also confirmed that he had a car of this description at SCM which he was holding for Mr Carl. The Montreal was described to and by Mr Carl as "not in running order" There is no reason to assume that this car was purchased, and it is very likely that it never existed.

2.4 The White Porsche

92. Mr Edwards brought this car to Mr Carl's attention, and he purchased it in May 2014 through the French dealer Artcurial. The car was cheap at EUR 240,000 since it had an engine of the wrong type. Mr Carl arranged for the car to be transported to a UK specialist garage, where a donor car was purchased with an engine of the correct type, and the engines of the two cars were exchanged. The fact that the car now had an engine of the correct type would have significantly increased its value, although, as a no-matching numbers car, it would still have traded at some discount. The car was then transported to SCM. Mr Hawkins regularly confirmed that he held this car for Mr Carl – for example, in an e-mail to Mr Carl's solicitors dated 18 September. He also confirmed that this was one of the cars which Mr Edwards had removed in the "raid".

93. The truth was rather different. The story seems to have been that a broker in the vintage Porsche market, a Mr Gary Stockton, had seen this Porsche on the SCM website in May 2015 and contacted them. In response he had calls from Mr Edwards and Chris Williams, both of whom represented that Mr Edwards was either the owner of, or had power to sell, the car. Mr Stockton then contacted a German Porsche dealer, Michael Roock, to see whether he had any interest in buying the car. He did, and correspondence resulted. Throughout these discussions it seems that Mr Edwards represented himself as being the owner of the car. Mr Stockton's evidence was that he did not himself represent Mr Edwards as being the owner of the car, since both Mr Roock and Mr Howarth had confirmed to him that they were already satisfied that this was

the case. The implausibility of this claim is not relevant for our purposes. On 7 July Mr. Roock agreed to buy the car for a price of £390,000, to be made up of a cash payment of £140,000 and the delivery of another Porsche (a 993 RS Club Sport) valued at £250,000 – a price which Mr Carl alleges would have been well below its true value at that time. Mr Roock seems to have been provided with an invoice identifying Mr Howarth as the seller, and providing his bank details for payment. Mr Stockton was then contacted by Mr Edwards, who explained to him that Mr Howarth would deal with the logistical and financial elements of the transaction.

94. Mr Roock appears to have been provided with a formal document evidencing the transfer of ownership to Mr Carl under the French "Carte Gris" system – which, unlike the UK registration system, constitutes evidence of title. There is therefore no doubt that Mr Roock was aware that the car was held in the name of Mr carl, and it must therefore have been the case that he must have been provided with some form of reassurance that those engaged in the sale had the actual authority of Mr Carl to do so. Mr Carl at one point sought to join Mr Roock and his company to this action on the basis that his acquisition of the car constituted a conversion, but this application was discontinued. The action before me proceeded on the basis that the effect of the sale was to transfer title to the car to Mr Roock, and I assume that to be the case without deciding it.

95. The part exchanged Porsche appears to have been delivered to Mr Howarth in Cheshire on the 26 July. Mr Howarth promptly sold it to Hexagon Motors in the UK for £240,000.

96. At English law, this raises two questions. One is as to Mr Howarth's position as regards the money which he received, and the other is as to the status of the part exchanged Porsche.

97. The property which Mr Carl owned – the White Porsche – was the subject of a "clean substitution" for the RS Club Sport. Substitution defeats following, so Mr Carls only claim to the substitute asset would be a tracing claim. However, it is important to emphasise that the fact that an asset is the traceable proceeds of another asset does not of itself mean that asset belongs to the owner of the original asset. The effect of a tracing claim is summarised in *Goff & Jones: The Law of Unjust Enrichment* (10th ed.) as follows:

> "the rules of tracing are rules that, in certain circumstances, deem one asset to be the "substitute" for another, for the purpose of enabling claims—including proprietary claims—to be made in respect of the "substitute" asset."

98. If no claim is made, no proprietary right arises. The reason that this is important in this context is that although Mr Carl could have asserted a proprietary right to the substitute Porsche, the fact that he did not do so means that it was never his property. The fact that he had no knowledge of this fact, and therefore never had any opportunity to assert any such claim, is not relevant in this context. This means in turn that he never had an immediate right to possession of the substitute car, and Mr Howarth's dealings with it did not constitute a conversion of it.

99. Mr Howarth appears to have paid the bulk of the £140,000 cash to SCM, although £30,000 was used in respect of a partial repayment of the loan taken out on the Orange Porsche (see below). Of the £240,000, the bulk - £192,500 – was used to fund a $300,000 transfer to Mr Carl. This is entirely clear from Mr

Howarth's bank statements - into an account with a running balance of around £10,000, the £240,000 proceeds of sale were paid by Hexagon on the 31 July, and £192,520 payment to Monex (Mr Carl's currency firm) was made on the 3 August, with the legend "Lamborghini".

100. I should note at this point that Mr Howarth produced an interesting explanation of this legend when he gave his oral evidence – which I will deal with in due course.

101. By coincidence, Mr Edwards was at this time on trial for fraud, and in the course of the trial he, Mr Howarth and Mr Carl all met on the 20 July 2015. Mr Carl draws attention to the remarkable fact that neither Mr Howarth nor Mr Edwards made any mention to him at that time of the fact that they were in the final stages of selling one of his cars.

102. The White Porsche was one of the cars identified in the delivery up order, and Mr Howarth was one of those served with that order. Mr Howarth's failure to disclose at that point that he knew exactly what had happened to one of the cars mentioned – that he had previously sold it to a third party – was a clear breach of that order.

2.5 The Orange Porsche

103. The Orange RS touring was identified by Mr Edwards and purchased by Mr Carl in July 2014 from LM Classic Cars in Belgium for EUR 500,000. It had an eminent racing pedigree and was therefore a premium vehicle. Mr Carl had recently sold a number of other cars through SCM, and Mr Hawkins held the proceeds of those sales on account for him. Mr Carl instructed Mr Hawkins to

pay EUR 500,000 of those proceeds to LM Cars. The Porsche was delivered to SCM in July 2014.

104. As part of his attempts to recover his cars in Autumn 2015, Mr Carl demanded the return of the Orange Porsche. On 8 September Mr Hawkins refused to allow Mr Carl to retrieve the car because it was subject to the SRA, and 90 days' notice were required. On 18 September Mr Hawkins reported that SCM had agreed to sell the Orange Porsche for £570,000 and issued sales contracts accordingly. Again, there is no evidence that any such contract was ever entered into, and indeed, in the circumstances, any such contract seems extremely unlikely.

105. The reason for this is that by September 2015 the car was elsewhere, and had been for some months. As part of their attempts to raise money to address Mr Carl's cash-flow problem, it had been agreed by Mr Edwards and Mr Howarth that cash must be raised somehow. As a result, a Mr Roy Cole was approached on 1 July 2015 to provide such financing by Mr Howarth and a Mr Kay (not a party to this action). Their initial request was that Mr Cole should provide a loan of £200,000, secured on the car. Mr Howarth took the car to Mr Cole, who inspected it, and spoke to SCM Cars to confirm its value and that it was owned by Mr Howarth. Mr Cole advanced the loan moneys to Mr Howarth in early July (possibly around the 3rd).

106. This version of events is hotly disputed by Mr Howarth. His story is that Mr Edwards asked him to obtain a loan from Mr Cole for the benefit of Mr Carl, that he did so, and that the result was that Mr Carl had borrowed the money

from Mr Cole. This issue was tried before Mr Justice Fancourt in *Roy Harry Cole v Andrew Howarth* [2022] EWHC 780 (Ch). Fancourt J concluded that:

> "a loan was agreed orally on 3 July 2015 between Mr Cole as lender and Mr Kay acting on behalf of Mr Howarth as borrower…. The terms were, as stated in the email sent to Mr Cole, that a fee of £5,000 was payable as interest for 14 days and that £205,000 was therefore to be repaid by 17 July 2015." (at [59]).

107. More importantly in this context, Fancourt J dismissed the idea that Mr Carl should be treated as the borrower. He said:-

> "The … suggestion that Mr Carl was an undisclosed principal is fanciful. Mr Howarth is simply confusing the reason for borrowing money – namely to accommodate some other person – with the question of who was the borrower." (at [56]).

108. Application was made for leave to appeal this decision, but the application was unsuccessful. Mr Howarth challenged some of the findings set out in Fancourt J's judgement, but accepted that the points which he challenged would not have been material to the application for leave to appeal.

109. The position where a point decided in earlier litigation is challenged in later litigation is unsatisfactory. It is summarised in *Phipson on Evidence* (20th Ed.) at ss. 43-02 and 43-77 as follows:

> "At common law a judgment *in personam* (whether delivered in civil or criminal proceedings) is no evidence of the truth either of the decision or of its grounds (whether findings of fact or the legal consequences of those findings), between strangers, or a party and a stranger (*Hollington v F Hewthorn & Co Ltd* [1943] K.B. 587.)".

110. I am therefore not able to simply assume the accuracy of Fancourt J's findings as to the position as regards the £198,000 loan. More importantly, I am obliged not to consider his actual conclusions as to what he considered the

facts to be, since that would constitute the admission of inadmissible opinion evidence. The idea that the considered conclusions of a judge of the eminence of Fancourt J, after detailed consideration of the documentary evidence and having seen the relevant witnesses cross-examined, should be disregarded as merely inadmissible opinion is one on which I forbear to comment. That is the current state of the law.

111. The reason that this issue arises is that Mr Howarth disputes in these proceedings the conclusion which Fancourt J reached on the facts. Fancourt J found that Mr Howarth borrowed money from Mr Cole, and not on behalf of any other person. Mr Howarth claims that he borrowed the money on behalf of Mr Carl, and that Mr Carl is therefore obliged to repay it either him or Mr Cole.

112. I must therefore form my own view as to the true position as regards the dealings between Mr Howarth and Mr Cole. To this end I was provided with the trial bundle which was before Fancourt J.

113. Having reviewed this material in detail, I have found myself unable to dissent from the conclusions reached by Fancourt J. He had, of course, had the advantage of hearing the witnesses cross-examined, but it seemed to me that the conclusion that he reached could have been reached on the basis of the witness statements alone. In particular, Fancourt J says of the oral evidence that he heard (at para 39-40 of his judgment):

> " I do not consider that either party was a reliable witness. Some of what each of them said appeared credible, but other parts were not persuasive. I am also satisfied that I am not being given by either side the full story about the background to this particular matter and what has happened since 2015. The

> court file is replete with allegations of witness intimidation, threats, loan sharking and criminal conduct on both sides. None of these matters was aired in court, except briefly by Mr Howarth in questioning Mr Cole about his lending business and by Mr Kay in making his application to set aside the judgment against him, but there has clearly been a lot more happening than I have been told about.
>
> I will not decide this case on the basis of a general preference of the evidence of one over the other, for the reasons that I have given. I will accept as likely to be true what was undisputed, those matters that in context are inherently probable, and those that are supported by contemporaneous documentary evidence."

114. It seems clear from the available documents that Mr Howarth was presented to Mr Cole, either directly or through Mr Kay, as the borrower of the money and the owner of the car, because, as he says in his witness statement, "Mr. Cole had no access to, and knew nothing of, BC [Mr Carl] at the time."(Para 14). It seems from the Judgement that at trial Mr Howarth suggested that he did in fact tell Mr Cole that Mr Carl was the owner of the car. However, this testimony was inconsistent with his witness statement and his amended defence, and Fancourt J rejected it.

115. Consequently, to the extent that it is relevant to this trial, I find that the facts surrounding the dealings between Mr Howarth and Mr Cole are as set out in the judgment of Fancourt J., and that he correctly concluded that the legal consequences of these facts are that the £200,000 was borrowed by Mr Howarth from Mr Cole on the security of a pledge of the Orange Porsche.

116. In October 2015 Max Kay informed Mr Cole that the car did not in fact belong to Mr Howarth, but to Mr Carl, and was the subject of a court order. This appears to have discomfited Mr Cole, who seems to have contacted Mr Howarth to ask him to remove the car. There is a difference of evidence as to

whether the removal occurred immediately before or immediately after the making of the delivery up order, but this does not seem to be significant. It appears that it was at this point that Mr Kay offered a personal guarantee of the repayment of the £200,000 which Mr Cole had lent on the security of the car – presumably to provide Mr Cole with an alternative form of security and to induce him to release the car. Mr Kay arranged a transporter to take delivery of the car from Mr Cole and to deliver it to Mr Howarth and Mr Howarth accepts that he took delivery of the car. There is some dispute as to the timing of the resulting developments. However, I think that the most likely sequence of events is that Mr Howarth's aim was to get the Orange Porsche back to SCM by the time the delivery up order was issued in order to conceal its absence. Although it is all extremely unclear, I think that the most likely order of events is that Mr Howarth delivered the car to SCM, it was removed by Mr Edwards in the "raid" and transported along with the other cars to Mr Edwards home.

117. At this point Mr Howarth had been served with a copy of the delivery up order and knew that the Orange Porsche was one of the cars named therein. However, he appears to have disregarded the order, on the basis that he was now seriously worried about the fact that he was liable to repay the £200,000 to Mr Cole and was unlikely to be repaid by Mr Edwards or Mr Carl. He therefore went to Mr Edwards' house, where (according to his second witness statement of March 2021) he found the Orange Porsche along with the 959, the Porsche Lightweight and the Ferrari 365. Mr Edwards appears to have allowed him to take the Orange Porsche, and provided him with the keys and ownership papers. Mr Howarth then registered the car in his own name. I find

it impossible to believe that the true intention of this arrangement was not that Mr Howarth should appropriate the car as partial or complete release of the amounts owed to him by Mr Edwards.

118. Mr Howarth kept the Orange Porsche at his home in Cheshire for a year, and then had it taken to his parent's house in Switzerland, where it seems to have remained. I note in passing that at all times Mr Howarth was aware of the court order in respect of the car, and chose to disregard it.

119. At this point the UK proceedings had been stayed pending Mr Carl's attempt to bring the case before the US courts. When that attempt was unsuccessful, the litigation resumed in the UK, and by an order of June 2017 Mr Howarth was joined to the proceedings and required to "arrange for the safe care and custody of the Orange Porsche" and not to pledge or dispose of it. At this point it must have become clear to Mr Howarth that he would be unable to use the car to recoup his debts, and he delivered it to a custodian in the UK, where it remains.

2.6 The 959 and the RS Lightweight

120. The position as regards the 959 and the RS Lightweight is more straightforward. The 959 was purchased by Mr Carl in April 2014. It was a difficult car to value, since it had been badly damaged in a road accident, but subsequently rebuilt by the Porsche factory to "as new" condition. Mr Carl paid EUR 350,000 for it out of his own account. It was transported to SCM in April 2014.

121. The RS Lightweight was purchased from LM Classic Cars in March 2014. The car is of some historic significance, having won the Portuguese national rally championship in the 1970s. Mr Carl made the relevant payments of the purchase price directly from his own bank account. Chris Williams, an associate of Mr Edwards, then contacted the seller and told them that he was Mr Carl's agent, that he was entitled to a EUR 25,000 commission on the transaction, and that Mr Carl wanted this to be dealt with by the purchase price being inflated to EUR 550,000, the sales invoice being issued to Mr Williams, with LM then paying EUR 25,000 to Mr Williams as a fee. Mr Williams then seems to have forged a bill of sale issued by LM Classic Cars to Mr Carl to cover his tracks. However, LM and Mr Carl then spoke, and the deception was uncovered. Mr Carl therefore became the legal owner of the car, having lost EUR 25,000 in passing. The RS Lightweight was delivered to SCM, and remained there until Mr Carl applied for his delivery up order on the 9th October 2015. It seems that the RS Lightweight and the 959 were kept together – it is notable that the RS Lightweight can be seen in the background of the photographs of the 959 which were used for the purposes of advertising the car on Auto Trader

122. There is some debate as to where the 959 was prior to the "raid" – Mr Edwards appears to have taken it to the South of France to show to a potential buyer; again without the knowledge of Mr Carl. The purpose of this trip may be explained by the witness statement of Jamie Petty (a witness who was not called and therefore not cross-examined), to the effect that Mr Edwards was attempting to sell the car through DCM Motors in Monaco to a European

buyer. Mr Petty suggests that this transaction did not proceed because Mr Edwards was unable to convince the buyer that he actually owned the car.

123. When Mr Carl discovered that the car had been taken to France and back he protested to Mr Edwards and Mr Hawkins, who assured him that the car had now been returned to SCM and would not be dealt with without his consent. Mr Carl says that he informed Mr Hawkins at this point that he would like to take the car for his personal use, although he was prepared to consider any offers that Mr Hawkins might receive, and Mr Hawkins agreed. This, of course, would have been an entirely different arrangement from that set out in the SRA which Mr Hawkins claims was in force at that time.

124. In order to use the car as his own, Mr Carl required a UK V-5 and registration. Mr Hawkins offered to arrange this, and requested delivery to him of the German title documents to the car as well as other documents. Mr Hawkins appears to have retained the title documents, but did not effect the registration.

125. The 959 was one of the cars which Mr Edwards retrieved from SCM in the "raid". Mr Hawkins' evidence was that the title documentation of the car was in the car at that time, and was therefore obtained by Mr Edwards. Mr Carl's position is that this is inherently unlikely, since (a) no reputable dealer would leave original title work in the car to which it related for security reasons and (b) Mr Hawkins was supposed to have dealt with this documentation as part of the process of obtaining the V5 and, since he had no authority to sell the vehicle, there would have been no reason for these papers to be with it.

126. Once Mr Edwards had removed the 959 from SCM, he seems to have delivered it to Robert Bentley of Classic Worldwide Automobiles, along with

the white RS Lightweight with instructions to sell it on his behalf. When the car did not sell, it was collected by Mr Edwards towards the end of October. It is not clear what happened to it thereafter, although Mr. Stockton suggests that Mr Edwards had approached a number of people in early 2016 seeking to sell one or other or both of these cars. It was at this time that Mr Edwards appears to have contacted, through Vikash Limbani, a car dealer called Aman Thukral with a request that he sell a Porsche 959. Mr Thukral advertised the car on an inter-dealer website called Auto Trade mail. It seems that almost immediately after advertising it Mr Thukral had a call from Joe Macari, another Porsche dealer, to inform him that the car was probably stolen. Mr Thukral appears to have removed the advertisement almost immediately upon receiving this call. I note in passing that this is the account which Mr Thukral gave in his oral evidence, and it directly contradicts the statements made in his witness statement, which were to the effect that the reason that he removed the advertisement was because Mr Edwards did not bring the vehicle to him.

127. By a dint of careful investigation, Mr Carl discovered the two cars in 2017. It seems that the 959 was being advertised by Magna Supercars, a dealership in Marbella, and the RS Lightweight along with it. The cars had been placed with them for sale by a Mr Gary Murphy (who appears to have been a close friend of Mr Trevor Smith) and a Ms. Ariadna Gabarri. Mr Carl commenced proceedings in Spain for the recovery of the cars, and discovered that Mr Murphy and Ms Gabarri claimed that they had purchased the two cars from SCM in September 2015. They produced documentation to support this claim in the form of (inter alia) a “car sale receipt” apparently issued by SCM. It appears that these documents were provided to them by Mr Edwards. The

prices specified in this document - £175,000 for the 959 and £300,000 for the RS Lightweight – bore no relation to their market value. The Spanish court ordered that the cars be seized and held in a government storage facility pending the resolution of the dispute as to their ownership. Mr Hawkins gave evidence to the Spanish court that the SCM documents produced by Messrs Murphy and Gabarri were transparent forgeries, and had not been issued by SCM. On this basis, the Spanish court released the cars to Mr Carl. One of these (the 959) has been sold, and the other is with Mr Carl in the United States.

2.7 The Ferrari 365 GT 2+2

128. The Position as regards the Ferrari 365 s unquestionably the most complex. It was identified to Mr Carl as for sale in France by Mr Edwards, along with an unrestored Maserati Sebring, with both cars offered together for EUR 195,000. Mr Carl purchased them in September 2014, with payment being made from his account with EFG bank. The Ferrari was delivered to SCM in November 2014. SCM advertised it for sale at £165,000, specifying that it “benefited from a bare metal repaint" and as being "simply lovely, inside and out." The advertisement represented that the Ferrari 365 would be accompanied by a warranty, as further proof of its good mechanical condition.

129. This is one of the cars which Mr Edwards is said to have removed from SCM on 12 October 2015, and which Mr Hawkins identified as having been removed. However, Larry Webb, the principal of Sovereign Motor Sales (not a party to this action), provided a witness statement to the effect that Mr Edwards had delivered the car to him in August 2015 for sale, explaining to

him that he owned the car, having taken it as payment for a debt. Mr Webb marketed the car from August 2015 to Spring 2016. In early 2016 he was contacted by another dealer who had seen Sovereign's advertisement for the car, and who informed him that it had been stolen from an American collector. He therefore took down his advertisement, placed the car in storage, and set about trying to contact Mr Edwards. This proved unsuccessful, and in June 2016 he hired a car transporter to deliver the car to Mr Edwards' house.

130. At some point in early 2016 Mr Edwards appears to have approached Mr Roy Cole with a request to borrow £275,000 on the security of this car, on the basis that he had a buyer for the car at a price of £600,000 and required temporary liquidity. Mr Cole, perhaps unsurprisingly, declined the proposal. According to witness statements from Mr Kay and Mr Greenwood, the car was then delivered to another money-lender, Mr Brendan Flynn – it appears, to secure a loan of £60,000 or so. This transaction was effected by Mr Kay, and the proceeds paid into Mrs Edwards' bank account.

131. In order to repay Mr Flynn, Mr Kay then arranged the sale of the car to Scott Davis (the 13th Defendant), and his company Pescara International Ltd (the 16th Defendant). It seems that, prior to buying the car, Mr Davis had arranged to sell the car on to Simon Greenwood, the 14th Defendant, and the company for which he worked, Mansa Limited, the 15th Defendant. It is important to note that Mr Greenwood was not the principal of Mansa, but merely acting in association with them – however, he appears to have had the authority of Mansa to purchase cars in its name as its agent. The price to be paid for the purchase was £72,000. This amount was paid on behalf of Mansa on 1

September 2017, and Mr Greenwood arranged for the car to be collected from Mr Flynn. The following day Mr Davis informed him that the car was the subject of a delivery up order, and offered to buy it back for £77,000. Mr Greenwood demanded £90,000. On 14 September 2017 Mr Greenwood was contacted by Mr Edwards, who claimed to be the former owner of the car, and offered to "repurchase" the car. Mr Greenwood again demanded £90,000. Negotiations continued, but no price was agreed.

