Neutral Citation Number: [2024] EWHC 670 (Ch)

Case No: BR-2023-000456

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF AMANDA LOUISE STAVELEY
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 25 March 2024

Before :

DEPUTY ICC JUDGE SCHAFFER

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Between :

AMANDA LOUISE STAVELEY	**Applicant**
- and -	
VICTOR RESTIS	**Respondent**

- -
- -

Ted Loveday (instructed by **Forsters LLP**) for the **Applicant**
Raquel Agnello KC (instructed by **Francis Wilks & Jones**) for the **Respondent**

Hearing dates: 28 February and 19 March 2024

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JUDGMENT

INTRODUCTION

1. The adjourned application before me today seeks to set aside a Statutory Demand dated 26 May 2023 (the Demand) served on Amanda Louise Staveley (Ms Staveley) by Victor Restis (Mr Restis).

2. The Demand is for payment of the sum of £36,841,287.12 derived from an original loan of £10m which, after payments and accruing interest up to 4 April 2023 and costs, stood at £10,103,503.32 with further interest claimed from 4 April 2023 to 26 May 2023 of £26,747,783.80.

3. Appearing on behalf of Ms Staveley was Ted Loveday of Counsel and for Mr Restis, Raquel Agnello KC also of Counsel. Both have filed detailed skeleton arguments with an agreed bundle of authorities, for which I am grateful.

4. There are five witness statements before the court, three on behalf of Ms Staveley, two by her personally and one by Andrew James Head, a partner in Forsters, her solicitors. There are two witness statements for Mr Restis, one by him and one by his lawyer, John Ioannis Neocleous ("Mr Neocleous"). The statements adduce numerous documents so that in all, within the prepared bundle, I have had over 720 pages of evidence before me, all of which I have considered to which some I was taken during the course of submissions. For that reason, the hearing originally estimated to last one day was stretched to two days to deal with pre-reading, submissions and late submissions on one point raised in argument which necessitated a short further adjournment until this morning to enable me to consider all the views and hand down judgment which I will now do.

BACKGROUND FACTS

5. The history of this matter is fairly complicated, not only in considering the Demand but also the dealings between Ms Staveley, Mr Restis, Mr Neocleous and a number of other entities associated with Ms Staveley. Extrapolating, as best I can, from a myriad of facts, the following can be discerned as relevant here:

    5.1 The principal debt was incurred on 9 September 2008 when Mr Restis, through First Financial Corporation, made a loan of £10 million to Ms Staveley's companies, PCP Capital Partners LLP and/or PCP Partners LLC and/ or, as alleged, to Ms Staveley personally. No loan documentation was prepared or signed.

    5.2 By 2014 the total sum of £6,552,696.22 of the initial sum had been repaid to Mr Restis, leaving a principal balance due of £3,477,303.78.

    5.3 By a Settlement Deed and Release dated 5 May 2016 ("the 2016 Deed"), Ms Staveley, PCP Capital Partners LLP and PCP Capital Partners LLC acknowledged the sum due and PCP Capital Partners LLP agreed to repay it on 30 April 2017. I

note that any dispute on the 2016 Deed was to be resolved by arbitration under the Rules of the London Court of International Arbitration Rules. ('LCIA")

5.4 On 30 April 2017 default under the 2016 Deed arose.

5.5 On 23 May 2017 Mr Neocleous, by email, advised PCP Capital Partners LLP, through Ms Staveley, that Mr Restis would give it a further 30-60 days to pay so as to enable Ms Staveley to complete negotiations with Barclays Bank PLC ("Barclays") against whom a substantial claim had been made ("the Barclays litigation").

5.6 On 24 May 2017 Ms Staveley acknowledged the email thanking Mr Noecleous and Mr Restis "for being so understanding".

5.7 On 28 July 2017 Mr Neocleous sought to arrange a meeting with Ms Staveley which took place on the 31 July 2017.

5.8 Subsequently Mr Restis, Ms Staveley, PCP Capital Partners LLP and PCP Capital Partners LLC signed an addendum to the 2016 Deed dated 8 August 2017 within which it was agreed that the amount outstanding with interest was £5,476,000, including legal fees and expenses of £400,000 to be paid on 31 October 2017.

5.9 On 14 September 2017 Mr Neocleous arranged to collect the 8 August 2017 addendum. It is unclear when it was actually signed.

5.10 On 23 October 2017 Mr Restis, in principle, agreed to give a witness statement in support of Ms Staveley in the Barclays litigation.