132. Meanwhile Mr Carl had been tracing the car. He had made contact with Mr Davis, who had pointed him to Mr Greenwood, and on 13 March 2018 Mr. Carl contacted Mr Greenwood directly. Mr Greenwood again refused to part with the car. Mr Greenwood was then contacted by the Police, and informed that the car was potentially stolen.

133. The car remained with Mansa, but in December 2019 Mr Greenwood removed the engine, gearbox, seats, front trim and engine bonnet from the car. Without these components the car is almost worthless.

134. Mr Greenwood's witness statement is to the effect that this was done because the engine had been irreparably damaged through "one of the pistons breaking", and that he therefore sold it for scrap. Not only does this explanation fail to account for the removal of the other components (specifically the gearbox), it also conflicts with the witness statement of Larry Webb of Sovereign, whose evidence is that during the year in which the car was with him, he drove it on several occasions, and it was regularly inspected by expert mechanics. His view, and – he reported – those of his mechanics - was that that all 12 pistons ran smoothly and without issues.

135. The carcass of the car remains with Mansa, who have dispensed with the services of Mr Greenwood. The position as regards the engine, gearbox and trim is more complex. Mr Wheeler, the principle of Mansa, says that in February 2020 he received a text message to the effect that the sender had heard that he was looking for a Ferrari engine and gearbox, and giving him contact details of a person ("Mark") who would be able to help. Mr Wheeler has established that the engine and gearbox were in 2021 with a person called Mark Williams, who sent him photographs of the engine and clutch which he had which were those from the 365. Mr Williams claimed to have purchased the engine and gearbox from Mr Greenwood for £27,000, and wanted to sell them back to Mr Wheeler for £30,000. Mr Wheeler appears to have agreed to this proposal.

136. It is (I think) relevant in this context that Mr Wheeler claims that he conducted a number of HPI checks in order to determine whether the car was stolen. However, for the whole of the period under consideration the car bore a French registration, and the HPI process only covers cars registered with the DVLA and DVA. Consequently, the fact that the cars had been reported stolen would not have showed up on any such checks. I find that all those concerned in this part of the transaction, as experienced dealers in premium cars, would undoubtedly have known that this was the case. Consequently, the making of these checks does not provide any kind of due diligence defence.

2.8 The overall position

Of the eight cars that SCM claimed to hold for Mr Carl, it is clear that by the time of the "raid" they were only holding three. The F40, the Miura and the

Montreal were never purchased, the White Porsche had been sold, the 365 was with Sovereign cars. Mr Howarth says that the Orange Porsche had by this time been recovered from Mr Cole and redelivered to SCM. Consequently on the evening of the "raid", it is very likely that the only cars actually present at SCM were the Orange Porsche, the 959 and the Porsche Lightweight, although it is possible that the 365 might also have been present. I think it is also relevant in this context that when Mr Edwards provided the napkin list of cars that he could actually return, this list consisted of the 959, the Porsche Lightweight, the 365 and the Orange Porsche. These are also the cars which Mr Howarth describes as having seen at Mr Edwards' house shortly after the "raid".

3. The evidence

137. This has been an extraordinarily difficult case to unravel. Part of the problem is that one of Mr Edwards' techniques, in addition to the forging of invoices, seems to have been amending (and sometimes simply falsifying) emails before forwarding them in order to give Mr Carl (and presumably others) the impression that he was proceeding to implement non-existent deals.

138. Since Mr Edwards has not provided disclosure, the third-party communication before me are largely texts forwarded by Mr Edwards to Mr Carl, whose authenticity is therefore suspect. There is also the problem that since the core of the case involves disentangling Mr Edwards' actions, but he is not a witness, a great deal of evidence turns on what Mr Edwards is said to have said at particular occasions – that is, on hearsay evidence.

139. It is also fair to say that the procedural history of this case can be politely described as a shambles. The case was more or less ready to come to court in 2016 – proper pleadings had been drafted by counsel, witness statements had been collected, and evidence amassed. Mr Carl then sought to have the UK proceedings stayed whilst he experimented with bringing his case before the US courts. This endeavour failed – perhaps unsurprisingly – and these proceedings were recommenced before this court. However, by that time all parties were unrepresented, and Mr Carl, I would say extremely unwisely, decided that he had spent enough on lawyers and would hereafter conduct his case himself. The final stages of preparation for trial therefore involved litigants in person seeking to comply with detailed rules of court as to service of documents and preparation of statements with which they were wholly unequipped to comply. This process was not helped by Mr Carl's habit of treating procedural requirements as desiderata rather than hard rules. However, it is also clear that the various defendants appear to have embarked on a campaign of procedural guerilla warfare, the aim of which seems to have been to defer the hearing of the trial indefinitely in the hope that Mr Carl would eventually desist. If that was their thinking, it betrayed an extraordinary misunderstanding of Mr Carl, whose conduct of this case seems to have been motivated by a genuine indignation at what he perceives as wrongdoing. It is therefore unsurprising that a degree of – justifiable - acerbity is visible in some of the later determinations of the learned master dealing with pre-trial issues.

140. The consequences of all this are that this matter arrived at trial burdened with conflicting and unresolved issues relating to late and/or improper service of trial documents, non-provision of witness statements, admissibility of hearsay

evidence, non-compliance with prior procedural orders, and non-compliance of those statements provided with the rules of court.

141. My approach to these issues was informed primarily by the fact that the cases to be presented to me were in all cases the cases which had been ready for trial in 2016, and which had been available to all of the parties since that date. In no case were any of the witness statements prepared for that hearing significantly amended or supplemented, the cases as presented corresponded with the pleading prepared at that date, and no new legal issues were raised. My starting point was therefore that as a matter of fact, all of the parties had sufficient information available to them to be able to present their cases at hearing – and indeed had had that information for the last seven years. I therefore decided to cut the procedural Gordian knot by allowing the hearing to proceed without considering any of these issues *ab initio*. The outcome – as I had expected, after reading the papers – was that all parties presented their cases fully by reference to the evidence available, and were not – as far as I could see – prejudiced in any way by any of the alleged non-compliances.

4.1 The Witnesses

Mr Carl

142. Mr Carl gave his evidence clearly and well, and was in my view an impressive witness. He has clearly devoted many years of his life to pursuing the vehicles of which Mr Edwards sought to deprive him, and his detailed research – set out and documented in his numerous witness statements – was both thorough and comprehensive. He cross-examined the witnesses who did appear with tact and sensitivity, and at times exhibited a great deal of self-restraint. I note

that a good part of the defence put forward by Mr Hawkins and Mr Howarth was liberally laced with unevidenced personal allegations against Mr Carl, ranging from dishonesty to deceit to fraud. Mr Carl sought at one point to introduce evidence to rebut these allegations, a request which I was obliged to refuse, since they formed no part of the case before me. However, I can say that, having considered these allegations with the benefit of the documentary evidence before me, they were entirely unsupported and should never have been made. It is difficult to constrain a litigant in person in the oral presentation of their case, and I must content myself with finding that Mr Carl's conduct has, on the evidence before me, been blameless throughout.

Mrs Edwards

143. Mrs Edwards presented herself in her written witness statements as being entirely ignorant about everything that had happened, to the extent that she was unaware of any of her husband's actions. This was not, however, entirely supported by her oral evidence, in which she evinced not only a degree of understanding as to the way in which her husband operated generally, but also – in my view – a degree of intelligence. She was portrayed in one of the witness statements filed in support of her case as a credulous fool – I entirely reject that characterisation. This was also manifested in her cross-examination of Mr Carl, which was conducted clearly, unemotionally and effectively.

144. I should note that the state of the relationship between Mr and Mrs Edwards is unclear, and it was suggested at one of the preliminary hearings – possibly injudiciously - that she might be a "battered wife". Mrs Edwards did at a late stage of the preliminary proceedings seek permission to amend her pleadings

to include a plea of undue influence. However, the amendment which she sought did not make any allegations of undue influence against Mr Edwards, but sought to argue that she had been subject to indirect undue influence from Mr Carl (who she admitted she had only dealt with on a handful of occasions) through Mr Edwards. The learned Master – entirely correctly, in my view – disallowed this amendment on the basis that it was logically incoherent – if she was not prepared to argue that she was subject to undue influence by Mr Edwards, it would clearly be impossible for her to argue that she had been subject to undue influence by Mr Carl acting through Mr Edwards. There is therefore no aspect of undue influence in the pleaded case.

145. Mrs Edwards filed a supplemental witness statement setting out in some detail the nature of her relationship with Mr Edwards. I understand that she was unwilling to make any formal complaint against him, since – *inter alia* – he is the father of her children. However, desperately unpleasant as I understand her position to be both then and now, I do not think that the evidence that I have seen would be sufficient to support an argument that she was not knowingly involved in what Mr Edwards was doing in her name and purportedly on her behalf at the relevant times.

Mr Hawkins

146. Mr Hawkins appeared as a witness for Mr Howarth. Both appeared to believe that Mr Carl was being highly unreasonable in pursuing his case – their feelings appearing to be that he could afford to sustain the losses which their actions had resulted in his suffering, and that he should now simply withdraw. Both alleged – without evidencing – wrongdoing by Mr Carl. The most

curious aspect of their evidence, to my mind, was their failure to say anything at all about what Mr Edwards had done and why. Despite the fact that both of them had been closely involved in Mr Edwards machinations, neither were able to cast any light at all on this issue, and neither were able to produce any communication between them and Mr Edwards which shed any light on their relationship. Mrs Edwards evidence is that Mr Edwards preferred to do business by telephone, but it is clear from Mr Carl's evidence that he was a regular user of e-mail, and this absence is surprising.

147. Mr Hawkins evidence was primarily focussed on the position of Mr Edwards. The reason why Mr Howarth tendered Mr Hawkins as a witness was – I think – to support the argument that Mr Edwards and Mr Carl were in some sort of "partnership", whose legal consequence was to permit Mr Edwards to deal with Mr Carl's cars as he saw fit without restraint. As explained below, I think the term "partnership" in this regard is a red herring – it is entirely clear that no such partnership ever existed. However, what I think Mr Hawkins meant by "partnership" in this regard was that Mr Edwards had the same rights as a partner would have to contract on behalf of his partners as regards partnership business, and that, since the business of the partnership was buying and selling cars for Mr Carl, that Mr Edwards was in this regard an agent of Mr Carl.

148. Mr Hawkins' evidence in this regard was entirely unsatisfactory, since he was clear that his only ground for believing anything of the kind was what Mr Edwards had told him. Since he accepted that he had only once spoken directly to Mr Carl, and that that conversation, and his subsequent e-mail exchanges with Mr Carl, absolutely did not support the idea that Mr Edwards

had the authority that Mr Hawkins claimed to believe that he had, Mr Hawkins testimony came down to an assertion of the proposition that he was entitled to accept and act on Mr Edwards' representations to him, regardless of what Mr Carl, the principal, had told him. This evidence did not advance either his case or that of Mr Howarth.

Mr Howarth

149. Mr Howarth, in particular, was a strong believer in the "deny everything" approach to evidence. He accepted that he had known Mr Edwards for over 30 years, and that Mr Edwards had had regular business dealings with both Mr Howarth and his father (who was also a car dealer), and that he had been a close friend of the Edwardses.

150. Mr Howarth's fundamental position was that his involvement in the various dealings instigated by Mr Edwards in respect of Mr Carl's cars – in particular the sale of the White Porsche, the pledging of the Orange Porsche, and the discussion which he had with Mr Edwards about the logistics of the "raid" – was both entirely innocent and entirely unremunerated – in his words, he was doing all this gratuitously as a favour to Mr Edwards in the hope of doing business with him in the future. I found this testimony wholly unconvincing.

151. The key issue as regards Mr Howarth's testimony is the payment made to Mr Carl out of the sale proceeds of the White Porsche. Mr Howarth paid this money to Mr Carl, labelled as "Lamborghini". This description supported the lie which Mr Edwards had told Mr Carl about the origin of this payment. The ordinary inference which might be drawn from the application of this label to this payment is that Mr Howarth and Mr Edwards knew exactly what was

going on, and were acting together to deceive Mr Carl. When this was put to Mr Howarth in the witness box, he produced as an explanation for this labelling that he and his father had, purely coincidentally been about to buy a Lamborghini, and that since this payment had been set up with their bank, the Lamborghini label had simply been applied to it by inadvertence. It was suggested that this story was supported by para. 41 of his First Witness Statement. in his witness statement to his having wanted to purchase the Miura at the same time that the partnership were looking at it. However, this would have involved a payment instruction given in February 2015 being suddenly activated to an entirely different payee and for a different amount being activated in August 2015. Thus is not plausible. The appearance of a story so improbable seemed to me to be the thirteenth chime of the clock, which casts doubt not only on itself, but on everything that has gone before it. Mr Howarth therefore seemed to me to be an entirely unsatisfactory witness.

Mr Limbani

152. Mr Limbani proffered a straightforward "stonewall" defence. His position in his witness statement was that he had never spoken to Mr Edwards about the cars, that he had only ever provided Mr Thakral's telephone number to Mr Smith, and that he had no documentation or communications of any kind to disclose.

153. Mr Limbani's cross-examination unearthed a number of issues which were not mentioned in his witness statement, the most interesting of which was a period payment of £500 per month received by his wife out of the account of Mrs Edwards (undoubtedly made by Mr Edwards), for several months after the

"raid", with the legend "storage". Mr Limbani's explanation for these payments – that they related to secretarial services provided to Mr Smith – was entirely unconvincing.

154. Mr Limbani was an unsatisfactory witness, who clearly knew a great deal more than he was prepared to disclose.

4.2 The Expert Evidence

155. I should also note that initially expert evidence was put forward, both by Mr Howarth and Mr Carl, as to the value of the cars involved. Both parties had sought the opinions of experts in the car business as to the value of the various cars at the various relevant times. As initially submitted, neither report satisfied the requirements of CPR 35. Mr Howarth's counsel decided that the best thing to do in these circumstances was to withdraw his experts report per se, although it remains in evidence. Mr Carl – misguidedly – decided that he wanted his expert's report to be compliant. He therefore drafted and provided to his expert a summary of the case to be inserted into his report, and it was so inserted. However, what Mr Carl did not do – presumably because he did not know it was required – was to explain to his expert that his duty to the court was as an impartial advisor. Mr Williams, for Mr Howarth, elicited this fact in cross-examination of Mr Carl's expert. I therefore declined to regard either side's report as an expert report satisfying the requirements of the rules of court. However, I am entitled to – and do – take into account that both of the draft reports provided demonstrate a very high degree of convergence as to the actual values to be ascribed to the vehicles concerned. In both cases, the opinions expressed are not admissible in evidence per se. However, the fact

that two persons identified as having expertise in the field come to very similar estimations of the value of the assets concerned, and that these valuations are broadly in line with those pleaded by the claimants is, I think, a fact which I am entitled to accept as evidence.

4. The Legal Relationships Between the Parties.

156. A great deal of this case turns on the question of what the rights and obligations of the various parties inter se actually were. It is therefore helpful to consider these issues separately before turning to the position as regards the individual defendants.

157. The starting point for this is the question of the relationship between Mr Edwards and Mr Carl. There are several parts to this question. The first is as to the contractual position between them. The second is as to whether they were in any way in partnership, as has been suggested – and if there was, what the consequences of that partnership might have been. The third is the question of whether Mr. Carl had behaved in such a fashion as to give Mr Edwards apparent or ostensible authority to act on his behalf and, if he had, what the scope of that authority might have been.

158. The next set of issues is the relationship between Mr Hawkins and SCM, on the one hand, and Mr Carl on the other. The question here is as to whether this arrangement was a common law bailment or a contractual bailment on terms (and if so what those terms were), and whether it gave rise to any fiduciary obligations owed to Mr Carl.

159. A third issue which arises is the position as between Mr and Mrs Edwards. Mrs Edwards accepted that Mr Edwards acted in her name, and paid and received monies into and out of her bank account, which she authorised him to operate on her behalf. However, she argues that she was not a party to any of his dealings, and should not be held liable for them. This raises the question as to whether and to what extent he was acting as her agent in these transactions.

160. Finally, there are the arrangements which existed between the parties – in particular, the extent to which they may be said to have acted either as joint tortfeasors or as parties to one or more conspiracies.

5.1 Mr. Edwards and Mr. Carl – Contract

161. The arrangements between Mr Carl and Mr Edwards were – at least initially – entirely informal. Mr Carl wanted to buy classic European sports cars, Mr Edwards had been active in that market for many years, and the two of them co-operated in the buying and selling of such cars. However, Mr Carl – I think wisely – decided after some time that the arrangements between them should be formalised. He therefore set down on paper his understanding of the arrangement between them in the form of the "term sheet", which was sent by Mr Carl to Mr Edwards on 15 November 2013.

162. What Mr Carl sought to do in this arrangement was to employ Mr Edwards to identify cars for Mr Carl to purchase, and to incentivise him by agreeing to pay him a fee based on the actual profit realised on any such car. Standard practice in the car trade was agreed before me to be that where an agent identifies and administers a transaction for a client, he receives a commission of 5% of the value of the vehicle. The arrangement which Mr Carl put to Mr

Edwards was that, where Mr Edwards sourced a car for him, he would have a sixty-day exclusivity period within which to sell it (extended to 90 days if a deposit was received within 60 days). If he found a buyer within that period at a price 20% higher than the price paid, then he would be entitled to a commission of 50% of the uplift in price. If Mr Carl decided that he wanted to keep the car, he would be obliged to pay Mr Edwards the amount which he would have received in commission had the car been sold. Mr Edwards claim for this commission payment was described in the agreement as Mr Edwards "interest" in the car. Finally, the term "profit" in this regard was calculated as the sale price less (a) the purchase price of the car, (b) storage and other costs incurred in respect of the car, and (c) a "cost of funds" adjustment equal to 1% per month of the sum of (a) and (b).

163. It is notable that the term sheet is explicit that Mr Edwards is appointed as a broker only, and does not have authority to sell any car, enter into contracts in relation to any car, or accept offers in relation to any car.

164. The term sheet does not appear to have been signed by either party. It was sent by Mr Carl to Mr Edwards as an attachment to an e-mail which read "If I am going to buy any cars for resale, the attached is the only basis on which I will do so.". After this date Mr Edwards purchased a number of cars for Mr Carl and, importantly, sought to be paid in accordance with the terms of the term sheet. Indeed, when at a later stage Mr Carl and Mr Edwards came to discuss the amounts of commission potentially due on cars, Mr Carl replied with a series of "worksheets" (faxed to Mr Edwards on 10 November 2014) in which he set out the commission calculation for each car in accordance with the

terms of the term sheet. There is no indication that Mr Edwards did not accept these calculations. I therefore find that the term sheet constituted an offer by Mr Carl which Mr Edwards accepted by conduct, and that it correctly sets out the contractual position between them.

5.2 Mr. Edwards and Mr. Carl - Partnership

165. It was, however, suggested by Mr Edwards and some other parties that the arrangement between Mr Edwards and Mr Carl was in the nature of a partnership – the basis of this argument being that the arrangement between the parties was that they would divide net profits arising on the sale of cars equally between them.

166. The question of whether an arrangement constitutes a partnership is a matter of law. This is a point set out by Lord Lindley, described in *Lindley & Banks on Partnership* (21st Ed.) (5-03) as "a principle so fundamental that it is not expressly stated in the Act itself", that:

> "in determining the existence of a partnership … regard must be paid to the true contract and intention of the parties as appearing from the whole facts of the case. Although this principle is no longer expressed it is still law".

167. What this means is that even if the parties have explicitly agreed *inter se* that the arrangement between them is not a partnership, the question of whether it is in fact a partnership or not is determined by asking whether that arrangement, as a matter of fact, has the characteristics which the law recognises as constituting a partnership. Hence, even if neither Mr Edwards nor Mr Carl intended their arrangement to be a partnership (and I am in no

doubt that Mr Carl, at least, did not), it is still necessary to analyse the arrangement to determine its characterisation.

168. It is clear from section 1(1) of the Partnership Act 1890 that a partnership can exist even if there is no jointly owned or partnership property. The true position is that "It is not … essential to the existence of a partnership, that there shall be any joint capital or stock. If several persons labour together for the sake of gain, and of dividing that gain, they will not be partners the less on account of their labouring with their own tools". (*Lindley & Banks* para 5-39), citing Lord Lindley. The paragraph goes on:

> "The effect of this is that where one person owns property and the other possesses a particular skill, they may agree that the latter should have control of the property for their mutual benefit and that they should divide the profits derived from its employment between themselves. In such cases, it may be no easy task to identify whether or not a partnership has been created: everything will depend on the terms of the parties' agreement and on their underlying intentions."

169. It is entirely clear in this case that there can have been no pooling of assets between Mr Carl and Mr Edwards. Leaving aside Mr Carl's repeated attempts to ensure that this was not the case, all those involved knew that Mr Edwards was an undischarged bankrupt, and that any property vested in him would potentially have passed under the control of his trustee in bankruptcy. I think it is clear that any partnership that may or may not have existed between Mr Carl and Mr Edwards would not *per se* have resulted in Mr Edwards acquiring any ownership or proprietary interest in the cars concerned.

170. The basis of Mr Edwards claim of partnership is that the arrangement that he should receive 50% of the gain on sale of cars which he had identified from Mr Carl to buy constituted a sharing of the profits of the business of buying

and selling these cars, and under s.2(3) of the Partnership Act 1890 "The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business". However, it is clear that the mere fact of such a division is not of itself sufficient to constitute a partnership. The section itself goes on to say "but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business.". It is clear from the authorities (in particular the Court of Appeal decision in *Badeley v Consolidated Bank* (1888) 38 Ch.D. 238 and *Davis v Davis* [1894] 1 Ch. 393) that the effect of this section is not that a sharing of profits creates a presumption of partnership which must be rebutted, but that

> "…if there are other circumstances to be considered, they ought to be considered fairly together; not holding that a partnership is proved by the receipt of a share of profits, unless it is rebutted by something else; but taking all the circumstances together, not attaching undue weight to any of them, but drawing an inference from the whole." (*Davis v Davis* [1894] 1 Ch. 393 at 399).

171. The true test in cases of this kind is whether the intention of the parties is that all those involved should potentially share in any losses – i.e. that they have capital at risk. This is because an agreement to share profits and losses, in the sense of making good the losses if they are sustained, may be said to be characteristic – if not of the essence – of a partnership. In this regard *Lindley & Banks* (at 5-32) cites Lord Lindley's observation that

> "Whatever difference of opinion there may be as to other matters, persons engaged in any trade, business, or adventure upon the terms of sharing the profits and losses arising therefrom, are necessarily to some extent partners in that trade, business or adventure"

172. The meaning of the term "sharing losses" is more than a mere matter of accounting – it is inappropriate to describe as partners persons who have agreed to share profits and losses if there is no general obligation to make good the losses. For example, where a selling agent agrees to share the profits and losses realised on his sales, it may be intended that he should be paid by a share of profits, with the losses of one year merely being deducted from the gains of another. If this is the true intention, he will not be in partnership with the vendor (*Horner v Hasted* [1995] S.T.C. 766.).

173. In this case I think it is entirely clear that there was never any intention for Mr Edwards to make any monetary contribution in the event that a loss was suffered on the sale of any car. There is no mention of any such arrangement in the termsheet, there is no suggestion that Mr Edwards had assumed any such obligation by subsequent agreement, and in any event, Mr Carl knew perfectly well that, since Mr Edwards was an undischarged bankrupt, any such undertaking would have been worthless. Consequently, I am satisfied that the arrangement between Mr Edwards and Mr Carl did not involve the sharing of losses in any way, and as such cannot have been a partnership in the legal sense of the word. I accept that this might not be determinative if there were clear evidence that it was the intention of both parties to create a partnership – see *M Young Legal Associates v Zahid* [2006] 1 W.L.R. 2562 CA. However, I am satisfied that there is no evidence of anything of the kind – Mr Carl was clear that this was not his intention, and Mr Edwards appears to have come up with the idea of partnership some time after the events which are the subject of this hearing. What evidence there is points away from, rather than toward, an

intention on either side to create a partnership. I am satisfied that there was no such intention, and that as a result there was no partnership.

174. It is, however, very likely that Mr Edwards represented to other parties – in particular Mr Howarth and Mr Hawkins – that he did have full authority from Mr Carl to deal with and dispose of the cars subject to the agreement, and their cases seem to turn on that fact. Thus, once we have dispensed with the idea of partnership, it becomes necessary to address questions of agency.

5.3 Mr. Edwards and Mr. Carl - Agency

175. The starting point here is that as a matter of law Mr Edwards was no more an agent of Mr Carl than he was a partner. Mr Carl repeatedly instructed Mr Hawkins that the cars involved were his, and he and he alone had power to dispose of them, and I have no doubt that that was indeed the position under the agreement between them. Mr Edwards might say what he wanted to third parties, but he could not make himself an agent through his own words or actions.

176. The question is therefore one of apparent authority. I note in passing that the mere fact that Mr Edwards was acting in his own interests to defraud Mr Carl would not relieve Mr Carl of liability for his actions if in fact the relevant acts were in other respects within the scope of Mr Edwards' apparent authority. A principal is bound by acts done by an agent in the scope of apparent authority, whether in contract or tort or otherwise. However, where the nature of the transaction is such that the third party has notice that the agent is exceeding his authority, the principal is not bound, and the fact that the agent's acts are manifestly for the agent's personal benefit may amount to such notice. And it

is a standard proposition that a principal is not liable merely because by appointing the agent the principal gives the agent the opportunity to behave fraudulently.

177. I think it is very likely that Mr Edwards did in fact have some authority to make arrangements in respect of cars – thus, where it became necessary to arrange for cars to be transported from one place to another, Mr Carl appears to have been happy for Mr Edwards to make those arrangements. However the question is whether Mr Carl, by words or conduct, inadvertently represented to one or more third parties that Mr Edwards had more authority to act on his behalf than he in fact did – in legal terms, did he say or do anything that would have had the effect of representing to a third party that Mr Edwards had such authority?

178. A representation must be made by words or conduct, and may be implied from acts of a quite general nature, e.g. putting a person in, or allowing him to adopt, a position carrying with it a usual authority. The question in this case is as to whether Mr Carl can be said, by reason of appointing Mr Edwards as his agent to conduct negotiations relating to the purchase and sale of cars, to have put him in a position in which those dealing with him would have presumed that he had authority to effect the purchase and sale of those cars, either in his own name or on behalf of the true owner.

179. It is obvious that a third party cannot rely on apparent authority if that party knew of a relevant limitation on the normal implied authority or was otherwise aware of a lack of actual authority (*Bowstead and Reynolds on Agency*, 22nd edn (2021), art.73.), so Mr Hawkins could never have relied on any such

presumption, since he had been given explicit instructions to the contrary by the actual principal. The immediate question is therefore whether the other parties – in particular, Mr Howarth - could have done so.

180. Mr Howarth's evidence is that the totality of his communications with Mr Carl were a few hours at most. His witness statement explains in some detail what Mr Edwards and Mr Hawkins told him about Mr Edwards' arrangement with Mr Carl, but none of that is relevant for our purposes. In order for a person to have ostensible authority as an agent, a representation must have been made by the principal, or someone authorised in accordance with the law of agency to act for the principal. An agent's own representation of authority cannot of itself create apparent authority - *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 Q.B. 480 at 505. The question is therefore whether it can be shown that Mr Cari had engaged in an implied representation of that agency. It is important to note that this is not a binary question. The question is not simply one of whether Mr Edwards was an agent at all, but as to what sort of agent he was, and in particular what sorts of contract he might have had authority to enter into on behalf of his principal.

181. More importantly, if it was known that Mr Edwards required the consent of Mr Carl to enter into transactions involving the cars, it is not enough for those dealing with him to have relied on his assurance that the consent of Mr Carl had in fact been obtained, since any such statement would have begged the question as to how the recipient knew that he was authorised to make that statement. (see *Armagas v Mundogas* [1986] A.C. 717). Mr Howarth's evidence is that he knew what he knew about Mr Edwards authority through

conversations with Mr Edwards and Mr Hawkins. Specifically, he says that he never met Mr Carl in person before 2015, and that he had had only a single direct telephone call with Mr Carl, which occurred after the "raid". Given that Mr Howarth's evidence is that he had known Mr Hawkins for 20 years, it seems likely that he may have discussed the relationship between Mr Edwards and Mr Carl with Mr Hawkins, which may explain the otherwise incomprehensible vehemence with which he, in his witness statement, asserts the details of an arrangement between Mr Edwards and Mr Carl, of which he, by his own admission, can have had no direct knowledge whatsoever.

182. There was therefore no basis on which Mr Howarth could argue that Mr Edwards had apparent authority granted by Mr Carl to act as his agent in the disposal of his cars.

183. The remaining question is as regards ostensible authority. Even if Mr Carl had not in fact made any statement, express or implicit, which confirmed any authority Mr Edwards might have had, the question remains as to whether he had, by his actions, put Mr Edwards in a position where others could legitimately have assumed that he had such authority. This is a question of the implied authority normally applicable in the circumstances or to a person in the agent's position.

184. This is a significant point where the purported agent is appointed to a post where the occupant of that post could reasonably have been assumed to have authority (*Armagas v Mundogas*). However, that is not this case. Mr Edwards was not formally appointed to any particular role – indeed, informality surrounded his activities. In such a case, the position is that a claimant cannot

rely on apparent authority "if it failed to make the inquiries that reasonable person would have made in all the circumstances in order to verify that [the agent] had authority" *East Asia Co Ltd v PT Satria Tirtatama Energindo* [2019] UKPC 30, [2020] 2 All E.R. 294 at [93], cited with approval in *Law Debenture Trust Corp Plc v Ukraine [*2023] UKSC 11, [2023] 2 W.L.R. 699 at [39]. No such enquiries were made by Mr Howarth – and if they had been, there can be no doubt as to what the response would have been. I therefore find that Mr Howarth could not rely on any sort of agency to argue that Mr. Edwards had any power to sell the cars concerned. Any such belief that he did have was the result of misrepresentations made to him by Mr Edwards (and possibly Mr Hawkins), and his remedy is against them.

5.4 Mr. Edwards and Mr. Carl – Fiduciary Obligations

185. That does, however, leave the question of whether Mr Edwards was subject to fiduciary duties. If Mr Edwards had been correct that – as he claims he claimed - he was in fact in a partnership with Mr Carl, there would have been no doubt that he was in a fiduciary relationship with Mr Carl, since the existence of fiduciary duties between partners is one of the classical examples of fiduciary obligation. The truth is that he was not, but it is clear from the evidence that he held himself out as such. For this purpose, it does not matter whether he held himself out as a partner or as an agent with the power to deal with Mr Carl's property – in either case, he was holding himself out as a fiduciary, and other defendants dealt with him on that basis.

186. I think the answer here is to be found in Lord Browne-Wilkinson's speech in *White v Jones* [1995] 2 AC 207, where he said (at [271])

> "The paradigm of the circumstances in which equity will find a fiduciary relationship is where one party, A, has assumed to act in relation to the property or affairs of another, B. A, having assumed responsibility, pro tanto, for B's affairs, is taken to have assumed certain duties in relation to the conduct of those affairs, including normally a duty of care... By so assuming to act in B's affairs, A comes under fiduciary duties to B."

The resulting concept might be loosely described as a fiduciary *de son tort*.

187. I do not think that there is any doubt that Mr Edwards sought to assume responsibility for the conduct of Mr Carl's affairs in respect of the cars. It is clear that he had no intention of acting as a fiduciary, or of acting in Mr Carl's best interests – the reason that he purported to act in this way was to steal from him. It is equally clear that Mr Carl did not think that Mr Edwards had assumed any such duties. However, that is not determinative – the question is one of fact, not intention. The position is well summarised in *Snell's Equity* (34th ed., para 7-005)

> "…the question of the intention of the parties is not in issue here. The expectation is assessed objectively, and so it is not necessary for the principal subjectively to harbour the expectation. Nor is it relevant whether the person who is alleged to be a fiduciary subjectively considered himself to be undertaking fiduciary duties."

188. In all the circumstances, I therefore find that Mr Edwards owed fiduciary duties to Mr Carl, and that by acting in breach of them he rendered himself liable in damages in equity for breach of those duties.

189. It follows from this that those who received property from or at the direction of Mr Edwards in the form of (a) cars, (b) proceeds of sale of cars, or (c) funds intended to have been employed in the purchase of cars but misdirected to them, are prima facie liable in knowing receipt if they can be shown to have known of the source of that which they received.

5.5 Mr. Hawkins/SCM and Mr. Carl

190. Mr Carl and Mr Hawkins both seem to agree that their initial agreement was entirely verbal. Mr Carl's evidence is that:

> "I had a telephone conversation with Mr Hawkins prior to his receiving any of my cars. I told him that I would provide some cars to SCM on consignment, that SCM could then market them for sale and would earn a five percent sales commission upon a sale approved by me to one of its customers."

Mr Hawkins evidence is that:

> "I recall him saying that they needed a reputable Porsche specialist in the UK and that my company would be paid for works it carried out to their vehicles in addition to a 5% commission on sales."

191. It seems to me to be a necessary implication of these discussions that Mr Hawkins, acting for SCM, was agreeing to hold the cars for Mr Carl during the period where they were for sale – in other words, to hold them as bailee.

5.6.1 - Bailment

192. Bailment imposes certain basic obligations on every bailee – in particular, the bailee must take reasonable care of the goods and abstain from converting them. *Morris v CW Martin & Sons Ltd* [1966] 1 QB 716, 738, CA, per Salmon LJ (and see now also *East West Corp v DKBS 1912* [2003] EWCA Civ 83, [2003] QB 1509). Although a bailment is not necessarily established by a contract – mere delivery of goods is sufficient to constitute a relationship of bailor and bailee – where there is a contract between bailor and bailee, the terms of that contract will govern the relationship. Where goods are lost or damaged while in the bailee's possession the bailee is liable unless he can show that the misadventure occurred independently of his fault (*Travers &*

Sons v Cooper [1915] 1 KB 73; *Port Swettenham Authority v TW Wu & Co (M) Sdn Bhd* [1979] AC 580, PC; *Frans Maas (UK) Ltd v Samsung Electronics* [2004] EWHC 1502, [2004] 2 Lloyd's Rep 251).

193. The terms of the agreement between Mr Cole and Mr Hawkins therefore seem to be clear. Both parties agree that this agreement was made by telephone in late 2013, and cars started to be delivered to SCM in early 2014. Cars also began to be sold, and Mr Hawkins evidence is that he was indeed paid a commission of 5% on these sales.

194. Mr Hawkins also says that he understood that Mr Edwards and Mr Carl were operating in combination, and this is clearly true to some extent. However, as early as September 2014 there was an exchange of e-mails between Mr Hawkins and Mr Carl in which Mr Hawkins said that "we will also contact you and Richard with regards to offers we have received prior to sale", and Mr Carl responded "Please understand that Richard is my agent with regard to these cars and that I am the only legal title owner hence the only person with authority to sell or create any liens on these cars." At this point the agreement between Mr Hawkins and Mr Carl seems to have been relatively well-understood by both parties.

5.6.2 The Contractual Position

195. The core issue here is as to whether the SRAs formed any part of the contract between Mr Carl and SCM. On their face, these were entered into on different dates, with some being before the exchange of e-mails in September 2014 and some after. The key point here is that the terms of the SRAs are wholly incompatible with the terms that actually existed between Mr Carl and SCM.

What the SRAs provide for is that SCM should be able to sell the car at a price of its choosing, and upon such a sale, should pay a price specified in the agreement. The economic structure is, in effect, an option over the car given to SCM. The idea is that SCM will sell the car for more than the option price and keep the difference – there is therefore no mention of commission being payable to SCM. Finally, the agreement has the effect of granting SCM complete freedom of action to sell the car, to the extent that "after SCM has entered into a binding agreement to sell the car" the customer may not withdraw from the agreement.

196. These terms are so entirely different from those agreed directly between Mr Hawkins and Mr Carl that it is very hard to understand how the two fit together. The SRAs consist of one side of A4, and there is no possibility that either Mr Hawkins or Mr Carl might have either misunderstood them, or thought that they did in fact reflect their pre-existing agreement.

197. It is common ground between the parties that the SRAs were first brought to the notice of Mr Carl in September 2015, and that he had been unaware of their existence until that point. If they had merely been contractual notices, they would have been entirely ineffective to vary the terms of the contract between Mr Carl and SCM. The argument that they have any legal effect therefore rests entirely upon the argument that (assuming they were in fact executed on the dates which they bear), because they were signed by Mr Edwards "on behalf of Mr Carl", they therefore had the effect of varying the terms of the agreement between Mr Carl and SCM, and the rule in *L'Estrange v F. Graucob* Ltd [1934] 2 K.B. 394 prevents Mr Carl from challenging them.

There are two parts to this question. As regards the agreements signed before the exchange of e-mails in September 2014 between Mr Carl and Mr Hawkins, it is clear that the terms of any such prior agreement must have been superseded by the agreement then reached. As regards any agreement after that date, it is equally clear that Mr Hawkins, having been told that Mr Edwards had no authority to commit Mr. Carl to sell the cars, cannot possibly have relied upon an agreement signed by Mr Edwards to the effect that he purported to exercise exactly that authority on behalf of Mr Carl. Finally, if the sequence of events had been that (a) Mr Hawkins made his agreement with Mr Carl directly as to terms, (b) Mr Edwards had signed a series of agreements on behalf of Mr Carl which purported to be on entirely different terms, and (c) Mr Carl had then confirmed the original terms to Mr Hawkins, it is wholly incredible that Mr Hawkins would not have at least mentioned at that point that the original agreed terms had been superseded by the documents signed by Mr Edwards.

198. The conclusion that Mr Carl seeks to draw from this is that the SRAs were simple forgeries, created to provide a fig-leaf for the refusal to return the cars. This is not necessarily the case. In his oral evidence Mr Hawkins observed that the existence of an SRA was necessary for the cars in his possession to be covered by his insurance. This is clearly not true as an absolute proposition – it is perfectly possible to insure stored cars which are not held for sale – but it may well have been true for Mr Hawkins that as long as he had a piece of paper in the form of an SRA relating to a particular car, his insurers would treat it as covered without further investigation. I think the ultimate conclusion from this analysis is that, whether the SRAs were executed on their purported

dates or not, the terms set out therein were simply not incorporated into the contract between Mr Hawkins and Mr Carl.

5.6.3 Fiduciary duty

199. It is trite law that a Bailee is not per se a fiduciary. In *MCC Proceeds Inc v Lehman Bros International (Europe)* Hobhouse LJ pointed out:

> "A relationship of beneficiary and trustee is not that of bailor and bailee. It is in law the antithesis of that: the bailor has the legal property as does the trustee, not the beneficiary. It is also a confusion to refer to the language of bailment which talks of the bailor entrusting the goods to the bailee and to equate that with a declaration of trust. The one is, despite the language, a legal relationship…; the other is purely equitable."
>
> [1998] 4 All E.R. 675 at 702.

200. Equally, the idea of an argument of a "trust derived from a bailment", or indeed a "floating bailment" was roundly rejected in *In re Goldcorp Exchange Ltd* [1995] 1 A.C. 74 at 95–99, PC.

201. A bailee may of course owe fiduciary duties to his bailor which coexist alongside the contract of bailment – for example, in *In re Hallett's Estate* (1880) 13 Ch. D 696, CA a solicitor who was the bailee of bonds held for a client was held to owe fiduciary duties to the client in respect of his dealings with the bonds. However, what this emphasises is that the court must find something in the relationship of bailor and bailee which goes beyond the intrinsic nature of that relationship before it can find any equitable duty owed.

202. In order to establish whether any particular bailee is also a fiduciary, it is necessary to consider the relationship between bailor and bailee to see whether it has characteristics which bring it within the class of fiduciary relationships.

The starting point for this analysis is Millett LJs dictum in *Bristol and West Building Society v Motthew* that:

> "A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of the fiduciary is the obligation of loyalty". [1998] Ch. 1 at 18.

203. A bailee clearly has a number of obligations to his bailor in respect of the bailed property, but none of these could be considered as involving a duty of loyalty. The point here is that in order to argue that a bailee is a fiduciary, the relationship needs to have some characteristic above and beyond the ordinary incidents of bailment.

204. I cannot find any aspect of the arrangement between Mr Carl and Mr Hawkins or SCM which would take the obligations assumed by Mr Hawkins out of the ordinary class of bailment and elevate them to the status of fiduciary obligations. Consequently, I find that neither Mr Hawkins nor SCM owed any fiduciary obligations.

5.6.4 Conversion

205. Conversion is the old term for what is now technically the tort of wrongful interference with the right to possession of goods per s.1(1) of the Torts (Interference with Goods) Act 1977 (hereafter "T(IG)A"). It is important to emphasise at the outset that conversion is based on possession, not title – if I steal someone else's property, he continues to own it, but I have wrongfully taken possession of it, and am therefore liable in conversion. Conversion is therefore the act of deliberate dealing with a chattel in a manner inconsistent with another's right whereby that other is deprived of the use and possession

of it (*Kuwait Airways Corp v Iraqi Airways Co (Nos 4 & 5)* [2002] UKHL 19; [2002] 2 A.C. 883 at [414]–[438]). As Lord Nicholls said (at [39])

> "In general, the basic features of the tort are threefold. First, the defendant's conduct was inconsistent with the rights of the owner (or other person entitled to possession). Second, the conduct was deliberate, not accidental. Third, the conduct was so extensive an encroachment on the rights of the owner as to exclude him from use and possession of the goods.".

206. Conversion lies for interference with rights of possession. Thus a mere contract by A to sell B's goods to C unaccompanied by any delivery of possession is not – prima facie – a conversion. However, if the purported sale had the effect of actually transferring title to the goods (e.g. if it is covered by one of the exceptions to the *nemo dat* rule), its consequence would be to extinguish the owners right to possession, and the sale would constitute conversion (*Lancashire Waggon Co v Fitzhugh* (1861) 6 Hurl. & N. 502, and see *Clerk & Lindsell on Torts* (24th Ed.) 16-16).

207. A person who intermediates a sale which constitutes a conversion is himself liable in conversion if he acts as more than a mere agent – for example, if the goods themselves, or documents representing them, pass through his hands (*RH Willis & Sons v British Car Auctions Ltd* [1978] 1 W.L.R. 438). A delivery of property by a bailee to anyone other than the bailor or the bailor's authorised representative constitutes a conversion, even where the bailor has been induced to do so by misrepresentations (see *Glencore International AG v MSC Mediterranean Shipping Co SA* [2017] EWCA Civ 365; [2017] 2 Lloyd's Rep. 186.).

Any unauthorised act done to or with goods by a possessor is potentially a conversion by that possessor. Hence an unauthorised act such as pledging

goods to a third party, creating a lien over them, or hiring them out to someone else, is a conversion. Per Buller J in *Syeds v Hay* (1791) 4 T.R. 260, 264.

> "If a person take my horse to ride and leave him at an inn that is a conversion; for though I may have the horse on sending for him and paying for the keeping of him, yet it brings a charge on me."

208. Denial of title is not itself a conversion. Thus, where a person represents himself as the owner of goods which he knows to be the property of another, the making of that representation is not a conversion (T(IG)A 11(3).

209. There is a particular issue as to the state of mind of the person dealing with converted property. A defendant who converts property is liable in conversion whether or not he knew, or had reason to know, that what he was doing infringed the claimant's rights. As Diplock LJ said *in Marfani & Co Ltd v Midland Bank Ltd* [1968] 1 W.L.R. 956 at 970–971.

> "At common law one's duty to one's neighbour who is the owner, or entitled to possession, of any goods is to refrain from doing any voluntary act in relation to his goods which is a usurpation of his proprietary or possessory rights in them. Subject to some exceptions it matters not that the doer of the act of usurpation did not know, and could not by the exercise of any reasonable care have known of his neighbour's interest in the goods. This duty is absolute; he acts at his peril."

210. Thus, for example, in *Motis Exports v Dampskibsselskabet AF 1912* [1999] 1 Lloyds Rep 837 a shipowner who had delivered a cargo to an impostor against a forged bill of lading was held liable for conversion of the cargo, albeit that he had acted innocently and without any negligence.