5.11 On 12 November 2017 the same four parties, referred to at paragraph 5.3 above, signed a second addendum to the 2016 Deed where they agreed that the sum outstanding with interest was £6,476,000 including legal fees and expenses of £976,000 to be paid on 1 February 2018.

5.12 On 28 November 2017 Mr Restis provided to Ms Staveley a witness statement in support of her claim against Barclays within which he stated that the £10m loan was to Ms Staveley personally (page 234 of the application bundle). A draft of that statement was sent to Ms Staveley's solicitors before it was signed by him. It is noted that this particular part of the witness statement was not challenged at any time by Ms Staveley before the Barclays litigation was determined.

5.13 On 15 August 2018 Mr Neocleous, on behalf of Mr Restis, agreed to a further extension of time to pay, requested by Ms Staveley, on condition that an addendum, at that time sent by him to her, was signed by 20 August 2018.

5.14 On 20 August 2018 those same parties signed that third addendum to the 2016 Deed which agreed that the sum outstanding with interest was £7,476,000 including legal fees and expenses of £1,476,000 to be paid on 20 October 2018.

5.15 On 28 November 2018 the same parties signed a fourth addendum to the 2016 Deed which agreed that the sum outstanding with interest was £8,176,000, including legal fees and expenses of £1,676,000 to be paid on 1 February 2019.

5.16 On 13 January 2019 Mr Restis agreed to Ms Staveley's proposal that she would arrange a third party loan for settlement of Mr Restis' claim (page 282 of the Application bundle).

5.17 On 1st February 2019, consequent upon Ms Staveley's proposal, she received a draft Final Release and Settlement Agreement ("the Final Release") and agreed to review it (page 302 of the application bundle) The Final Release was subsequently signed, under which it was agreed that Ms Staveley and/or PCP Capital Partners LLP and/or PCP Capital Partners LLC would secure a loan facility in favour of Mr Restis which would be equivalent to the outstanding sum, the repayment to be made conditional on a payment being made to PCP Capital Partners LLP and Others by Barclays in the Barclays litigation. It is noted that under Clause 1e of this agreement, in default of the loan facility being procured, it was stated that Ms Staveley, PCP Capital Partners LLP and Capital Partners LLC would "remain liable" for the outstanding sum due. No mention is made of the 2016 Deed in this document but it contained an entire agreement clause ("Entire Agreement Clause") to which I will later refer.

5.18 On 4 February 2019 the Final Release was dated and sent to Mr Neocleous (page 319 of the application bundle).

5.19 On 24 April 2019 Mr Neocleous, Ms Staveley, PCP Capital Partners LLP and PCP Capital Partners LLC signed what was termed a Facilitation Deed under which Ms Staveley, PCP Capital Partners LLP and PCP Capital Partners LLC acknowledged that the outstanding sum was now £8,700,000 including legal services and expenses of the amount of £1,900,000 which they agreed to pay by 1st day of November 2019. Although there is reference to an Acknowledgement of the Debt at Schedule 4 to this Deed, none is shown on that Schedule and it was confirmed to me during the course of closing submissions that it was never attached.

5.20 On 21 January 2020 Mr Neocleous advised Ms Staveley by Whatsapp message that he would prepare a new agreement, to be sent that day to her for her to sign, where the date for payment was to be extended to August-September 2020 (page 346 of the application bundle).

5.21 On 6 February 2020 Mr Restis, Ms Staveley, PCP Capital Partners LLP and PCP Capital Partners LLC accordingly signed an amendment to the Facilitation Deed which agreed that the outstanding sum was £9,650,000 including legal services

and expenses of £2,050,000. As part of this amendment it was agreed that upon its execution, Ms Staveley and/or PCP Capital Partners LLP and/or PCP Capital Partners LLC would make a down payment of £150,000 towards the primary liability, the balance to be paid by 31st day of August 2020.

5.22 On 6 March 2020 Mr Neocleous pressed Ms Staveley by Whatsapp message, for the £150k payment and Ms Staveley confirmed it would be made, advising him that he was "very special" (page 351 of application bundle). That payment was duly made.

5.23 On 31 December 2020 Mr Neocleous agreed to wait on payment of the balance and to support Ms Staveley's request for an extra 3-6 months to pay (page 365 of the application bundle).

5.24 All four parties to the February 2020 agreement subsequently signed a second amendment to the Facilitation Deed, which had been sent to Ms Staveley on 7 January 2021, and which agreed that the outstanding sum was now £10,093,503.42 (including legal services and expenses of £2,143,860.13) to be paid by 1st April 2021. The agreement contained an Entire Agreement clause and an Integration clause, to which I will later return in this judgment. This document was reviewed by Ms Staveley within the following 14 days, signed and collected from her office on 22 January 2021 (page 487 of the application bundle).