211. One of the effects of this is that, where goods are converted more than once, each person who converts them is liable for the full value of the goods, leading to double- or multiple- recovery. As a result, s.7 of the T(IG)A provides that,

in such a case, any excess recovery over the value of the goods must be accounted for by the clamant.

212. A defendant may seek to defend an allegation of conversion by asserting that the claimant did not in fact have a right to immediate possession of the goods since he did not own them. Section 8(1) of the T(IG)A permits a defendant to raise such a defence "in accordance with the rules of the court", and CPR 19.7 therefore provides that if a defendant identifies any person as having a better claim to the goods than the claimant, that person should be added as a party to the claim.

213. No such persons have been identified by any of the parties in this hearing, and I think there is therefore no challenge to Mr Carl's claim to be the owner of the cars.

5.6.4 Bailment

214. The essence of the law of bailment is that a person who becomes a bailee of the goods of another is subject to a duty of care in respect of those goods. The nature of that duty of care may vary according to the circumstances – for example, a gratuitous bailee may owe a lower duty of care than a bailee for reward – but the duty itself is a constant.

215. The action in bailment significantly pre-dates the modern tort of negligence and the action in contract. As a result, it does not fit cleanly into the modern distinction between contract and tort. This makes it slightly difficult to triangulate between it and the later developments. The issue, as Professor sir John Baker put it, is that:

> "The [action on the] case on which a plaintiff relied in complaining of a wrong to chattels might incorporate any number of tortious concepts, such as deceit, negligence, breach of an undertaking, or conversion. Later history was to separate these out as distinct actions, according to the element which predominated as the gist of the action. When the separation occurred, in the sixteenth century, the rules of law concerning personal property were distributed between the law of contract and what came to be called the torts of conversion and negligence." (*History of English Law (5th ed)*)

216. However, the action on bailment remained a separate action. Holt CJs judgement in *Coggs v Barnard* B&M 415 at 419 makes clear that bailment is a transaction *sui generis*, not dependent on the general rules of either contract or tort, and this position has recently been upheld by the Court of Appeal in *Yearworth v North Bristol NHS Trust* [2009] EWCA Civ 37. This explains the curious but important distinction between bailment and other actions in tort – that whereas in general a tort is only actionable where a claimant can show that they have suffered harm or loss, a breach of bailment is actionable even in the absence of any harm or loss – and the equally important distinction that a bailment can arise in the absence of any binding contract..

217. The basic obligation of a bailee is to take care of the property bailed to him. As a result, the action in bailment is an action against a bailee who does not take reasonable care of the bailed goods as is required by the circumstances of the particular case (*Sutcliffe v Chief Constable of West Yorkshire* [1996] RTR 86 at 90). However, it is important to be clear that although the action may be a separate action, the standard of care expected is not different from that which would be applied in other torts. As Lord Browne-Wilkinson said in *Henderson v Merrett Syndicates Ltd* [1995] 2 A.C. 145 at 205

> "Although the historical development of the rules of law and equity have, in the past, caused different labels to be stuck on different manifestations of the duty, in truth the duty of care imposed on bailees, carriers, trustees, directors, agents and others is the same duty: it arises from the circumstances in which the defendants were acting, not from their status or description. It is the fact that they have all assumed responsibility for the property or affairs of others which renders them liable for the careless performance of what they have undertaken to do, not the description of the trade or position which they hold."

218. An action for breach of duty by a bailee is therefore simply a different route to the same decision as would arise in determining whether the bailee had breached a duty of care in negligence or a contractual duty – the departure points may be different, but the determination to which they lead is the same. There are, however, two significant points on which an action on a bailment might be decided differently. One of these is the well-established rule that under a bailment, the burden of proof of the issue of breach of duty rests upon the bailee (*Coldman v Hill* [1919] 1 KB 443). The solid policy justification for this rule was restated by Lord Sumption in *Volcafe Ltd. V Cia Sud Americana de Vapores SA* [2018] UKSC 61 at [9] to [10]. The second is that where a bailee does an act which is inconsistent with the terms of the bailment, the bailment terminates immediately and automatically (*Fenn v Bittleston* (1851) 7 Ex. 152). The bailor therefore acquires an immediate right of possession of the goods, regardless of any other arrangements in place. Thus, where a bailee seeks to sell property which he has on bail, the bailor may immediately demand the return of the property, and any refusal of the bailee to return such property will constitute a conversion (provided that the other requirements of conversion, notably peremptory demand and unconditional refusal).

219. It is also important to note that the fact of such a refusal by the bailee does not terminate the bailment – a bailee who converts his bailor's property by non-delivery, but retains it, is both a converter and a bailee. Where a bailee refuses to return the bailor's goods, he remains liable as bailee for as long as they remain in his possession. The conversion does not terminate the bailment.

220. In practice, of course, almost all bailments arise pursuant to an agreement between the bailor and the bailee. These agreements are not always enforceable contracts, but, where they are, the terms of the contract will predominate over any terms arising from the relationship of bailment - thus, if the terms of the contract between bailor and bailee have the effect of varying any of the ordinary terms implied by law between bailor and bailee, it is the terms of the contract which will prevail.

221. It is impossible to be a bailee of a non-existent object, and SCM was never a bailee of the F40, The Miura or the Montreal. It was, however, a bailee of the other vehicles specified. This position – and the legal obligations which arose in respect of it - is therefore governed by the ordinary common law of bailment.

5.6.5 Detinue

222. Detinue is the old name for the tort committed where (inter alia) a bailee refuses to return bailed goods to the bailor. Technically, of course, detinue is abolished (s.1 T(IG)A), and by s.2(2) of T(IG)A the tort committed by a bailee who is responsible for the loss or destruction of goods in breach of his duty to his bailor is – in effect – deemed to be conversion. However, again, the term remains a useful shorthand. The issue here is, of course, whether Mr Hawkins

in fact refused to hand over Mr Carl's cars upon request, and whether his actions constituted a tort.

223. In order for a bailee to commit this tort, the demand for the return of the bailed goods must be unconditional and specific, and the bailee's refusal must be unequivocal (*Clerk & Lindsell* 10-25).

The necessary demand

224. A demand is unconditional and specific for this purpose where it identifies particular property. Although there is no clear authority on the point, it seems to me that where an unconditional and specific demand is made for the return of goods in circumstances where the bailor and the bailee are in negotiations which could, if successful, lead to the bailment continuing, the existence of those negotiations does not per se render the demand conditional since, if this were not the case, an owner would be deprived of his right to his own goods for as long as he negotiated with the bailee.

The necessary refusal

225. A refusal may be either by words or by conduct – mere silence in the face of an unconditional and specific demand can constitute conversion (see *R. (on the application of Atapattu) v Home Secretary* [2011] EWHC 1388 (Admin) esp. at [60]–[92] and *Ramsden v Revenue and Customs Commissioners* [2019] EWHC 3566 (QB); [2020] B.T.C. 1). In principle bailed goods must be delivered up forthwith on demand, but a bailee may take reasonable time to assess the true position as regards the goods before acceding to the request – thus a failure to respond immediately to a demand for delivery does not per se

constitute a detinue. What constitutes reasonable time is a matter of fact, but should be proportionate (*Spenser v S Franses Ltd* [2011] EWHC 1269 (QB)).

226. Where a bailment provides that the bailee has a positive right to keep the goods for a specified period or on specified terms, then the bailor may not demand the return of the goods until that period is ended or until the specified terms are satisfied (and indeed the bailee could sue the bailor if he removed the goods). There is an implied term in any contract of bailment that "a bailee who comports himself in a manner utterly repugnant to the terms of the bailment terminates the bailment and thereupon the right to possession revests in the bailor." The ordinary effect of this is that if a bailor seeks to sell the bailed property without the consent of the bailor, the bailment is terminated at that moment, and the resulting sale itself is a conversion, since the bailor's right to immediate possession is restored before the sale is completed (*North General Wagon and Finance Co Ltd v Graham* [1950] 2 K.B. 7 (CA) per Asquith LJ at p. 11). However, this is only an implied term, and can be negatived by the express terms of the agreement between the bailor and the bailee – it is a matter of construction.

227. This makes it important to identify the specific demands and refusals involved. The position as regards some of the early e-mail correspondence in this regard is unclear. However, what is clear is that on 10 September 2015 Mr Carl sent Mr Hawkins an e-mail recording that it had been agreed that:

> "I can pick up all my cars any time next week. These include the three Porsche 2.7 RS cars, the Ferrari F40 and 365 GT 2+2, the orange Lamborghini Miura and the child's car. I would expect each of the cars to be accompanied by whatever related paperwork you might have. [Richard Edwards] asked that the

> Black 959 remain with you temporarily while you finish getting it registered in my name, and that the red Alfa Romeo [Montreal] remain with you because he has an interested buyer to show it to. Both of these specific delays are acceptable to me. Unless I hear from you to the contrary, I will arrange for a transporter to pick up the six. cars on Monday."

228. It seems to me that this satisfies the requirement for a peremptory demand.

229. Mr Hawkins responded to this e-mail by asserting that this would not be possible for the cars to be picked up because he had agreed sales of the cars, and was expecting payment imminently. This produced a letter from Fladgates, Mr Carl's then solicitors, demanding that Mr Hawkins and SCM give undertakings not to sell the cars, and to turn them over. This resulted in Mr Hawkins claiming that he held the cars under the terms of the SRAs, and that these entitled him to refuse to deliver any car which had been sold, and all cars unless 90 days' notice was received. He specified that SCM had agreed to sell the 2.7 RS Lightweight for £665,000, the 2.7 RS Touring Orange for £570,000 and the F40 for £640,000 and issued sales contracts accordingly – none of which was true – and offered this as his justification for refusing to allow Mr Carl to collect the cars.

230. Mr Carl, of course, had no way of knowing at the time that the purported sales were fictional. He therefore appears to have acquiesced in Mr Hawkins retaining of the cars for a further period. However, by 1 October his suspicions were increasing, especially since Mr Hawkins appears to have rejected a request from him to have a representative see and photograph the cars at SCM. This led to the application for the delivery up order, and then the "raid".

231. Mr Hawkins position, as set out in his witness statements, is that although he sent messages saying that he would refuse delivery if a transporter turned up

to collect the cars, because no such transporter ever actually appeared, he never actually refused to deliver the cars. This is sophistry. Leaving aside the fact that it is clearly untrue – Mr Hawkins would not and could not have delivered the Miura on request because it did not exist – I think the premise is flawed. If I send an e-mail to my bailee saying "I will send a transporter to collect my goods from you tomorrow", and my bailee responds "I will not deliver the goods to the transporter if he appears", I think that communication constitutes a clear refusal, and therefore a conversion. It is absolutely not the case that it is only if I send the transporter, and he is turned away empty-handed, that a refusal to deliver occurs. Equally, if the facts are that I am not obliged to deliver property if A is true, and I respond to a request to deliver by saying "I will not deliver, because A is true", whilst knowing that A is not true, that constitutes a refusal to deliver, and does so even if the owner believes my lie and does not pursue his request.

232. If the SRAs were not in fact part of the contract between Mr Carl and Mr Hawkins, then Mr Carl had at all times an immediate right to possession of the cars. However, I note that even if the SRAs had been valid contracts and Mr Carl had not in fact had an immediate claim to possession, his position would be unaffected. This is because an owner of property who does not have an immediate right to possession still has a right to sue. Under the old law such a person, although he could not sue in conversion (because conversion protects a right to possession, and he has no such right) could nonetheless sue in a special action on the case for injury to his reversionary interest. This action is now encompassed along with conversion in the action for wrongful

interference with chattels under T(IG)A, which includes "any tort so far as it results in damage to goods or to an interest in goods (s.1(d)).

5.7 Agency – Mr Edwards and Mrs Edwards

233. Mrs Edwards faced two claims. One was as regards the defaulted cheque, and her liability to Mr Carl for its face value. The other is as regards Mr Howarth's claim that either (a) he was entitled to the return of the £198,00 to be paid by Mr Carl, or (b) he was – effectively – subrogated to Mrs Edwards claim such that if the money was due to be paid to her, that he was entitled to require her to pay it over to him.

234. I entirely accept – as, I think, does Mr Carl – that for the entirely of the period under consideration the acts, payments and transactions attributed to Mrs Edwards were in fact effected by Mr Edwards (as regards the Alfa 8C, it is arguable that those transactions were also effected by Mr Williams, but that is not immediately relevant here). Mrs Edwards position is that she was simply presented with documents and cheques to sign, and often asked to authorise (or stop) payments by telephone to her banks, and that she at no point had any idea what was being done in her name. Her evidence was that her then husband would simply put documents and cheques before her to sign or otherwise authorise, and she would do so without question.

235. This takes us to the question of to what extent – if any - is Mrs Edwards liable for the transactions undertaken by Mr Edwards in her name? We are long past the days when a husband who purported to transact on behalf of his wife would be deemed to have actual authority to act on her behalf. This question

must therefore be approached by applying the ordinary rules of the law of agency.

236. As a preliminary point, I accept for the purposes of this judgment that there was no express authorisation by Mrs Edwards of Mr Edwards to act as he did – I entirely accept her evidence that she did not know exactly what he was doing, and would not have consented to it had she known.

237. The usual characteristics of an agency relationship may be said to be authority for the agent to affect the principal's relationship with third parties, a fiduciary duty owed by the agent to the principal, and an ability on the part of the principal to exercise a degree of control over the agent. As the Court of Appeal observed in *UBS AG (London Branch) v Kommunale Wasserwerke Leipzig GmbH* [2017] EWCA Civ 1567 at [91]: "the absence of any of these main characteristics must …. be a significant pointer away from the characterisation of a particular relationship as one of agency, even though there may be rare exceptions."

238. The most recent authority in this area is *Borough of Haringey v Ahmed and Another* [2017] EWCA Civ 1861. In that case a husband, who had a good command of English, entered into a series of tenancy agreements on behalf of himself and his wife – who did not. The wife's evidence as that she did not know what her husband was doing, but trusted him. The judge at first instance held that this meant that there had been an implied agreement between husband and wife that he would deal with such matters on her behalf, and that there had been a course of conduct which gave rise to an implied agency.

239. The Court of Appeal held that there was no such agency relationship. The judge had based his conclusion that there was an agency on his finding that there was a "course of conduct" comprising (i) Mr Ahmed securing a series of rented accommodation for the family, (ii) his wife accepting that he could act for her, and (iii) trusting him. The grounds for overturning this decision were as follows:-

> "35 As to (i), it is correct that it was Mr Ahmed who secured accommodation for the family, but there is no finding (or evidence) that he did so in his and Ms Ahmed's name, nor that he discussed the tenancy terms with her, nor that she had any awareness of such terms. Indeed, the judge's finding was that he never informed her of any of the accommodation decisions and that she had no involvement in them."
>
> 36 As to (ii), there is no finding (or evidence) that Ms Ahmed accepted that Mr Ahmed could act for her in entering into tenancy agreements on her behalf. She had no involvement in those decisions and was not informed about them. The judge's findings do not bear out the inference that Ms Ahmed was consenting to Mr Ahmed acting for her in any legal or agency sense. In a broad, factual sense Mr Ahmed was no doubt acting for her and their children in that he was securing accommodation for them and thus for their benefit. That, however, does not tell one anything about the legal capacity in which he was so doing.
>
> …
>
> 38 As to (iii), again the fact that Ms Ahmed may have trusted Mr Ahmed to secure accommodation for herself and their family does not tell one anything about the legal capacity in which he was so doing.
>
> 39 The "course of conduct" relied upon by the judge does not therefore involve Mr Ahmed entering into tenancy agreements as an agent for Ms Ahmed, or her consenting to him doing so or her trusting him to do so. It is difficult to see how such a course of conduct could ever establish mutual assent to so doing.
>
> 40 In reaching his conclusion, the judge does not appear to have had regard to whether there was assent to any of the usual characteristics of agency, as summarised above. In the present case, authority for the agent to affect the principal's relationship

> with third parties means authority to contract on Ms Ahmed's behalf and commit her to the legal obligations owed by a joint tenant, including the obligation to pay rent. On the judge's findings this was neither discussed nor known about. She simply had no involvement. As to the owing of a fiduciary duty, it is difficult to see how this could arise without at least some request by Ms Ahmed for Mr Ahmed to act on her behalf, as to which there is no finding. As to control, on the judge's findings Ms Ahmed had no control over Mr Ahmed. It was he who would take the accommodation decisions without involving or even informing her. It was he who was "controlling" and it was he and his mother, rather than he and her, who "used to do everything together".
>
> …
>
> 42 For all these reasons, in my judgment the findings made by the judge do not justify the conclusion reached by him that there was an agency relationship.

240. This decision sets out fairly clearly the criteria which should be applied where a wife or husband wishes to resile from a transaction which their spouse has purported to enter into on their behalf on the basis that they were not authorised to do so. These criteria are that (a) the innocent spouse should not have authorised or known about the transactions, (b) they should have had no control at all over the spouse's decision taking, and (c) they are not informed about the transactions, either before or after the event.

241. Although Mrs Edwards was not aware of the specifics of her husband's transactions, she does not satisfy these criteria. She was clearly well aware of them in general terms, and indeed her own evidence was that she helped him to effect them on a daily basis. Mr Edwards was in fact Mrs Edwards agent, and she is liable on the transactions which he entered into purportedly on her behalf.

242. This finding, however, cuts both ways. I think that Mrs Edwards is clearly liable on the cheque – and, even if she were not, she would be liable on the underlying debt. However, I think it is equally clear that, whatever Mr Edwards said to Mr Carl, the £198,000 is clearly due to her, since Mr Edwards seems to have made absolutely clear to Mr Carl in the e-mails which passed between them that this money was advanced by her, that he was in this regard acting on her behalf, and that the result was a contract under which the money was advanced by her to him, and that it should be repaid by him to her. It is equally clear that Mr Edwards asked Mr Howarth to make the payment of £198,000 to Mr Carl pursuant to this obligation and in discharge of it. In this regard, the fact that Mr Howarth funded this obligation by converting the Orange Porsche is not relevant.

5.8 Mr Carl & Mr Howarth – Unjust Enrichment

243. Mr Carl and Mr Howarth had no direct relationship at all – there was no contract between them, and I do not think that Mr Howarth had even sufficient proximity to Mr Carl to owe him a duty of care. What Mr Howarth knew about Mr Carl was exclusively what he was told by Mr Edwards and Mr Hawkins. However, Mr Howarth's own evidence is that he did know that the cars that he dealt with were owned by Mr Carl, and on two occasions he transferred money to Mr Carl. This raises the question of whether he has any claim to the monies so paid.

244. This point arises in this case in broadly the same way in which it arose in the case of *Hamann v Carl* in the US (*Hamann v. Carl* Conn. Super. Ct. Apr. 25, 2018). In broad terms, as part of his wedding cash crunch, one of the people

from whom Mr Carl sought to raise money was Mr Hamann, an American classic car dealer. Mr Hamann provided $150,000, on terms which are disputed. However, what is not disputed is that the actual payment was made by Mrs Hamann, his wife. The US courts took the view that this amount could be recovered by Mrs Hamann on the grounds of unjust enrichment, since she had not been party to the agreement between Mr Carl and Mr Hamann. The question for me is as to whether a similar argument might be raised in respect of the advance of £198,00 made by Mrs Edwards to Mr Carl, since this money was in fact paid by Mr Howarth.

245. According to Lord Burrows in *Samsoondar v Capital Insurance Co Ltd* [2020] UKPC 333 at [18]:

> "It has now become conventional to recognise … that a claim in the law of unjust enrichment has three central elements which the claimant must prove: that the defendant has been enriched, that the enrichment was at the claimant's expense, and that the enrichment at the claimant's expense was unjust. If those three elements are established by the claimant, it is then for the defendant to prove that there is a defence."

246. I do not think that there is any question here that the first of these criteria is satisfied – Mr Carl admits that he received the £198,000. The question is as to whether the enrichment was at Mr Howarth's expense.

247. In cases of this kind, where A procures B to do something which unjustly enriches C, English law is reasonably clear that the claim for unjust enrichment vests in A, not B (See *Goff & Jones*, 10th ed. Chapter 6 section 4 – this is described by Birks as the "rule against leapfrogging" in Birks, *Unjust Enrichment*, 2nd edn (Oxford: OUP, 2005), pp.87–88 and 89–98)). More importantly for this case, in *MacDonald Dickens & Macklin (A Firm) v*

Costello [2011] EWCA Civ 930; [2012] Q.B. 244, Etherton LJ endorsed as sound legal policy the general approach of denying restitutionary relief for unjust enrichment against a defendant who had benefited from the claimant's actions rendered pursuant to a contract with a third party. In this case, Mr Carl has benefitted from Mr Howarth's actions, but those actions were undertaken pursuant to an agreement between him and Mr Edwards (acting as agent for Mrs Edwards). I have no idea whether I can find a formal contract between Mrs Edwards and Mr Howarth in this regard, but it is entirely clear that Mr Howarth's reasons for doing what he did were the arrangements (however they be categorised) made by Mr Edwards between him and Mrs Edwards. I therefore do not think that the existence or not of a legally recognised contract embodying this relationship would make any difference to the application of the principles of unjust enrichment in this case. Mr Howarth therefore has no claim in unjust enrichment against Mr Carl.

248. That leaves the question of whether Mr Howarth might have a restitutionary claim against Mrs Edwards. I think Mrs Edwards is clearly enriched. Any argument to the contrary would have to rest on the idea that the payment by Mr Howarth on her behalf had extinguished an obligation which would otherwise be due from Mr Howarth to her so her net position is unaffected (this is why I am not enriched when my bank makes a payment on my behalf, since the value of my claim against the bank is reduced by the amount of the value paid on my behalf). The point here is that, although the advance was made on her behalf by a third party, the repayment of the advance would ordinarily accrue to her personally. If that advance is repaid to her personally

she is clearly thereby enriched. The question is therefore as to whether that enrichment is unjust.

249. The issue which these facts raise is the *ex turpi causa* principle. An enrichment is not unjust where a potential claimant is barred from asserting his claim on the basis that it is a claim of a kind which the law will not recognise. As Lord Sumption said in *Les Laboratoires Servier v Apotex* [2014] UKSC 55 at [13] and [22], this requires me to ask two questions – did the conduct concerned involve "sufficient turpitude", and was it closely enough connected with the claim. I think the answer to the second of those questions is clear – the conduct concerned was embarked upon for the specific purpose of facilitating the payment in respect of whose return the claim arises, and so is clearly sufficiently connected. The remaining question is therefore as to turpitude.