5.25 No payment having been made by the due date, on 23 March 2021 Mr Restis requested either a bond or early settlement and refused to agree any further extension (page 365 of the application bundle).

5.26 On 6 April 2021 Mr Neocleous pressed for agreement on the Promissory Notes to be provided by Ms Staveley (page 374 of the application bundle).

5.27 On 7 April 2021 Mr Necleous sent the Promissory Notes to Ms Staveley to sign (page 375 of application bundle).

5.28 On 19 April 2021 Ms Staveley by email stated she would re-draft the Promissory Notes (page 376 of the application bundle) which she duly did requesting certain amendments to them.

5.29 On 21 April 2021 Mr Neocleous sent the Promissory Notes with those agreed amendments to Ms Staveley for signature (page 374 of the application bundle).

5.30 On the 29 April 2021 Ms Staveley, PCP Capital Partners LLP and PCP Capital Partners LLC provided two signed Promissory Notes dated 1 April 2021, one in favour of Mr Restis for £7,949,643.19 ("the Note") and the other in favour of Mr Neocleous, Mr Restis' lawyer, for £2,143,860.13, both to be paid, two years later, on 3rd April 2023. Each incorporated a default interest liability calculated daily at the rate of 5% on the Principal Amount as defined.

5.31 On 1 March 2023 Mr Neocleous reminded Ms Staveley that both Promissory Notes were due the following month. That was immediately acknowledged by her (page 396 of the application bundle).

5.32 No payment having been received by Mr Restis on the Promissory Notes, the Demand was prepared and served on 26 May 2023.

5.33 The application to set aside the Demand was made by Ms Staveley to this court on 16 June 2023.

5.34 Directions on the application were made by ICC Judge Prentis on 31 July 2023 when it was listed for determination before me.

APPLICANTS SUBMISSIONS

6. These submissions were detailed but, in summary, Mr Loveday argued that the Demand had to be referred to arbitration in accordance with the 2016 Deed and that in any event Ms Staveley had substantial grounds to dispute the Demand.

7. As to the former, he relied on the well- known authority of Salford Estates (no 2) Ltd v Altomart Ltd [2015[Ch 589. The 2016 Deed contained at clause 14.1 the appropriate arbitration clause and the court should therefore set aside the Demand. Whilst he noted that the Promissory Notes dealt with jurisdiction this was disputed as these Notes had been procured by misrepresentation and under the LCIA Rules (referred to in the 2016 deed) it was for that Tribunal to rule on jurisdiction. The arbitration clause remained intact and could not be overturned without an express agreement. The Promissory Notes were of no assistance as they did not contain an Entire Agreement Clause and did not override the arbitration clause in the 2016 Deed. The Demand should not be allowed to proceed.

8. As to the latter point, namely that there were substantial grounds of dispute, in summary he argued, firstly that the 2016 Deed, which continued to govern the loan, did not impose personal liability on Ms Staveley and secondly, she was entitled to set aside the Demand on grounds of duress and/or undue influence and/or fraudulent misrepresentation.

9. So far as the 2016 deed was concerned, where both parties had the benefit of legal advice, this was not challenged by Ms Staveley. Mr Loveday pointed out that no interest could be charged other than from the date of the 2016 deed and that the rate of interest could only be construed to be 5% per annum above European Central Bank MRO rate simple, not compounded. Secondly each party was to bear its own costs and Ms Staveley was clearly not personally liable. He submitted that the various addenda to the 2016 Deed did not change the position on personal liability, that the sums claimed within them ever increased and had been procured by threats, that she was told there was no need for legal advice, that the effect of the

documents were mis-stated, that she was at all material times suffering from Huntingdon's Disease, that there was a threat Mr Restis would withdraw his evidence which was to be used in the Barclays litigation, that the legal fees claimed were not genuine and that despite request no original documents, upon which Mr Restis relied, have been produced.

10. As for the post 2016 documents, it was argued by him there had been duress placed upon her. Her evidence was that she feared for her and her family's safety. Mr Neocleous had described Mr Restis as dangerous. It was reasonable to assume that this was a threat to violence. She felt she had no option but to sign the documents produced after the 2016 Deed. As for actual undue influence, this had been placed on Ms Staveley. She suffered from Huntingdons Disease. Mr Restis had the capacity to influence, which was exercised by him, such influence was undue and its exercise brought about the signing of the documents. Furthermore, there had been misrepresentations made to Ms Staveley as to the documents. These had not been legally negotiated. She had been told there was no need to take legal advice and that the terms had not fundamentally changed. Ms Staveley had given a coherent account of what had happened. She had been found to be an honest witness in the substantive Barclays litigation and so far as misrepresentation was concerned, such documents as there were supported her account. The representations by Mr Neocleous on Mr Restis' behalf were fraudulent. These were all triable issues.