250. Although there is some debate as to what constitutes turpitude in this regard, I think the conspiracy between Mr Edwards and Mr Howarth to deceive Mr Carl satisfies that requirement (see *Parkingeye Ltd v Somerfield Stores Ltd* [2012] EWCA Civ 593). Consequently, I find that Mrs Edwards was enriched, but that enrichment is not unjust, and Mr Howarth has no claim to the £198,000 which is due from Mr Carl to her.

5.8 Fraud and deceit

251. The common law relating to fraud was established by the House of Lords in *Derry v Peek* [1889] UKHL 1. It was there decided that in order for fraud to be established, it is necessary to prove the absence of an honest belief in the truth of that which has been stated. In the words of Lord Herschell:

> "… fraud is proved when it is shown that a false representation has been made: (1) knowingly; or (2) without belief in its truth; or (3) recklessly, careless whether it be true or false."

252. The converse of this is that however negligent a person may be, he cannot be liable for fraud, provided that his belief is honest; mere carelessness is not sufficient, although gross procedural carelessness may justify an inference that he was not honest.

253. Deceit is one of those legal concepts which is easy to state but hard to prove, and a party seeking to allege deceit must plead its case fully (see *Boyse (International) Ltd v Natwest Markets & O'rs* [2020] EWHC 1264 (Ch)). I am satisfied that that has been done in this case against the first to fourth and eighth defendants. I note that deceit is not pleaded against any of the other defendants; in particular, it is not pleaded against Mrs Edwards.

5.9 Conspiracy

254. "A conspiracy consists … in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means." *Mulcahy v R*. (1868) L.R. 3 H.L. 306 at 317 per Willes J; *Baxendale-Walker v Middleton* [2011] EWHC 998 (QB) at [59]–[60]. Conspiracy is also a crime, but an allegation of civil conspiracy is distinctly different from an allegation of civil conspiracy - the crime inheres in the agreement to act unlawfully, but the tort arises when damage is caused by the combination.

255. There is a fine but important distinction between conspirators and joint tortfeasors. Where two persons combine to do a thing, and both do it, they are joint tortfeasors, and are both liable in tort. Where two persons combine to do

a thing, but only one of them actually does it, the doer is liable in tort, but there is also a conspiracy in which both partake.

256. The tort of conspiracy takes two forms: conspiracy to use unlawful means, and lawful means conspiracy, which at one time was commonly called "conspiracy to injure". A conspiracy to convert property is clearly a conspiracy to use unlawful means.

257. The tort of conspiracy requires an agreement, combination, understanding, or concert to injure, involving two or more persons. Of the various words used to describe a conspiracy, "combination" has been preferred to "agreement" on the ground that "agreement" might be thought to require some agreement of a contractual kind, whereas all that is needed is a combination and common intention. The tort has also been said to require "concerted action taken pursuant to agreement" but this is only because "a tortious conspiracy, like most other tortious acts, must have caused loss to the claimant, or the cause of action will be incomplete." (*JSC BTA Bank v Ablyazov (No.14)* [2018] UKSC 19; [2020] A.C. 727 at [9])

258. Because: "It is a rare case where there is evidence of an agreement", in most cases, "it will be necessary to scrutinise the acts relied upon in order to see what inferences can be drawn as to the existence or otherwise of the alleged conspiracy or combination" (Per Zacaroli J in *Racing Partnership Ltd v Done Brothers (Cash Betting) Ltd* [2019] EWHC 1156 (Ch); [2020] Ch. 289 at [257]; quoting *Kuwait Oil Tanker Company SAK v Al-Bader* [2000] 2 All E.R. (Comm) 271 CA at [112]).

259. Husband and wife were once thought to be one person in the eyes of the common law and, therefore, to be incapable of conspiring together. This is still the case in criminal conspiracy, indeed in this context the anomaly has been extended to civil partners, though it ceases to apply if the combination includes a third person (Criminal Law Act 1977 s.2(2)(a) - see also *R. v Lovick (Sylvia)* [1993] Crim. L.R. 890). However, it has been held that, in the absence of binding authority, and of a compelling rationale or public policy, the primitive maxim that spouses are one person should not be imported into the tort of conspiracy (*Midland Bank Trust Co Ltd v Green (No.3)* [1979] Ch. 496 at 527 per Oliver J; affirmed [1982] Ch. 529 CA at 538 per Lord Denning MR, and at 541 per Fox LJ.). It follows from this that even if Mrs Edwards was involved in torts committed by Mr Edwards, she is not presumed to be a conspirator, and the necessary mental element must be proved in her case in exactly the same way in which it would be required to be proved in any other conspiracy allegation.

260. A common question is as to the number of conspiracies – is there one grand conspiracy covering a number of acts, or a number of conspiracies which operate act by act. The conspirators need not all join in at the same time, nor need they have exactly the same aim in mind; but the possession of a separate aim may be evidence that the party concerned has not participated in the combination at all, at any rate if he acted throughout in ignorance of the true facts (per Harman J in *Huntley v Thornton* [[1957] 1 W.L.R. 321 at 343). The question is how far the defendant was aware of the plan and then "joined in the execution" of it (per Gatehouse J in *Metall und Rohstoff AG v Donaldson, Lufkin & Jenrette Inc* [1990] 1 Q.B. 391). A person may be a party to a

combination to use unlawful means, even though he himself cannot commit the unlawful acts in question, for example a person who joins parties to a contract in making threats that they will break that contract, thereby constituting a conspiracy to intimidate.(see *Clerk & Lindsell on Torts* (24th ed.) at 23-107 fn. 515). Unlawful means conspiracy can be defined as the situation where two or more persons combine and take action which is unlawful in itself with the intention of causing damage to a claimant who does incur the intended damage (*Baxendale-Walker v Middleton* [2011] EWHC 998 at [60]).

261. There are four questions which must be asked in order to determine whether a particular behaviour constituted unlawful means conspiracy; (1) the degree of intention required, (2) what forms of behaviour will count as unlawful means, (3) whether the unlawful means were "indeed the means" by which damage was caused, and (4) whether the defendants must know that their means are unlawful.

262. As regards the first of these, it is not the case that a person is only a conspirator if they acted with the explicit intention of injuring the victim. In *Lonrho Plc v Fayed* [1992] 1 A.C. 448 the House of Lords determined that "it is no defence for them to show that their primary purpose was to further or protect their own interests; it is sufficient to make their action tortious that the means used were unlawful", and in such cases "an intention to injure the claimant", rather than a predominant purpose to injure, is enough. (at p. 466 and 468 per Lord Bridge).

263. As regards unlawful means, it is clear that whenever the means used involves the commission of a tort, or torts, against the claimant, a combination to inflict harm using those means will be a tortious conspiracy (*Crofter Hand Woven Harris Tweed Co Ltd v Veitch* [1942] A.C. 435 at 462 per Lord Wright). However, a claim can also be based on a conspiracy to cause loss by means of acts that are criminal, but not tortious. In *JSC BTA Bank v Ablyazov (No.14)* (at [11]) the Supreme Court summarised the position: "a criminal offence could be a sufficient unlawful means for the purpose of the law of conspiracy, provided that it was objectively directed against the claimant".

264. The "indeed the means" test (explained in *Clerk & Lindsell* para 23-122 ff) is problematic. The basic point is that the loss to the victim must have been the "predominant purpose" of the combination – where the combination has an entirely different purpose, and the harm to the claimant was entirely incidental to the pursuit of that aim, then the test is not satisfied (*JSC BTA Bank v Ablyazov (No.14)* [2018] UKSC 19; [2020] A.C. 727 at [14]).

265. Finally, there is the question of knowledge. In *Racing Partnership Ltd v Done Brothers* [2019] EWHC 1156 (Ch); [2020] Ch. 289, the Court of Appeal (by a majority) held that where the consequences of a conspiracy constituted the use of unlawful means, the participants in that conspiracy were engaged in a tortious conspiracy, even if they did not know the means to be employed were in fact unlawful. Thus, even if Mr Howarth had honestly but mistakenly believed that Mr Edwards was not stealing Mr Carl's property, that belief would not afford him a defence.

6. Findings as regards the dealings with each car

6.1 The F40

266. The F40 was never purchased, but Mr Carl, having paid for it, was told that it was by both Mr Hawkins and Mr Edwards. That was clearly a deceit. It must be the case that Mr Hawkins and Mr Edwards had conspired that Mr Hawkins would make these deceitful statements on behalf of SCM, since otherwise there would be little reason for Mr Hawkins to have made them. Mr Hawkins is liable in deceit, and Mr Edwards in deceit and for unlawful means conspiracy.

267. I think it is clear that Mr Scholes was appointed by Mr Carl to act as his agent as regards the making of the payments. I think he was clearly a fiduciary in this regard – Mr Carl reposed trust and confidence in him, and placed him in a position where he was to act on Mr Carls behalf. Mr Scholes breached that fiduciary duty by distributing the sale proceeds to Mr Edwards and others. The parties who received these monies –SCM and Mr Edwards (through the account of Lorna Edwards) – cannot have been ignorant of their source – even if they did not have actual knowledge of the precise origin of the funds, they must have known that the transaction had gone off, and none of them produced any explanation at all of why the payments had been made to them. I note in this regard that the only information that we have as to these payments derives from disclosure made by the sixth and seventh defendants, Graham Scholes and Left-Hand Drive Limited. The receipts were not disclosed in this action by their actual recipients, and no explanation or justification was provided by them as to why they were received. Mr Carl has provided a

detailed breakdown, derived from information provided by Mr Scholes, of which parties had received which amounts in this regard. Those parties are liable in knowing receipt to return these monies.

6.2 The Miura

268. The position as regards the Miura is very similar. Here again, Mr Hawkins is liable in deceit, and Mr Edwards for deceit and for conspiracy to deceive, on the same basis. As regards the purchase price, the recipients of this money now included the 8th defendant, Chris Williams, as well as SCM and Mrs Edwards. Again, I think that these parties are liable in knowing receipt to return the monies which they received.

6.3 The White Porsche Touring

269. This car was purchased by Mr Carl and held at SCM until June 2015. Mr Edwards had been trying to find a buyer for it and through an intermediary, Mr Stockton, had identified Mr Roock as a potential buyer. Mr Stockton negotiated the deal, acting as intermediary between Mr Roock and Mr Edwards, but was told my Mr Edwards that Mr Howarth would be effecting the transaction. Mr Hawkins then released the car to Mr Howarth for delivery to Michael Roock. The essence of the action in conversion is an interference with a right to possession, and where a person, in possession of the goods of another, delivers those goods to a third party in a way which results in that third party acquiring title to those goods, then he has converted those goods by – effectively - extinguishing the rightful owner's right to possession. The delivery of the car to Mr Roock constituted a conversion by Mr Howarth, not Mr Hawkins or SCM.

270. The proceeds of sale of the White Porsche took the form of an amount of cash - £140,000 -and another car – a Porsche Club Sport. That other car was delivered to Mr Howarth, who sold it for £240,000. I do not believe that Mr Carl ever acquired an immediate right to possession of that other car, and so its sale did not constitute a conversion by Mr Howarth. The focus is therefore on the two sums of money received.

271. Both of these sums – totalling £380,000 - were paid into Mr Howarth's bank account. We know that $300,000 of this (approximately £192,000) was paid over to Mr Carl, disguised as the forfeited deposit on the sale of the Miura. A further £50,000 was paid to SCM, which seems to have paid it to Mr Carl in respect of the earlier forfeited deposit which he had been promised. The remainder seems to have been shared out amongst SCM and Mr Howarth. Mr Howarth says that he was entitled to a commission of £25,000 on the sale, but it is not at all clear when, how or with whom any such arrangement might have been made.

272. It is clear that Mr Howarth was not a fiduciary of Mr Carl in respect of this transaction – Mr Carl's evidence is that he was entirely unaware both of the transaction and of the activities of Mr Howarth. The question is therefore as to whether Mr Howarth is liable to account for the monies received to Mr Carl and, if so, on what basis. As regards the £140,000, this seems to me to be a clear case of money had and received. Mr Howarth had sold Mr Carl's car, and had received money in respect of it. That money was, in law, Mr Carl's money, in which he had a proprietary interest, and he is therefore entitled to recover it on that basis (see *Lipkin Gorman v Karpnale Ltd* [1991] 2 A.C.

548). The position as regards the substitute Porsche is harder to establish – I think the true position is that Mr Carl might, during the period in which it was in Mr Howarth's hands, have claimed it from him as a matter of common law tracing, but no proprietary right in it arose per se (this is the distinction between tracing and claiming which Lord Millett identified in *Foskett v McKeown* [2001] 1 A.C. 102 at 127-8) – the car could have been traced, but was not claimed, and therefore no direct right in it came into existence).

273. There was, however, clearly a conspiracy between Mr Howarth and Mr Edwards to convert the car, and they are liable to Mr Carl for the value of the White Porsche on this basis. The fact that Mr Hawkins continued to assert on behalf of SCM that the car was with him when it was not shows that he must have been part of this conspiracy.

6.4 The Orange Porsche

274. Mr Howarth and Mr Edwards agreed to pledge, and did pledge, the Orange Porsche to Mr Cole as collateral for a loan to Mr Howarth. Here again, by transferring the car to Mr Howarth for this purpose, SCM converted the car. The delivery of the car by Mr Howarth to Mr Cole also constituted a conversion, since a pledge of property is as much an interference with the owner's immediate right to possession as is a sale. It seems clear that this course of action was agreed on by at least Mr Edwards, Mr Howarth and Mr Hawkins – the last because he continued to represent to Mr Carl that the Orange Porsche was still with SCM, and the only explanation for his engaging in this falsehood is knowledge that the car must have been dealt with in a way which had to be concealed from Mr Carl.

275. Mr Howarth's subsequent dealings with the car also gave rise to liability in conversion - his removal of the car, first from Mr Edwards' home and subsequently from the UK, constitute clear denials of Mr Carl's immediate right to possession.

276. Finally, Mr Howarth registered this car in the UK in his own name. A UK registration for an imported car is a registration, not a declaration of ownership, and as a result if B registers a car belonging to A in his name, the registration does not of itself constitute a conversion by B. It is, however, evidence of the fact that B either currently does, or intends to, deny the title of A. I think the registration of the car in his own name by Mr Howarth, who at the time had possession of the car and (apparently) every intention of using it as his own, is strong evidence of his continued intention to deny Mr Carl's title, and that accompanied by possession constitutes conversion.

277. My understanding is that this car is still registered in the UK under the name of Mr Howarth. I therefore need to order him to deliver up the V5 registration document and to do all other things necessary for the car to be reregistered in the name either of Mr Carl or to any purchaser of the car from Mr Carl.

6.5 The Porsche 959 and the RS Lightweight

278. This car was one of those removed by Mr Edwards in the "raid". This seems to me to constitute a clear case of conversion. I believe that the "raid" was in fact a joint enterprise of Mr Hawkins and Mr Edwards, and I think that in this case the liability arises a joint tortfeasors as well as in conspiracy.

279. From September 2015 onwards, Mr Carl regularly sought to have these cars returned by SCM to his control. Mr. Hawkins refused. For the reasons given above, I am satisfied that Mr Hawkins refusal was sufficient to constitute a breach of his obligations as bailee, and to give rise to liability in conversion.

280. At some point these vehicles must have been further converted, since they were found in Spain in the possession of new persons. However, I am unable to form any view of how this was effected, or by whom, so there is no basis for any further finding of liability.

6.6 The Ferrari 365

281. This is another car which Mr Carl regularly sought to have returned to him from September 2015 onwards, and which Mr Hawkins and SCM refused to deliver. This also gives rise to a claim against them for breach of bailment.

282. As regards the various intermediaries, it appears that the 13th defendant, Mr Davis, as principal for the 16th defendant, Pescara International Limited, had purchased the car, but had on-sold it to Mr Greenwood, the 14th defendant, who acted on behalf of Mansa Limited, the 15th defendant. Consequently, possession of the car seems to have passed directly to Mr Greenwood without having ever being vested in Mr. Davis or Pescara. There is therefore no possibility of their being liable in conversion, since mere denial of title without interference with possession does not constitute conversion. There is nothing in the evidence before me that suggests that the Davises were aware of the fact that the car actually belonged to Mr Carl, and it is clear that they had no relationship with him. Mr Carl suggests in his witness statement that they must have been on notice of some wrongdoing, in that the price that they

offered for the car (£72,000) was considerably less than what he says the car was worth. However, I accept that there are not only reasons for car values to fluctuate about a mean, but also reasons for individual sellers to require immediate liquidity, which may impact on price. I do not, therefore, think that Mr Davis hand notice of any defect in the title to the property which he bought.

283. We turn now to Mr Greenwood and Mansa Ltd. Mr Greenwood purchased the property from Mr Davis who, it is accepted, is a car dealer. The immediate question is therefore as to whether Mr Greenwood acquired good title under the Factors Act.

284. Section 2(1) of the Factors Act of 1889 provides that:

> "(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same."

285. The burden of proof is on the buyer to show that the exception applies – if he cannot do so, the court must apply the rue that *nemo dat quod non habet*. Specifically, in the case of the Factors Act, the buyer must not have had notice that the person making the disposition lacked authority to make it.

286. The question of what is meant by the term "mercantile agent" can, for these purposes, be put to one side. In order for a sale by a mercantile agent to come

within the exception, as Willmer LJ in *Stadium Finance v Robbins* [1962] 2 QB 664 at 674:

> " [the agent's] possession of the car must be possession, with the consent of the defendant, in his capacity as mercantile agent – that is to say, as one clothed with apparent authority to sell."

In *Pearson v Rose & Young* [1951] 1 KB 275, Lord Denning said, at p. 288:

> "The owner must consent to the agent having them for a purpose which is in some way or other connected with his business as a mercantile agent. It may not actually be for sale. It may be for display or to get offers, or merely to put in his showroom; but there must be a consent to something of that kind before the owner can be deprived of his goods."

287. I think that this point was accurately and effectively dealt with by Cooke J in *Gray v Smith, JPMC and Edwards* [2013] EWHC 4136 (another case involving Mr Edwards). He said:-

> "There is however, a more fundamental objection to the passing of title under the Factors Act, since I have already found that Mr Edwards did not hold the McLaren as agent to Mr Gray at all. He did not acquire the McLaren as agent for Mr Gray and never held it for him in that capacity. He was the legal owner of the McLaren and Mr Gray, whose money had been used for the purpose of the purchase was the owner in equity. This is, therefore, not a Factors Act case." (at [124])

288. I think the same is true here. The Factors Act only applies where a person is in possession of goods with the consent of the owner. At this point the owner of the car was Mr Carl, and there is no question but that he did not consent to the car being in the possession of Mr Davis. Mr Greenwood and Pescara did not acquire good title under the Factors Act, and I do not think that there is any other way in which they could have acquired good title. Consequently, Mr Greenwood converted the car when he took delivery of it.

289. Mr. Greenwood then disassembled the car. I do not think that the disassembly per se was actionable. However, when the different parts were sent their different ways, the result was that the person who took possession of the engine and gearbox converted that property when they did so, since Mr Carl's right to possession of the car translated into a right to possession of every part of the car.

7. The Cheque Action

290. As set out above, the Cheque action arises from the cheque written by Mrs Edwards to Mr Carl. I do not think that there is any doubt that the Cheque is a valid cheque. An instrument is a valid cheque if it satisfies the formal requirements for a cheque contained in the Bills of Exchange Act 1882. Section 73 of that Act provides that 'except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque'. The arguments that Mrs Edwards advances in respect of it address the contractual matrix within which it was written rather than the instrument itself.

291. The facts, as set out above, are that Mr Edwards seems to have agreed with Mr Carl that Mr Carl would pay money to CSPL. I have found that Mr Edwards entered into the transactions which he did enter into as agent for Mrs Edwards. It is also clear that Mrs Edwards was aware of the basic fact of the transaction – she knew that Mr Carl was advancing the money, and she knew that the advance had been requested by her husband on her behalf. She then had a telephone call with Mr Carl, in which it was entirely clear to her that he was

advancing money on the basis that he would expect to receive repayment in her name, albeit through Mr Edwards.

292. In these circumstances, I cannot reach any conclusion other than that she was, and knew that she was, liable to repay a loan which had been taken out on her behalf by her husband as her agent. I entirely accept that she was merely obeying her husband's instructions in acting as she did. However, I note in this regard that she has, despite being invited, positively declined to bring any claim of undue influence against her husband, and where she has refused to take a point, I cannot take it on her behalf. I therefore think that Mrs Edwards was liable to repay the loan. The reason that this matters is that where a person writes a cheque in satisfaction of a debt which they owe, the conventional analysis is that there is good consideration given by the creditor in the form of a conditional agreement not to pursue the original obligation.

293. Mrs Edwards' pleading suggested five reasons why the cheque was not a valid bill of exchange. These were:

i) The cheque was a sham because it was never intended to be presented;

ii) the cheque did not constitute a "cheque" within the meaning of s. 73 of the Bills of Exchange Act 1882 because it was not to be paid on demand but rather to be presented only if the Loan was not repaid within two weeks;

iii) The cheque did not constitute a negotiable instrument within the meaning of s.3(1) of the Bills of Exchange Act 1882 because it was not to be paid on demand nor at a fixed or determinable time;

iv) The cheque constituted no more than a document written pursuant to an oral guarantee that was unenforceable by reason of the Statute of Frauds;

v) Mrs Edwards liability (if any) under the cheque or otherwise was discharged by later agreement between the payee and Mr Edwards

The "Sham" argument

294. An important feature of the law of cheques in English law is that the holder is usually entitled to summary judgment on the instrument. This is because in principle a bill of exchange or promissory note is to be treated as cash (*Fielding & Platt Ltd v Najjar* [1969] 1 W.L.R. 357 at 361). The defendant is not permitted to set off or counterclaim for damages for breach of some other contract and a stay of execution will not be given for this purpose (see the White Book at CPR 24.3.6). On the other hand, as between immediate parties to the instrument (in the case of a cheque, the drawer and the payee), defences such as lack of consideration can be raised (*Chalmers and Guest on Bills of Exchange and Cheques* (19th Ed.) at para 5–072).

295. The learned master who dealt with Mr Carl's application for summary judgement on the cheque declined to make the relevant order on the basis that the cheque might be a "sham", and that the question of whether it was or not was a matter for the full trial.

296. The starting point for the doctrine of shams is the speech of Diplock LJ in *Snook v London and West Riding Investments Ltd.* [1967] 2 QB 786 (at 802C-F):

> "As regards the contention of the plaintiff that the transactions between himself, Auto Finance and the defendants were a "sham," it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to 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."

He went on to say:

> "But one thing, I think, is clear in legal principle, morality and the authorities (see Yorkshire Railway Wagon Co v Maclure and Stoneleigh Finance Ltd. v Phillips), that for acts or documents to be a "sham," with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a "shammer" affect the rights of a party whom he deceived. There is an express finding in this case that the defendants were not parties to the alleged "sham." So this contention fails."

297. These passages make crystal clear that the doctrine of sham only has any application to documents purporting to embody an agreement where the actual agreement which the parties have made does not correspond with those documents.

298. The trouble with trying to apply this doctrine to a bill of exchange is that the creation of the bill itself is what gives rise to the legal relations between the parties. If one person draws a valid cheque in favour of another, the payee's right to payment rises as a direct result of the creation of that cheque, and this will be true regardless of the intentions of the parties. The principal to be applied in such a case is that set out by Lord Templeman in *Street v Mountford* [1985] 1 A.C. 809, 819 to the effect that:

> "the manufacture of a five pronged implement for manual digging results in a fork even if the manufacturer, unfamiliar

> with the English language, insists that he intended to make and has made a spade.".

In the context of the Bills of Exchange Act 1882, if a person has created a written instrument which satisfies the formal requirements of the Act, then he has made a bill of exchange, regardless of his intentions.

299. This policy is entrenched in the Act by s.3(1), which specifies that a bill of exchange must take a certain form, and by s.3(2), whose effect is that the imposition of any other terms or conditions on the face of the bill means that it is not a valid bill, and by s.55, which provides that the drawing of a valid bill per se creates legal obligations which are binding on the drawer. A properly drawn bill cannot, by definition, be a sham.

The collateral contract

300. This raises the question as to what the position should be if, at the time that the bill was created, there was an agreement in place as to how the bill should be dealt with – for example, if the parties were to agree that the bill should only be presented for payment in certain circumstances.

301. The policy of the Act in this regard is fairly clear. A bill is intended to pass as currency, and it is the policy of the law that a bill should be given effect in accordance with its express terms – as Lord Ellenborough said in *Hoare v Graham* (1811) 3 Camp. 57 "what is to become of bills of exchange and promissory notes if they may be cut down by secret agreement that they shall not be put in suit". This is sometimes expressed as being a manifestation of the parole rule (see *Kazeminy v Siddiqi* [2009] EWHC 3207 (Comm) and *Chalmers* 2-155). However, a better way of thinking about it is as a

mechanism to ensure that a bill should have the effect set out on its face, and that persons dealing with the bill should be entitled to treat it as having only the terms set out on its face.

302. The position in this regard is, however, different as between some persons and others. Parties to a bill are divided by the Act into immediate parties and remote parties. The immediate parties to a bill are those responsible for bringing it into existence – usually the payee and the drawer. Where the bill is brought into existence pursuant to an agreement between the payee and the drawer, several sets of consequences may follow. Most importantly, as between the drawer and the payee, the bill is enforceable as a contract and, like any other contract,

> "extrinsic evidence is admissible to show that, at the time a document was signed by the parties, they were agreed that it was not to take effect as a contract except on the fulfilment of a certain condition"

(see *Chitty on Contracts*, 35th ed. 16-036, and *Chalmers*, 2-161).

303. This point was considered by Blair J in *Banque Cantonale de Geneve v Sanomi* [2016] EWHC 3353 (Comm). This case was a claim for summary judgement on two promissory notes given by the defendant to the claimant bank. One of the defendant's defences was an argument that, immediately before signing the notes, an agent of the bank told him that the bank would make no demand under the notes, and that they were requested only "to keep senior management happy" (para [32]). The defendant argued that this raised three triable issues, these being that that "(i) the parties had no intention to create any legal relations such that the notes are not binding, (ii) the claimant is estopped from making a demand, and (iii) if [the claimant] did have the

intention to make a demand in future, this was a misrepresentation which entitles the defendant to rescind contracts contained in the notes." Para [32]. Blair J dealt with these arguments as follows:

> ""[34]. The defendant relies on Kazeminy v Siddiqi [2009] EWHC 3207 (Comm) where it was suggested (though not decided) that as applied to bills and notes this principle may be no more than an example of the parol evidence rule and subject to an arguable exception where there is evidence to suggest that the note may not contain the parties' entire agreement. It was held that the scope and applicability of the principle would be better decided at trial, and summary judgment was refused ([50] et seq).
>
> [35] In Kazeminy v Siddiqi, the defence was that the notes were not to be repaid until profits began to flow from the technology that was being developed between the parties. The present case is completely different. The defence is to the effect that the promissory notes by which the defendant promises to pay the sums stated on demand in fact require him to pay nothing. That reduces the notes to worthless paper. I do not think that Kazeminy v Siddiqi assists the defendant.
>
> [36]..In New London Credit Syndicate Limited v Neale [1898] 2 QB 487, the oral agreement was to the effect that the holder of a bill of exchange would renew it, if at maturity the acceptor could not pay. That is similar in effect to the oral agreement advanced in this case, because the acceptor might never be able to pay. The Court of Appeal held that evidence of the contemporaneous oral agreement to renew the bill was inadmissible on the ground that its effect would be to contradict the terms of the written instrument. I accept that the extent of the rule is uncertain (Chalmers, ibid, at para 2-157), but it has been applied in other cases (Hitchings and Coulthurst Co v Northern Leather Co of America [1914] 3 KB 907 , Nicol's Trustees v. Sutherland [1951] SC (HL) 21 , 6 LDAB 184). Additionally in the present case, it makes good commercial sense not to admit evidence that would completely undermine the certainty and finality of negotiable instruments being used in the finance of oil trades (Chalmers, ibid, at para 2-155)."

I think it is correct that, if a binding collateral contract not to present a cheque could be shown, it could potentially result in the creation of a counterclaim which might be set off against the claim on the cheque. However, I do not believe it would invalidate the cheque itself. Since the ordinary function of a

cheque is to be cashed, I think it would take very clear and unambiguous evidence to find such an agreement. There is no evidence here, either of a binding collateral contract supported by consideration or, indeed, of any such agreement.

304. As regards the other points

i) The cheque was dated, and did not purport to carry on its face any deferment. It was therefore to be paid on presentation. The argument that cheque did not constitute a negotiable instrument within the meaning of s.3(1) of the Bills of Exchange Act 1882 because it was not to be paid on demand nor at a fixed or determinable time therefore fails;

ii) Where a cheque is given in support of a guarantee, the validity of the cheque is not connected in any way to validity of the guarantee. The argument that cheque constituted no more than a document written pursuant to an oral guarantee that was unenforceable by reason of the Statute of Frauds therefore fails;

iii) A later agreement in respect of a cheque does not invalidate in any way the liability of the drawer under the cheque – it simply provides a counterclaim. The argument that Mrs Edwards liability under the cheque or otherwise was discharged by later agreement between the payee and Mr Edwards therefore fails.

305. The remaining argument for Mrs Edwards therefore turns on a lack of consideration. She and Mr Carl are immediate parties to it. Can she argue that there was no consideration for her cheque, and that it is therefore ineffective?

306. The general law of consideration applies to cheques. Any promissory note – including a cheque – requires to be supported by consideration given by the promisee. Was such consideration given by Mr Carl? In this regard it may be noted that the bills of exchange regime is, in this regard, an exception to the ordinary rule that past consideration cannot support a contract, since by s.27(1)(b) of the Act an antecedent debt can constitute good consideration for a cheque where that debt is owed by the drawer personally.

307. This brings us back to the question of whether Mrs Edwards was in fact indebted to Mr Carl for the £221,000. I think she was, and, if she was, then the cheque was supported by valid consideration, and is enforceable. If the cheque had been a mere gift to Mr Carl, then it would not have been enforceable as against him. However, it was not, and it is.

308. Mrs Edwards is therefore liable on the cheque to pay the £221,000 to Mr Carl.

309. I also need to address the issue of interest. Section 57 of the Bills of Exchange Act provides that interest on a demand bill (such as a dated cheque) is payable from the time that it is presented for payment. However the question of whether interest should be payable, and at what rate, is left to the discretion of the court.

310. Mrs Edwards argues that no interest should be payable on two grounds. One is on the basis that Mr Carl sent an e-mail to Mr Edwards on the 7 March 2012

in respect of the loan of the £221,000 to the effect that "if you do what you say you are going to do, this is a favour and there is no interest or other cost to you". However, this offer was made on the basis that what Mr Edwards was going to do was to repay the loan within "a few days". Mr Edwards clearly did not do this. The e-mail further went on to discuss a 15% charge, but this was dependent on the liquidation of collateral which in the end was not provided. I therefore do not think that the terms of this e-mail constitute an agreement by Mr Carl not to charge interest in any event.

311. The second ground on which Mrs Edwards argues that no interest should be payable is more substantial. *Chalmers* (at 7-048) gives as one of the grounds where a court might exercise its discretion not to award interest where "there is a long delay in enforcing payment after presentment". Mr Carl initially acted with alacrity in presenting the cheque for payment, but he subsequently accepted a compromise under whose terms no interest was required. Mrs Edwards argues that, because he indicated at various times that was prepared to accept a settlement consisting simply of payment of the initial amount, he had in effect abandoned his claim for interest.

312. Mr Carl applied for summary judgement on the cheque in April of 2021, and applied in that hearing for interest of £67,000. The learned master -possibly surprisingly - declined to give summary judgement (see *Carl v Edwards* | [2021] EWHC 1103 (Ch)). However the essence of Mrs Edwards' point – I think – is that if the cheque was presented and dishonoured on 2 April 2012, and it took Mr Carl until 2021 to bring a claim for summary judgement on it, that can hardly be said to be reasonable alacrity. Mr Carl argues that he was

engaged in this litigation for much of this period, and he cannot therefore be said to have been inactive in respect of his claims.

313. The starting point here is that a cheque is a payment instrument. In general, the aim of a cheque is to satisfy an obligation for a specific amount of money – unpresented cheques do not bear interest. Consequently, an action on a cheque is simply an action for the face value of that cheque. I do not think that there is any general principle that any particular period of delay in pursuing a defaulted cheque is necessarily fatal to a claim for interest in respect of the debt due – everything depends on the circumstances. In particular, once a payee of a defaulted cheque has given notice that he intends to seek interest on the amount due, it seems reasonable that he should be awarded such interest if nonpayment continues. Conversely, if a payee indicates that he is prepared to accept the face value of the cheque in settlement of the obligation, it seems reasonable to assume that that will remain his position until he indicates otherwise. In this case I think Mr Carl's conduct would have led all those involved to believe that his only claim was for the repayment of the principal amount due.

314. Consequently I do not think that Mr Carl is entitled to the exercise of the court's discretion to award what would now be 12 years accumulated compound interest on this debt. I therefore find that he is not entitled to pre-judgment interest under s.57 of the Bills of Exchange Act (or on any other basis).

8. The Claims

315. The Statement of Claim presents a smörgåsbord of different causes of action, ranging from deceit to negligence. I think the key claims are those which arise in deceit, conversion unlawful act conspiracy and knowing receipt.

316. I think there are five separate conspiracies here. First, the conspiracy to deceive Mr Carl as regards the F40. Second, the conspiracy to deceive Mr Carl as regards the Miura. Third, the conspiracy to convert by sale the White Porsche. Fourth, the conspiracy to convert by pledging the Orange Porsche. Fifth, the conspiracy to deceive Mr Carl that all eight cars were held by SCM for him at all material times.

8.1 Mr Edwards (3rd)

317. I need to take Mr Edwards first, because my findings as regards his position have consequences for my findings as regards the other defendants.

318. Mr Edwards' defence in these proceedings was struck out, and he was debarred from defending, for failure to provide disclosure pursuant to the unless order of 20 October 2020. Pursuant to what appears to have been his policy of ignoring legal proceedings, he has never filed a pleaded case. However, he did provide two witness statements in opposition to Mr Carl's application to commit him for breach of the delivery up order which set out, to some extent, his case. His argument was that he was in an "informal partnership" with Mr Carl. He seems to imply that this meant that the cars were in some sense partnership property and/or that he was entitled to dispose of them, although this is not explicitly stated.

319. The core claim against Mr Edwards arises in deceit. I think this claim is clearly made out. (1) He deceived Mr Carl as to the purchase of the F40 and the Miura (and probably the Montreal) and the application of the purchase moneys. (2) he was complicit with Mr Hawkins in the deceptive statements that the eight cars were held for him by SCM as bailee, when this was known by both of them to be untrue, (3), he told Mr Carl that the cars misappropriated in the "raid" had been sold immediately after the raid, although he knew that his was not the case, in order to try and dissuade Mr Carl from recovering them.

320. It is equally clear that his removal of the cars taken in the "raid" – at least the 959 and the Porsche lightweight – constituted a conversion of those cars. He was also a joint tortfeasor with Mr Howarth in the conversion of the White Porsche and the Orange Porsche. I think it is highly likely that he may have been involved in the conversion of the Ferrari 365 in its sale to Mr Davis and its on-sale to Mr Greenwood, but I have insufficient evidence to form a clear view on that point. Mr Edwards clearly attempted to convert the 959 after the "raid", but I do not think that an unsuccessful attempt at conversion gives rise to any claim in damages.

321. More or less everything done by Mr Edwards after the "raid" in respect of the cars constituted a breach of the delivery up order.

322. Mr Williams' submissions for Mr Howarth put forward the (somewhat surprising) argument that Mr Howarth was justified in paying the proceeds of the sale of the White Porsche to Mr Edwards on the basis that he was entitled to them under the terms of the termsheet. I think I need only say that I reject

this argument completely – the sale of the White Porsche was not pursuant to the agreement between the parties, but in flagrant breach of it, and no such claim arose. Equally, the suggestion that Mr Edwards had any entitlement to remuneration in respect of the profit on the subsequent sale of the 959 simply wrong. I think it is clear that Mr Carl terminated the agreement with Mr Edwards on the basis of his repudiatory breach no later than the date of the "raid", and the idea that Mr Edwards might have any claim to any further payments from Mr Carl after that date is extraordinary.

8.2 Mr Hawkins and SCM (1st & 2nd)

323. Mr Hawkins was represented by solicitors (Gordons) when the claim commenced, and participated in this litigation until early 2020. His defence was struck out and he was debarred from defending for failure to provide disclosure pursuant to an unless order of 20 October 2020. SCM were also represented until early 2020. They were placed in administration in February 2020, and that administration is due to end shortly with the company being struck off. The administrators have confirmed that they have no interest in this litigation.

324. Mr Hawkins' defence emphasised the distinction between the position of Mr Hawkins personally and SCM. This is of course correct – the bailee of the cars was SCM, not Mr Hawkins personally. However, since Mr Hawkins was at all times the guiding mind of SCM, his motives, intentions and beliefs are necessarily also those of SCM. I therefore consider that (a) where SCM made deceptive statements to Mr Carl as regards the cars, Mr Hawkins, as the author of those statements, is jointly liable for them with SCM, (b) where Mr

Hawkins can be said to have conspired with other persons (such as Mr Howarth), his activities were undertaken on behalf of SCM and SCM is liable for those actions, and (c) where SCM did acts in relation to cars which were in breach of its obligations as bailee, Mr Howarth, as the person who initiated those acts, is jointly liable for them.

325. Mr Hawkins' defence to the allegations of deceit is that the statements made were true; which they demonstrably were not. However, he does plead a defence to the allegation that he converted the cars by refusing to deliver them up to Mr Carl on request.

326. His argument in this regard is that the SRAs gave him a justification for refusing to release the cars, and that he believed that Mr Edwards had Mr Carl's authority to agree the SRAs. He bases this on Mr Carl's e-mail of the 25 September 2014, which read:

> "Please understand that Richard is my agent with regard to these cars and that I am the only legal title owner hence the only person with authority to sell or create any liens on these cars. If you have any questions on this issue, I suggest you confirm these facts with Richard."

327. Mr Hawkins relies on the words "Richard is my agent". However I think it is clear that the paragraph, taken in context, does not bear the weight which Mr Hawkins seeks to place on it. It is also notable that this e-mail was the subject of correspondence between Mr Hawkins and Mr Carl on 17 August 2015, in which Mr Hawkins suggested that this meant that Mr Edwards had some authority over the cars. Mr Carl responded curtly "The letter makes clear that Richard has no authority to do anything with the cars!".

328. Mr Hawkins admits that requests to collect the cars from him were made on the 24 August, 5 September, 10 September, 16 September and 18 September 2015. His position is that had the Claimant actually appeared at his premises he would have delivered the cars to him. He also argues that the fact that the Claimant wished the cars to be sold was inconsistent with his requests for delivery of the cars – an argument which is incomprehensible, since the mandate from Mr Carl to Mr Hawkins had always been that if he could negotiate an acceptable sale price for the cars, he should do so. .

329. Mr Hawkins' main argument is that he did not convert the cars by delivering them to Mr Edwards during the "Raid", since he was not

> " ..entitled to prevent the Third Defendant collecting the vehicles if he so chose (him owning the motorcars jointly with the Claimant, or the motorcars being partnership assets)".

330. Mr Hawkins express excuse to Mr Carl for not being prepared to return his cars in September was because he claimed that he had issued sales contracts for three of them. This cannot be reconciled with his pleaded case that no sales took place.

331. Mr Hawkins pleaded case is that Mr Edwards removed all of the identified cars in the Raid. This must be untrue as regards at least the F40 and the Miura (which I am satisfied were never purchased).

332. Mr Hawkins case is that, although he co-operated with Mr Edwards in the removal of the cars, he did so under duress. The question of whether this is sufficient to exculpate him is unclear. It seems to me that where a person who has possession of the goods of another is deprived of those goods by force, he cannot be said to have converted them. The reason for this is that Conversion

requires intent – in particular intent to deal with the property inconsistently with the rights of the true owner, and a person whose will has been entirely overborne through threats cannot be said to have that requisite mental element. The test to be applied for duress in this context is or should be no different from the test to be applied in any other non-criminal context. Thus almost any threat of physical violence is enough to ground a claim in duress, provided that the recipient of the threat genuinely believed that submission to the demand made was the only way to prevent himself from being injured or worse (*Chitty on Contracts*, 35th Ed. 11-018).

333. Mr Hawkins also claims the sum of £67,763 for work which he claims was done on the various car whilst in his possession and which he says has not been paid for. I have no evidence before me which would enable me to decide this claim, even if its pleading had not been struck out.

334. There are four broad issues as regards Mr Hawkins. One is as regards the cars which were never in fact purchased, but which he indicated to Mr Carl had been purchased and were held for him. A second is as regards the cars which he told Mr Carl were held on his behalf, but which had in fact been disposed of. A third is as regards the cars which he actually did have in his possession, but which he refused to release to Mr Carl upon request. A fourth is as to whether he has a defence of duress to the conversion of the cars which resulted from his turning over to Mr. Edwards the cars removed in the "raid".

335. As regards the first of these issues, the position could not be clearer. Mr Carl paid money under the impression that he was purchasing valuable property. The money was diverted in a way in which Mr Hawkins was complicit. Mr

Hawkins then represented to Mr Carl that the property had in fact been acquired, and was being held for his account. It is hard to imagine a clearer case of the tort of deceit.

336. As regards the second issue, I think it is clear that, at the time when the Orange and the White Porsches left SCM, Mr Hawkins was in absolutely no doubt that Mr Edwards did not have Mr Carl's authority to instruct them to be moved, sold or pledged. I think it is clear that when Mr Hawkins permitted Mr Edwards to remove these cars he was acting in a way which was knowingly contrary to the rights of the true owner, Mr Carl. At that point he and SCM breached his duty as bailee and converted those cars.

337. As regards the third issue, I think Mr Hawkins knew that Mr Edwards had no authority to commit the cars to SCM on the terms of the SRAs. Even if this were not the case, I think it is also clear that the representations made by Mr Hawkins to Mr Carl – that he would not deliver the cars because he had entered into contracts for their sale – were false to his knowledge. Consequently, I think that Mr Hawkins refused to deliver the cars to Mr Carl upon request, and by doing so he converted them.

338. As regards the fourth issue, I am satisfied – as I say above - that there is a potential defence of duress to a claim in conversion. The question is whether Mr Hawkins was in fact subject to any such duress. The evidence that he was is tenuous – he says that he was, Mr Edwards, the purported effecter of the duress, says otherwise.

339. I think the circumstances make it extremely unlikely that any duress was in fact used. The story about the "raid" was very much in Mr Hawkins interests,

since it provided him with an excuse for the absence of the F40 and the Miura. Since that absence was the result of a collusion between (inter alia) Mr Edwards and Mr Hawkins, it seems unlikely that an attempt to solve the problem would not have been acceptable to both of them. It also seems implausible that Mr Edwards would both have exercised sufficient duress to put Mr Hawkins in fear and also provided him with a written receipt for the property removed.

340. I therefore do not believe that Mr Hawkins was subject to sufficient duress to provide him with any defence to an action of conversion as regards the cars removed in the "raid". This is a classic case of breach of bailment, where the bailed property is lost.

341. As regards the claim in dishonest assistance, such a claim requires:

1. a breach of trust or fiduciary duty by the primary wrongdoer(s);

2. the defendant must have assisted the primary wrongdoer(s) in the breach; and

3. the defendant must have had a dishonest state of mind.

342. All three of these characteristics seem to me to be present here. I have found that Mr Edwards was a fiduciary, and there is no doubt that he breached that duty by purporting to purchase the F40, the Miura and the Montreal whilst in fact diverting the purchase moneys elsewhere. Mr Hawkins clearly assisted him in this endeavour by telling Mr Carl that the cars had been purchased, when in fact they had not. It is impossible to image a rationale for the lies which Mr Hawkins told Mr Carl that was not dishonest. There is simply no

way that Mr Hawkins, as an established and professional car dealer, could have honesty failed to know what cars were at his facility, and in whose ownership.

343. As regards the claim for damages for breach of contract, I have found that the agreement between Mr Hawkins and Mr Carl never seems to have been documented, and to have consisted in a short telephone call in which Mr Hawkins agreed to take care of Mr Carl's cars in order to have the opportunity to sell them on commission if the opportunity arose. The essence of the agreement was therefore simply that Mr Hawkins agreed to act as a bailee for Mr Carl. I do not think that there is any scope to imply terms beyond that agreement, neither is there any basis for me to do so. To the extent that it might be argued that there might be an implied contractual duty of care, I would say that such a duty was fully covered by the agreement that Mr Hawkins should be a bailee, since he would, as such, become subject to the ordinary bailee's duty of care in respect of the bailed goods.

344. This is important, because it imports the rule on burden of proof as to a bailee's liability mentioned above. Since Mr Hawkins is disbarred from defending this action, that means that he cannot discharge the burden as regards allegations of breach of a duty of care, and I must therefore find such a breach.

Conversion

345. The F40 and the Miura cannot have been converted by Mr Hawkins, since they were never purchased and, as a result, Mr Carl never had an immediate right to possession. The White Porsche was converted when it was consigned

for sale, and the Orange Porsche when it was consigned to be pledged. The position as regards the 355, the Lightweight and the 959 is unclear, but it is clear that they were converted when they were handed over by Mr Hawkins to Mr Edwards.

Conspiracy by unlawful means

346. The only possible reason that Mr Hawkins can have had for lying to Mr Carl about the F40 and the Miura is to conceal the fact that Mr Edwards had misappropriated the funds provide for their purchase. The only explanation that I can find for his actions is therefore that he and Mr Edwards were engaging in a concerted exercise to deceive Mr Carl.

347. It is entirely possible that Mr Hawkins did not know the details of what had happened, and it is very likely that Mr Edwards reassured him that there was a perfectly good and honest explanation for what he was doing. However, I do not think that that would have helped Mr Hawkins. He knew that what he was saying (or, more probably, what Mr Edwards was asking him to say) was actually untrue, and I can imagine no possible honest explanation that could have been given to him.

Deceit and Dishonest assistance

348. I can take these two heads together, since they go to intention. As regards Deceit, the question is a simple one – did Mr Hawkins know that what he was telling Mr Carl was false. There is no doubt that he did. The only remaining question is therefore as to his reason for doing so, and this raises the same question of dishonesty which arises in the context of dishonest assistance.

349. It may well be that Mr Hawkins did not know the precise details of what Mr Edwards was doing, but it seems to me that even if Mr Hawkins had simply consciously decided to refrain from taking any step to confirm the true state of affairs, that would nonetheless have constituted blind-eye knowledge sufficient to found liability under this head.

8.3 Mr Howarth (4th)

350. Mr Howarth was represented by RIAA Gillette and counsel at the outset including when his statements of case were finalised. He has been unrepresented since about 2018. He has instructed Mr Williams of counsel, on a direct access basis, to represent him at this trial.

351. The essence of Mr Howarth's defence and counterclaim is that Mr Edwards and Mr Carl were in partnership, and that either (a) the cars were owned by the partnership, and that Mr Edwards therefore had an ownership interest in them, or (b) that Mr Edwards had, by virtue of the partnership, authority to deal with the cars, or (c) that Mr Carl had given Mr Edwards actual or ostensible authority to deal with the cars. Mr Howarth admits that he was consulted by Mr Edwards about preparations for the "raid", but claims that his involvement was confined to providing the telephone number of a car transporter driver. He accepts that he was provided with a copy of the delivery up order, but argues that he did not do anything "which helps or permits the Defendants to breach the terms of this order", since by the time he received the order the white Porsche was already sold and the Orange Porsche already pledged.

352. As regards the £198,000 paid to Mr Carl, Mr Howarth advances two cases. One is that Mr Carl is obliged to repay the amount lent to him. The second is

that, even if he is not, Mr Carl was unjustly enriched at Mr Edwards' expense, and is therefore liable in restitution to pay this amount to him.

353. Finally Mr Howarth advances the argument that even if his actions did constitute a conversion of the Orange Porsche, the fact that the car has now returned to Mr Carl's ownership (albeit not control) means that the amount of any damages awarded should be notional.

8.3.1 Conversion of the White Porsche

354. A conversion is any act in respect of property which constitutes the denial of the title of the true owner. It is in principle a tort of strict liability, in that any interference with the goods of another is a conversion, whether or not the goods are known to belong to that other. The role of intention in conversion is subtle – it is no defence to liability in conversion that the defendant believed, even reasonably, that he had the right to act in the way that he did. However, in order to convert goods, it is necessary for the defendant to intend to assert title – there is no such thing as negligent conversion.

355. In this case, it is quite clear that Mr Howarth's actions in respect of the White Porsche constituted a denial of Mr Carl's claim to it. It is also clear that Mr Howarth knew that the selling of the car would constitute a denial of the title of its current owner. His defence is that Mr Edwards had told him that Mr Carl had consented to the sale of the car. Unfortunately, it is no defence to liability in conversion that the defendant believed, even reasonably, that he had the right to act in the way he did. The same goes for his dealings with the Orange Porsche, since pledging property belonging to another is as much a conversion as selling it.

356. It is clear that conversion is a tort which can be committed by joint tortfeasors (*Palmer Birch (A Partnership) v Lloyd* [2018]EWHC 2316 (TCC)). I find that the sale of the White Porsche was a joint enterprise undertaken by a number of people, including Mr Hawkins, Mr Stockton and Mr Howarth. Each of them performed a different part of the enterprise – Mr Stockton by intermediating the transaction, Mr Hawkins by releasing the car to Mr Howarth, and Mr Howarth by delivering it to Mr Roock. It is not alleged that Mr Stockton knew that Mr Howarth and Mr Edwards were acting to defraud Mr Carl, but it is clear that the consequence of the transaction was to deprive Mr Carl of his possessory title to the car. I find that Mr Howarth and Mr Edwards are correctly described as joint tortfeasors in respect of this tort. I also find that there was a conspiracy to commit this conversion which involved Mr Edwards as well as the tortfeasors.

357. As regards the pledge of the Orange Porsche, I think that it is equally clear that this was a conversion jointly committed by Mr Hawkins, Mr Howarth and Mr Kay (who is not a party to this action). Here again, I am satisfied that all three of these knew that the transaction was a denial of Mr Carl's title, but, again, because this is a claim in conversion, their liability would be the same even if they had not had that knowledge. Here again, I find that there was a conspiracy to commit this conversion which involved Mr Edwards as well as the tortfeasors.

8.3.2 Contravention of the penalty notice

358. Mr Carl sent Mr Howarth a copy of the delivery up order in respect of the cars on the 14 October on the basis that, as he put it in his e-mail, "Richard

[Edwards] has suggested to me that he may have put 8 cars belonging to me in your care". Mr Howarth responded "I do not have your cars… I did assist Richard in arranging transport of said cars as he requested assistance, but that is where my help ended.". He did acknowledge that he had read and understood the court order. It is not clear at what date Mr Howarth obtained the Orange Porsche from Mr Edwards, so it is just possible that at the time when he made this statement he did not in fact have possession of the car. However, he unquestionably did know where it was, and by his own admission obtained possession of it almost immediately thereafter.

8.3.3 Breach of fiduciary duty

359. I think Mr Howarth's position in this regard is very different from that of Mr Edwards. Although Mr Howarth also dealt with property belonging to Mr Carl, he at no point held himself out as being entitled to do so, or as acting on behalf of Mr Carl. This is particularly clear as regards the White Porsche, where he seems to have said that the car was owned by Mr Edwards. As regards the Orange Porsche, I think the idea that he was pledging it on behalf of Mr Carl was an argument that occurred to him long after the transaction had been completed. I do not think that Mr Howarth ever acted on behalf of Mr Carl, or held himself out as doing so. Consequently, I do not believe that he was at any time a fiduciary.

8.3.4 Dishonest assistance

360. This does, however, leave the issues of dishonest assistance and knowing or ministerial receipt. If Mr Edwards held himself out to be a fiduciary (as he must have been if he was a partner), and Mr Howarth knew that what he was

doing was inconsistent with his obligations to Mr Carl, then Mr Howarth would be prima facie liable in dishonest assistance in respect of any property belonging to Mr Carl which passed through his hands (or its traceable proceeds), and would hold any proceeds retained by him on constructive trust. However, as far as I know there are no such proceeds and no such property, so the point is academic.

8.4 Mrs Edwards (5th)

361. Mrs Edwards was represented by Sillett Webb and Mr McPherson of Counsel from 2018 until shortly before the adjourned trial in June 2021. Mrs Edwards is no longer married to Mr Edwards.

362. Mrs Edwards is a party to both of the actions considered here. She filed pleadings drafted by counsel in both actions in October 2018. As regards the main claim, the basis of her defence is that she had no idea what was going on, but she allowed Mr Edwards to use her bank account (because he did not have one of his own), and that she sent e-mails and carried out other acts on his instruction.

363. Mrs Edwards is not alleged to have participated in Mr Edwards schemes more widely. The specific allegation against her is that she knew (or should have known) that the funding for the £198,000 which was paid on her behalf to Mr Carl was in fact the proceeds of the pledge of the Orange Porsche, and that she was therefore a party to the conspiracy to convert it, or is liable in dishonest assistance for having facilitated the transaction.

364. It is not alleged that Mrs Edwards was actively involved in the deceits practiced by Mr Edwards in respect of the cars. However, liability for dishonest assistance can be established even if the person concerned is not involved in the original misconduct – even third parties who assist in "the continuing diversion of the money" (*Twinsectra v Yardley* [2002] UKHL 12 at [107]) are liable if the other conditions are satisfied and there is a link between the original misconduct and the assistance. This means that third parties who help with onward dispersion of the proceeds of fraud may be liable.

365. Mrs Edwards case is that she had no knowledge of the provenance of the money coming into and going out of her bank account. Her evidence is that Mr Edwards had provided her with an explanation as to why the money was being paid by Mr Howarth into which she did not enquire. She therefore denies dishonesty on the basis of lack of knowledge.

366. A claim for dishonest assistance requires:

1. a breach of trust or fiduciary duty by the primary wrongdoer(s);

2. the defendant must have assisted the primary wrongdoer(s) in the breach; and

3. the defendant must have had a dishonest state of mind.

Both of the first two issues are made out. The question is therefore simply as to whether Mrs Edwards was dishonest.

367. Mr Carl summarised his evidence on this point in his Witness Statement of 12 July 2023. I think he does establish the point that Mrs Edwards knew at all

material times that her husband's business dealings were at best questionable, and possibly worse. However, he does not succeed in establishing any actual knowledge of dishonesty. The question is therefore one of whether the facts are sufficient to support an inference that she was actually dishonest.

368. The test for dishonesty was considered in *Ivey v Genting Casinos (UK) t/a Crockfords* [2017] UKSC 67 at [74]

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts […] When once his actual state of mind as to the knowledge or belief as to the facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest"

369. There is therefore no need for a claimant to prove that the defendant knew all the details of the underlying fraud. It is enough to show that the defendant knew the primary wrongdoer was doing something they were not allowed to do. That knowledge does not need to be explicit; if the defendant thought that misconduct was occurring and so deliberately refrained from asking questions or shut their eyes to it, the court will impute knowledge to them. This is commonly referred to as "blind-eye knowledge", and that is the basis of the allegations against Mrs Edwards.

370. The test for the imputation of blind-eye knowledge requires two conditions to be satisfied:

1. the existence of a suspicion that certain facts may exist; and

2. a conscious decision to refrain from taking any step to confirm the existence of those facts.

(*Manifest Shipping & Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469)

371. Mrs Edwards clearly knew something about how Mr Edwards business was conducted. In her oral evidence she described his affairs as operating "like a washing machine" – cars and money came in, and cars and money went out, but in the middle there was just a swirl. However, this is not *per se* dishonest. A trader who trades on his own account is perfectly entitled to take money received from one customer and to apply it to the purchase of stock to satisfy the requirements of a different customer. The reason that this was problematic in the case of Mr Edwards is that he was not trading on his own account – indeed, being an undischarged bankrupt, it would have been almost impossible for him to do so. What he was doing was acting as an intermediary in transactions effected by others, and as such he had no business appropriating either the cash or the property involved in the transactions which he intermediated. By doing so, he defrauded those others. However, I do not have sufficient evidence to enable me to conclude that Mrs Edwards even had sufficient knowledge of Mr Edwards' activities to enable her to conclude that that was in fact what he was doing, and without any such evidence I cannot conclude that Mrs Edwards had blind-eye knowledge of the fact that her husband was defrauding those with whom he was involved. I entirely accept her evidence that she actively tried to avoid acquiring any knowledge of her husband's business dealings, but I do not think that that is of itself evidence

that she had actual or constructive knowledge that those dealings were dishonest. Her evidence was that he was, for most of the period under consideration, highly stressed by the business and "permanently on the phone" – it seems to me to be entirely clear why she would not want to involve herself in discussions with him as to his affairs. It is also, of course, the case that had she made such enquiries it is more or less certain that she would have been lied to, but I do not think that that is relevant in this context.

372. Mr Carl, in cross-examination, put to Mrs Edwards that, on her own admission, she participated in an almost daily round of calls to banks instructing, countermanding and directing payments of money. Since the account that Mr Edwards was using was her account, this meant she regularly had to sign cheques and other instructions, and to telephone the bank and ask them to take instructions from Mr Edwards before passing the phone to him. He suggested that since she had knowledge of individual transactions, she must have had knowledge of the overall pattern of business. Her evidence was that she did not – that she signed and gave instructions as her husband directed without addressing her mind to the details of what was being done. Her evidence in this regard seemed to me to be entirely credible, and I accept it.

373. Mr Carl also raised with Mrs Edwards the fact that money flowing through her account was taken by her to meet living expenses, and that she had to some extent appropriated monies which were in fact stolen from him. Again, this is clearly true as a matter of fact, but the question is as to whether Mrs Edwards had actual or constructive knowledge of this fact. I have held that she did not.

374. Finally, it was suggested that because Mrs Edwards knew that Mr Edwards was an undischarged bankrupt, and that one of the reasons that he was channelling payments through her bank account was to conceal them from his trustee in bankruptcy, means that she must have known that he was engaged in wrongdoing. This is incorrect as a matter of law. An undischarged bankrupt is permitted to conduct a trade and earn money throughout the period of his bankruptcy – his obligation is to report the outcome of any such business to his trustee in bankruptcy. However, more generally, such a suspicion, even if it could be proved, would be insufficient to ground a finding of constructive knowledge in respect of a particular identified transaction, which is what is alleged in the Statement of Claim.

375. I therefore do not believe that Mrs Edwards was part of any of the conspiracies in which Mr Edwards engaged as regards the cars or the proceeds of their misappropriations, and did not behave dishonestly. I also therefore find that she is not liable in knowing receipt in respect of the amounts paid into her bank account.

8.5 Mr Scholes & Left Hand Drive (6th & 7th)

Mr Scholes initially filed a defence, but his defence was struck out, and he was debarred from defending for failure to provide disclosure pursuant to an unless order in October 2020. He has subsequently provided disclosure and a witness statement and attended hearings but has never applied for relief from sanctions.

The claim against Mr Scholes is for restitution in respect of monies paid to him by Mr Carl in respect of the purchase of the F40, the Miura on the basis of

total failure of basis. This claim seems clear – although Mr Scholes did not appear for cross-examination, he provided disclosure as to his financial records which Mr Carl has used to recreate the flows of money through his accounts in respect of the F40 and the Miura.

8.6 Mr Chris Williams (8th)

376. Judgement in default for damages to be assessed has already been given against Mr Williams – however, the assessment of damages was adjourned to this trial.

377. The allegations against Mr Williams arise in respect of a EUR 25,000 commission which he appears to have obtained on the purchase by Mr Carl of the Lightweight by providing false documents to the seller, LM Classic car of Ghent. He convinced the seller to pay him EUR 25,000 out of the purchase price paid to them by Mr Carl on the basis of forged invoices. It is not clear whether the invoices were forged by him or by Mr Edwards, but it does not seem to be disputed that he received the money. Mr Carl therefore claims it back, either in the tort of deceit or on the ground of restitution for mistake of fact. I think that the claim in deceit fails, since the person deceived was not Mr Carl but LM Classics. However, the claim in restitution must succeed - Mr Williams was enriched in that he persuaded LM Classics to pay over to him an amount of money which they had received from Mr Carl, and to which he had no claim, and his deceit in procuring the payment deprives him of any defence to restitution. Mr Williams is liable to repay the EUR 25,000 to the Claimant.

8.7 Mr Vikash Limbani (9th)

378. Mr Limbani is represented by Mr Patel of Rippon Patel. Ripon Patel instructed Mr Williams to represent Mr Limbani at trial, so Mr Williams appeared for him as well as for Mr Howarth.

379. There are two issues which concern Mr Limbani. One is as to the possible conversion of the 959 after the Raid, and the other is as to the allegation that he was involved in the "raid" itself. This is based on Mr Edwards' witness statement in the committal application to the effect that after the raid he delivered the cars into the control of Mr Limbani for the benefit of Mr Trevor Smith.

8.7.1 Conversion through participation in the "Raid".

380. Mr Carl reported the "raid" to the police, and as a result the North Yorkshire police commenced an investigation. Mr Edwards had provided them with telephone numbers for both Trevor Smith, and a person called "Vic", who was described as working for Mr Smith. As part of their investigation of the theft of the cars, North Yorkshire police telephoned the phone numbers they had been given. The number for Trevor Smith was no longer connected, so they tried the number for "Vic". A draft witness statement prepared by the investigating officer (DC Lucy Robson) recorded that:

> "On 19" December 2015 I contacted the number 07722222804 and spoke to a male who identified himself to me as 'Vic'. He informed that that he is self-employed and organises transportation of vehicles. He informed me that he was asked by a male he knows as Trevor Smith to organise the removal of 5 vehicles from a place in Wandsworth to another location he can not recall at this time. He remembers there being 5 vehicles - 3/4 Porsche's, an F40 and a Maserati. He believes this took place 1 -2 months ago. He did not know where they were going

> to and did not know anyone by the name of Richard Edwards.
> he could provide no further details at that time."

381. The reference to the cars being in Wandsworth tallies with the evidence of Mr Edwards that the cars removed in the "raid" were delivered to an address in Wandsworth. However, the conversation raises more questions than it answers. Mr Limbani is involved in the car trade, as are a number of his relatives and friends. It is very highly unlikely that he would have mistaken a Porsche 911 for a Ferrari F40 or a Lamborghini Miura – both of which are distinctive in appearance. It is also clear that there was no F40 or Maserati in the group of cars actually collected. The only reason Mr Limbani can possibly have had for mentioning these specific cars is that he had been asked or told to do so, and the only people who would have had any reason to do so would be either Mr Hawkins or Mr Edwards, who were still seeking to conceal the fact that these cars had never been delivered to SCM. Since there is no suggestion that Mr Limbani ever communicated with Mr Hawkins, it is a reasonable inference that he must have received these instructions from Mr Edwards. I therefore reject his testimony that he barely spoke to Mr Edwards, and did not discuss issues relating to car dealings with him.

382. Mr Limbani's evidence as regards this conversation was contradictory. In his witness statement he said that "I have no knowledge of ever meting PC Robson or making any statement to the police. I also have no knowledge of the … vehicles". This falls some way short of denying the telephone conversation. However, in his oral evidence he denied ever having spoken to the Police – an assertion which was repeated by his Solicitor at the pre-trial review. In his oral evidence, Mr Limbani, who acknowledged that the

telephone number was his own, suggested that he might have left his phone in the car and that some other person – presumably Mr Smith – might have taken the call, pretended to be him, and held the conversation which DC Robson recorded. The question of why Mr Smith would have incriminated himself in this way was not canvassed, and can – I think – be dismissed.

383. However, I do not think that the evidence before me is an in any way sufficient to enable me to conclude that Mr Limbani was actually involved in the "raid". He may well have been, but there is insufficient evidence for me to conclude that, on the balance of probabilities, he was.

8.7.2 Conversion of the 959 after the raid

384. It is clear that the 959 was offered for sale by Aman Thukral in early 2016. Mr Thukral's evidence was that he was telephoned directly by Mr Edwards, who was seeking to sell the car, and Mr Edwards explained that he had got Mr Thukral's number from Mr Limbani. Since Mr Limbani was a longstanding contact of Mr Thukral, this is entirely plausible. Mr Thukral's evidence is that Mr Limbani played no part in the subsequent attempt to market the car, and I have no reason to doubt that.

385. The position of Mr Limbani is a difficult one. His approach to disclosure and co-operation with the court process was a straightforward stonewall – disclose nothing, admit nothing. It was entirely clear from his evidence that some of his witness statement was untrue. However, the question for me is as to whether I believe that Mr Limbani was in fact engaged in a conspiracy to convert Mr Carl's cars. I do not think that he was. It seems to me to be clear that Mr Limbani was acting throughout as the instrument of Mr Smith, and that his

role was aimed at securing Mr Smith's position – in particular, money he had lent to Mr Edwards. Mr Limbani's evidence was that he had never spoken to Mr Edwards. I do not believe that, but it is not of itself sufficient for me to conclude that he was Mr Edwards co-conspirator. Equally, although I accept that Mr Limbani facilitated the attempted disposal of Mr Carl's cars, I do not believe that he ever had sufficient possession of the cars to trigger liability in conversion. I also note that it is clear that he never owed any duty, in equity or in common law, to Mr Carl as their true owner. There is no doubt that Mr Limbani has not told the truth in his evidence. However, I think the totality of the evidence within the factual matrix makes clear that he is not liable in conspiracy or conversion.

8.8 Mr Scott Davies and Pescara Limited (13th an 16th)

386. Judgement in default has been given against Scott Davis and Pescara international (the 13th and 16th defendants), with the quantum of damages to be assessed.

387. The case against Scott Davis is that he either assisted in the misappropriation of the 355 or that he himself converted it. The facts are that he agreed with Mr Kay that he and/or Pescara would purchase it for £68,500, and immediately sell it on to Mr Greenwood (acting for Mansa) for £72,000. The pleaded case is that he knew or should have known that the transaction was suspicious. The grounds given for this argument are effectively twofold – first, that the mere involvement of Mr Edwards in the transaction should have put them on notice

that the transaction was suspicious, and that the price to be paid was so unusually low as to be per se suspicious.

388. There is currently a divergence of opinion as to the way in which courts should approach quantum in knowing receipt claims – in particular, whether liability for such a claim should be fault-based, so that the quantum varies with the culpability of the recipient, or whether that liability should be strict (subject to a defence of change of position), by analogy with the common law restitutionary claim against a person who receives misappropriated money to which the claimant has subsisting legal title (as found in *Lipkin Gorman (a firm) v Karpnale* [1991] 1 A.C. 548.). The debate is summarised in *Snell* paras 30-073 to 30-074. In this case, I think that the restitutionary approach is clearly the correct one.

389. If such liability is found, the defendant's liability is fixed at the value of the property when he first received it, and he remains liable even if he has dissipated the original property, or if it can no longer be specifically identified in his remaining assets. This is an important practical distinction between the restitutionary remedy and the proprietary claim founded on following or tracing – in the latter case the claim is for anything that remains, in the former case it is for the totality of the value received.

390. The defendants are therefore liable except to the extent that they have defence of change of position. The point here is that what is sometimes referred to as a "defence" of change of position is more accurately described, per Lord Goff in *Lipkin Gorman* [at 581] as a finding that it would be inequitable for the defendant to be ordered to make restitution. Thus, even though judgement in

default has been given against Mr Davies, I would not prepared to make a restitutionary order unless I were satisfied that it would be equitable to do so.

391. The principal elements of the defence of change of position are clearly made out here – Mr Davies clearly entered into the transaction with Mr Kay on the basis that he had already lined up a pre-sale with Mr Greenwood. However, the question is as to whether the requirement that the change of position be undertaken in good faith has been satisfied. Again, per Lord Goff in *Lipkin Gorman* (at p.580), the question does not arise where a defendant has acted in bad faith. The meaning of the term "bad faith" in this context is as debated as it is in other contexts. However, in this specific context I am assisted by the decision in *Harrison v Madesjski and Coys of Kensington* [2014] EWCA Civ 361, which provides clear authority that where a person purchases an asset at a price which is clearly incompatible with the value of what he actually receives, he should be required to make restitution for the difference, on the basis that the price differential was so great that he cannot not have been on enquiry.

392. I think that that authority applies in this case – consequently I do not think that there is anything inequitable in making the order to the effect that Mr Davies or Pescara must make restitution for the difference between the value of the car at the time when they received it and the amount which they paid for it.

393. The case against Mr Davies for conversion is also established, but adds nothing to the case in knowing receipt. Mr Davies certainly acted in a way which denied Mr Carls title to the car and, as has been established, the fact that he did not know of that title is no defence to an action in conversion. It is

highly arguable that even if he had had complete confidence in Mr Kay's or Mr Edwards title to the car, he would nevertheless be liable in conversion. Because he was on notice that their title was defective or absent, this point does not arise. He is liable in conversion.

8.9 Mansa Limited and Pescara Limited (15th and 16th)

394. I understand that the claims against Simon Greenwood and Mansa Limited (the 14th and 15th defendants) have been settled and do not require determination.

9. Quantum of Damages

Deceit

The correct measure of damages in the tort of deceit is an award which serves to put the claimant into the position the claimant would have been in if the representation had not been made. That means that the highest award that can be made is the loss actually suffered by the claimant as a result of the deceit (Per Collins MR in *McConnell v Wright* [1903] 1 Ch. 546 CA at 554-5). The primary distinction between liability in deceit and liability in misrepresentation is that in deceit the damages need not have been reasonably foreseeable – any damage which is suffered in consequence of reliance on the deceitful statement is covered (*Smith New Court v Scrimgeour Vickers*[1997] A.C. 254).

Conspiracy

395. Damages for conspiracy follow much the same pattern as those awarded for inducing breach of contract. Thus, while a showing of pecuniary loss is necessary to ground the action for conspiracy, the damages are at large so that, once some pecuniary loss is shown, the damages are not limited to the precise calculation of pecuniary loss actually proved and, in particular, additional expenses incurred by the victim of the conspiracy may be recovered (per Dillon LJ in *Lonrho v Fayed (No.5)* [1993] 1 W.L.R. 1489 CA at 1494B). Also the rules for mitigation apply as much in conspiracy as elsewhere, without the test being less strict, although it is clear that contributory negligence is not available to a defendant where the deceit relied on was intentional (*Standard Chartered Bank v Pakistan National Shipping Corp* [1999] 1 Lloyd's Rep. 747 at para.10-080).

Mitigation

396. I think I am also required to consider the position as regards mitigation – was Mr Carl in some respects the author of his own misfortunes through a failure to mitigate the risks which he ran? This point only arises where the claim is in negligence or negligent misrepresentation, since mitigation is not available to a defendant who has committed an intentional tort such as deceit.

397. I can deal with this point fairly shortly. The onus of proof on the issue of mitigation is on the defendant. If the defendant fails to show that the claimant ought reasonably to have taken certain mitigating steps, then the normal measure will apply (*Sainsbury's Supermarkets Ltd v Visa Europe Services LLC* [2020] UKSC 24; [2020] 4 All E.R. 807 at [211]). No such arguments are raised in any of the defendant's pleaded cases. I think that this is unsurprising

– I am unable to see what it could be alleged that Mr Carl could have done that he did not do once he discovered that his cars were missing, and I think it would be entirely unreasonable to suggest that he could have taken any mitigating action before that point. The issue of mitigation simply does not arise on these facts.

Double-Recovery

398. A series of actions related to a particular piece of property may produce multiple actions in conversion, along with potential actions in breach of bailment, breach of fiduciary duty and potentially breach of contract. This proliferation of potential liabilities is, however, accompanied in English Law by a robust principle against double recovery (see *Sevilleja v Marex Financial Ltd* [2021] AC 39). This is not merely a numerical rule. Where different causes of action give rise to different quantities of damages, the winning party, if he wins on multiple different grounds, is entitled to pursue the ground which gives him the largest recovery. However, what he may not do is to make up what he perceives as a shortfall on one ground by praying another in aid.

Liability and loss

399. I think the position is as follows. The first conspiracy was twofold - to misappropriate the purchase monies for the F40, and to deceive Mr Carl as to what had in fact been done. This is a simple case of conspiracy to deceive, with the conspirators being (at least) Mr Hawkins, Mr Edwards and Mr Scholes. This resulted in a loss to Mr Carl of the purchase monies which he had paid over - £297, 298. Their liability is simply to compensate him for this

loss. There is a question as to what the consequences of this loss were for Mr Carl. One approach would be to assume that the car had been purchased with the money which he provided, and to award him damages based on the profit he would have made on a subsequent resale. Another would be to simply accept that the money was lost to him on the date when he paid it over, and to award pre-judgement interest from the date of the misappropriation and the date of judgement. In this case, I propose to take the latter approach. It may well be the case that if the conspirators had in fact purchased the car which they pretended to purchase, then Mr Carl might have made a quantifiable profit. However, I think that the existence and quantum of that profit is too speculative to be the subject of an award of damages. Mr Carl's entitlement in this regard is therefore simply for the recovery of the misappropriate payments plus pre-judgement interest from the date of the misappropriation.

400. I note in this regard that pre-Judgment Interest is not awarded as compensation for damage sustained by the claimant, and I therefore do not take into account commercial opportunities missed because the claimant could not take up the opportunity because the defendant had delayed payment. Equally, I do not take into account how the defendants used the money they had misappropriated during the relevant period. I think that in all the circumstances an appropriate rate would be 2.75% over base rate, compounded annually, between the date of appropriation of the amounts paid over and the date of judgment.

401. As regards the second conspiracy – to misappropriate the purchase monies for the Miura and the Montreal – the position is the same, with the conspirators

being Mr Hawkins, Mr Edwards and Mr Scholes. I think that in this regard pre-judgement interest should be payable on the same basis for the same reasons.

402. As regards the third conspiracy – to convert the White Porsche – it seems clear that the conspirators are at least Mr Edwards, SCM and Mr Hawkins. As regards Mr Howarth, his position is that he did not conspire to deceive Mr Carl because he believed that Mr Edwards had the authority to act on behalf of Mr Carl. However, that is not relevant in this case. Mr Howarth converted Mr Carl's property, and Mr Hawkins and Mr Edwards were co-conspirators in that enterprise. Even if Mr Howarth had no idea that what they were doing constituted a conspiracy to convert, he would still be liable in conversion.

403. This takes us to questions of quantum of damages, and in particular the clear distinction between quantum in conversion and quantum in other torts.

404. As a preliminary point, conversion (unlike most torts) is actionable in the absence of any loss or detriment. It is clear that where, in an action for conversion, the defendant offers and the claimant accepts redelivery of the goods at any time before the action has proceeded to judgment, the claimant may proceed for damages resulting from being out of possession of the goods (although those damages may well be nominal).

405. The normal measure of damages for conversion is usually taken as the market value of the goods converted. In *Kuwait Airways Corp v Iraq Airways Co* [2002] 2 A.C. 883 at 1090 [66]–[67], Lord Nicholls (with whom Lord Hoffmann and Lord Hope agreed) suggested that the normal or prima facie measure of damages is by reference to the market value of the good at the time

of expropriation because "generally this measure represents the amount of the basic loss suffered by the plaintiff owner" (at [66]), but that whether this actually represents the claimants loss will depend upon the circumstances of the case. I therefore think that Mr Howarth's liability in conversion is, at a minimum, the £320,000 which he submitted in his evidence would have been obtained in a trade sale at that date of the car. Interest on this should run from the date of the sale.

406. Separately, Mr Howarth was obliged to account to Mr Carl for the sale proceeds of the car on the basis of money had and received. His broad defence is that he changed his position by distributing the money that he received in accordance with instructions given to him by Mr Edwards. However, as Lord Goff said in *Lipkin Gorman (A Firm) v Karpnale Ltd* [1991] 2 A.C. 548 at 580.

> "… is not open to one who has changed his position in bad faith as where the defendant has paid away the money with knowledge of the facts entitling the plaintiff to restitution; and it is commonly accepted that the defence should not be open to a wrongdoer."

407. In *Niru Battery Manufacturing Co v Milestone Trading Ltd (No.1)* [2002] EWHC 1425 (Comm), Moore-Bick J decided that bad faith, in this regard, is:

> "… capable of embracing a failure to act in a commercially acceptable way and sharp practice of a kind that falls short of outright dishonesty as well as dishonesty itself. (at [135])

408. The question I have to ask myself is therefore not as to whether Mr Howarth knew that the enterprise was intended to deceive Mr Carl, but as to whether he realised that the purpose of the exercise as a whole was to deceive Mr Carl. I think he clearly did, since he was party to this deception through the

misdescription of the payment to Mr Carl. Consequently, Mr Howarth has no defence of change of position, and is liable to account to Mr Carl for the proceeds of the sale of the White Porsche. These proceeds were, on his evidence, £380,000.

409. The liabilities in conversion and money had and received are in the alternative – Mr Carl cannot have both. However, he must choose which he wishes to pursue. It is tempting, although anachronistic, to suggest that this is an example of the waiver of tort principle – than in order to proceed in money had and received he must waive his right to proceed in conversion.

410. Mr Howarth also points out that of these proceeds, $355,000 (a little over £300,000 at the prevailing exchange rates) were transferred to Mr Carl - $300,000 as the purported deposit on the Lamborghini, and $55,000 through SCM as the forfeited earlier deposit. The curiosity here is that these payments were made in respect of liabilities which did not in fact exist – no sale of the car had been agreed, no deposit by any buyer had been paid, and no such monies were owed to Mr Carl. The reason that these fictitious payments were made was to support the broader fiction that the car had been purchased and was held for Mr Carl.

411. I think it is clear that this fact does not have any impact on the extent of the liability in conversion. As Byles J said in *Edmonson v Nuttall* (1864) 17 .B. N.S. 280 at 297):

> "… you could not mitigate damages for conversion of a bag of money by showing that the defendant had out of the bag of money converted paid the debt of the plaintiff"

The remaining question is therefore one which arises in unjust enrichment. If Mr Carl was unjustly enriched by the receipt of these moneys, he should be liable to account for them to the payer; if not, not. This comes down to the question of whether it would be unjust to permit him to retain them.

412. In my view it is not unjust for Mr Carl to retain these amounts – indeed, I think it would be unjust to require him to account for them. The payments were paid as part of a broad and elaborate fraud practiced upon him, pursuant to which he has been tricked put of a great deal of money. There is no suggestion that he knew, or could have known, that this was the case. More importantly, the making of the payments had the - intended – effect of supporting the deceit being practiced upon him, such that he acted to his detriment in not actively investigating the true position as regards the cars.

413. Consequently I do not think that there is any basis on which these sums can be set off against the obligation on Mr Howarth to account for the proceeds of sale of the White Porsche.

414. As regards the fourth conspiracy, to convert the Orange Porsche, the position is much the same. The car was clearly converted, and Mr Howarth was the person who converted it. His state of mind is of no relevance to his liability in that regard. Messrs Edwards and Hawkins were clearly parties to that conspiracy. However, in this case the question of what harm Mr. Carl has suffered is more complex. As regards liability in the tort of conspiracy, since he has ultimately succeeded in recovering the car itself, his losses are simply the costs which he has incurred in recovering it and any harm which the car may have suffered as a result of its detention in inexpert hands. However,

there is no question that the car was converted, and the prima facie measure of damages in conversion is the value of the property converted.

415. This does raise the question of the applicability of s. 7 of T(IG)A. This is the section which restricts double-liability. The point of the section is that since a claim in conversion arises for goods converted at the time of the conversion, where there are multiple conversions the rightful owner is therefore entitled to multiple recoveries. Section 7 of T(IG)A therefore provides that where a claimant brings multiple actions on this basis, he must account for any recovery in excess of the value of the goods. This section is clearly aimed at eliminating double-recovery. The question here is as to whether and to what extent it applies where a claimant whose goods have been converted has recovered those goods by his own efforts without reference to the converter.

416. I do not think that s.7 is engaged by this fact-pattern. It applies where there are multiple actions in conversion, but that is not the case here.

417. It seems to me that, where the claimant has recovered the converted property through his own efforts without the assistance of the defendant, the claimant is entitled to claim the full value of the property converted. This is not a double —recovery – it is simply an application of the principle laid down by Byles J in *Edmonson v Nuttall* (1864) 17 .B. N.S. 280 at 297) mentioned above. If even the conferment on the claimant of a benefit by the defendant is in principle insufficient to mitigate damages in conversion, it seems clear that the claimant's obtaining of a benefit through his own efforts and without the assistance of the defendant cannot constitute such mitigation.

418. The claim in this regard is therefore for the value of the Orange Porsche at the time of its Conversion.

419. It should be noted that after the conversion of the Orange Porsche by its pledge to Mr Cole, Mr Howarth subsequently converted it again by appropriating it, taking it from Mr Edwards and having it registered in his own name. However, this conversion, although nominally actionable, has no practical consequences.

420. As regards the fifth conspiracy, to deceive Mr Carl that the Miura was in the process of being sold, this was clearly a joint endeavour of Mr Hawkins and Mr Edwards. However, in this regard it is entirely clear that Mr Howarth was also a conspirator. There is no explanation for Mr Howarth's designating the payment of part of the sale proceeds of the white Porsche as "Lamborghini" other than that he was aware of the deception, and was acting to support it.

421. It is difficult to assess the loss caused by this conspiracy. I think it is clear that if the £300,000 had not been paid over pursuant to this deceit, Mr Carl would have discovered the true state of affairs as regards his cars in mid 2015. However, by that time the white Porsche would have been sold, the Orange Porsche pledged, and his only recourse would have been to withdraw the existing cars from SCM. This would have meant that he would not have had to recover the 959 and the lightweight from Spain, and might have recovered the 365 intact. However, the only actual damage which accrues to him in consequence of this conspiracy is the costs of the recovery of those three cars. I think it is clear that damages in conspiracy to deceive operate in the same way as damages in deceit – that is, that any additional expenses incurred by

the victim of the conspiracy may be recovered – and he should be able to recover these costs as damages.

422. There are also claims for loss of investment opportunity. It is clear that where a person is wrongfully deprived of valuable property which would have increased in value after the fraud, he can recover that increase as a separate head of damage. The principles and mechanisms are set out in the judgment of Jacobs J in in *Tuke v Hood* [2021] EWHC 74 (Comm) – coincidentally, another case relating to fraud involving classic cars. In principle, this claim is for the recovery of any subsequent increase in the value of cars which the victim has been unable to realise because of the wrongs committed.

423. This is, however, a difficult head of damage to apply on these facts. It is clear that as regards the F40, the Miura and the Montreal no such claim exists, since these cars were never purchased. As regards the 959, no claim could succeed unless it could be shown that this car could have and would have been sold between the date of the "raid" and the date on which it was actually sold for considerably more than the price actually obtained – which seems unlikely, although not impossible. As regards the Orange Porsche, which has now been recovered by Mr Carl, a claim could be made on much the same basis – that it could have and would have been sold at a significantly higher price than its current value in the period when Mr carl was out of possession. Consequently, the only cars in respect of which such a claim seems to have any real prospect of success are the White Porsche sold to Mr Roock, the Ferrari and the Porsche Lightweight. I do not have sufficient evidence in front of me to determine whether such liability actually arises, and what its quantum may be.

Consideration of those issues will have to stand over to the consequentials hearing.

424. As regards the cheque action, it should be remembered that Mr Carl brought bankruptcy proceedings against Lorna Edwards in July 2016 based on the debt owing on the cheque of £221,000. These proceedings appear to have been compromised in December 2016 on the basis that Mrs Edwards brother-in-law, John Stockdale, paid to Mr Carl an amount of £23,000, being the difference between the £221,000 which Mr Carl claimed and the £198,000 which he had received. This would almost certainly have been the end of this issue had not Mr Howarth been joined in the main action. This resulted in Mr Howarth's claimed that the £198,000 was in fact due to him and not to Mrs Edwards. This claim undermined the basis of the settlement reached between Mr Carl and Mrs Edwards. However, the Bankruptcy petition was dismissed in December 2016, presumably on the basis that the issues in dispute would now be resolved in the main action.

425. My conclusion on this point restores the status quo ante – Mrs Edwards is liable to pay the £221,000, and Mr Carl is liable to repay the £198,000 to her. Since Mr Carl has already received a payment equal to the difference between these two amounts, there are no further sums payable on either side as regards these two claims.

10. Costs

426. Mr Carl has fought an extended campaign through these courts to assert his rights, and his costs are undoubtedly now very substantial. There have also

been a number of costs orders in the intermediate proceedings which now fall to be determined.

427. I am prepared to hear further submissions on both the award and the quantum of costs before making a final determination, since the parties should have the opportunity to clarify their positions. However, my preliminary views are as set out below.

428. In principle, Mr Carl has won, and is entitled to his costs from the defendants. However, Mr Carl's conduct of this case was shambolic, and undoubtedly had the effect of inflating the costs of the other parties. CPR 44 requires me, in considering costs, to consider "the conduct of the parties", and CPR 44.2(5)(c) explicitly includes in that term "the manner in which a party has pursued or defended its case". Mr Carl's case has come under sustained procedural attack in the run-up to this trial, and the learned Masters who dealt with it, although satisfied that it should survive strike-out, have on occasion ordered that costs of delays should be paid by Mr Carl.

429. I do not think that there is anything to be gained by rehearsing at length the tortuous course of the pre-trial proceedings. I am satisfied that there is some fault on both sides – it does not seem to me that any of the Defendants have even come close to discharging their duty under CPR 1.3 to help the court deal with matters expeditiously and fairly. However, I think that a lot of the difficulty which Mr Carl has faced – and caused – was the result of his decision to prepare and present a technical case without the assistance of advisors with expertise, and for that he has no-one to blame but himself. I

therefore think that Mr Carl should be entitled to no more than 60% of his costs in the main action.

430. The primary liability for the costs of these proceedings lies with Mr Edwards and his co-conspirators, SCM, Mr Hawkins and (in part) Mr Howarth. However, the reason that we have been forced into these proceedings has been Mr Howarth's refusal to accept that the Orange Porsche is the property of Mr Carl, or that the £198,000 due from Mr Carl was repayable to Mrs Edwards and not to him. The primary reason why this trial had to be conducted was therefore his own position.

431. I also note that Mr. Carl made two open offers of settlement shortly before the commencement of the trial. One of these was to Mr Limbani, and proposed a "drop hands" arrangement. Mr Limbani rejected this, on the basis that he wanted a contribution from Mr Carl towards his costs. The other was to Mr Howarth and Mrs Edwards, to the effect that he accepted that he was liable to repay the £198,000 to somebody, and if they could agree between themselves how that money was to be apportioned, he would make the payment accordingly. Mr Howarth and Mrs Edwards were unable to reach agreement on this point. As a result, one way of looking at the resulting trial is as a contest between Mr Howarth and Mrs Edwards. Viewed from that perspective, Mrs Edwards is the victor and Mr Howarth the loser. I therefore think that Mrs Edwards should not be liable for costs of the main hearing.

432. The position of Mrs Edwards in the cheque action was that she was not liable to pay the cheque. She was unsuccessful on that point. Consequently, I think Mrs Edwards must pay the costs of the cheque action only.

433. There will be no order for costs in respect of Mr Limbani. The reason for this is that he has escaped examination of his conduct through a policy of evasion and non-disclosure. I have insufficient evidence before me to determine whether or not he was part of a conspiracy, but I am entirely clear that he knew of and disregarded court orders in respect of cars, and that he has not provided the disclosure which he was ordered to provide. I note in this regard that Mr Carl put to Mr Limbani in the witness box that he had given no disclosure, and Mr Limbani testified that there was absolutely nothing to disclose by way of communications. I think that this was clearly untrue. I have no problem in principle with the "deny everything" defence, but once it has become clear that a party is seeking to avoid examination of their actions through a strategy of deliberate non-disclosure, I think that that party, even if successful in deflecting liability, should not have their costs incurred of the action

434. None of these decisions undercut or cancel the decisions made at the interlocutory stage about costs of intermediate proceedings. These decisions will be taken into account in the final determination of the liabilities of the parties. However, where there are costs liabilities going in both directions between parties, those obligations should be netted out.

435. The above constitutes a broad sketch of the liabilities of the parties resulting from this judgement. It will undoubtedly be necessary to hold a further hearing to determine issues of costs and quantum. I therefore adjourn this hearing to the date of that further hearing.