11. He submitted that not only in the light of the above the Promissory Notes should be set aside, but also they had no free standing legal effect, were not "delivered" back to Mr Restis, were not presented for payment to Ms Staveley in accordance with s87(2) of the Bills of Exchange Act 1882 ("the 1882 Act") and that there was no evidence that there were statutory notices of dishonour given in compliance with ss47 -49 of the 1882 Act.

12. Finally he maintained that there was an arguable case that Mr Restis did not own the original monies lent by him and that any repayment could be inadvertently furthering a crime.

13. All these matters were sufficient to show a triable issue and should go to trial.

RESPONDENTS SUBMISSIONS

14. In answer Ms Agnello made the point that there was an admission of liability on the face of the evidence that the sum of £3.477m was owed. The only issue was whether this sum was jointly and severally liable and on the face of the Facilitation Deed, its amendments and the Note given to Mr Restis, Ms Staveley was liable.

15. If there were any matters which could be raised as a substantial dispute they could only relate to interest and legal costs but not the outstanding loan. An argument on

duress was unsustainable – this was a commercial transaction, a commercial loan. Ms Staveley had sought time to pay and agreed interest and costs. There was furthermore no substance to an argument of undue influence. In any event Ms Staveley was perfectly capable of instructing lawyers as she did on other matters. Indeed, Mr Restis and Mr Neocleous thought she had retained them.

16. Ms Agnello pointed out that the 2016 Deed had been superseded by the later agreements. There was a clear outstanding debt which exceeded the bankruptcy level. Bare assertions made by Ms Staveley in the light of the contemporaneous documents were not enough to show a substantial dispute raised by an experienced business woman.

17. She submitted that the Demand relied on the 7 January 2021 agreement (the second amendment to the Facilitation Deed), which, on its face, superseded all previous agreements, and the Note. None of these later agreements made after the 2016 Deed contained an arbitration clause. All contained an Entire Agreement clause other than the Note.

18. Allegations against Mr Restis personally were just mud - slinging which should be viewed in the context of her requesting Mr Restis to provide a witness statement in the Barclays litigation.

19. She pointed out that with each agreement a draft was sent to Ms Staveley to consider, for example, the 7 January 2021 Agreement which was sent on 7 January, was reviewed by her, then signed and collected on 21 January. In some cases, amendments were sought, particularly with regard to the Note. She pointed out that each page of the Note had been initialled by Ms Staveley. Later communications, after both Promissory Notes were signed, not only did not support any argument on duress or undue influence, but did not dispute liability.

20. As to duress, this could only relate to alleged economic duress. Whats App exchanges between the parties were always amenable. Commercial pressure was insufficient. There was no evidence of unlawful pressure. To argue it was implied was not enough. By January 2021 evidence in the Barclays litigation had closed, judgment being handed down in the following month. There was no evidence of violent threats. After Ms Staveley signed the 7 January 2021 Agreement she did nothing to challenge it.

21. So far as undue influence was concerned, the fact she had Huntingdons Disease did not support a contention she had a total lack of capacity, particularly when she was still heavily involved in her businesses and the Barclays litigation. There was no evidence advanced by her that she told either Mr Restis or Mr Neocleous about it or its potential effects. Making no secret of it was not enough. Either would have to have known of this to take advantage of any perceived vulnerability. There was no evidence of this. Indeed, all the evidence pointed to her considerable business experience. Furthermore, when the amount became due, she was making open

offers of settlement which undermined her denial of liability. A defence along those lines was inherently implausible.

22. Turning to the Note, this was valid. The Note did not require payment at a specific place but merely to a designated account at a particular bank. The issues raised as to the validity of the Note were not sound. There had been delivery, there was no obligation to present and sufficient notice of dishonour had been-given.

23. She did accept, however, that the liability relating to the legal costs said to be owed to Mr Neocleous could not be pursued within the Demand and she offered no submissions in support of that part of the claim.

24. She further advised me that for the purposes of the Demand she would not be pursuing the interest claimed both before and after 3 April 2023, reserving her client's position on these claims.

25. She confined the Demand to the balance of the primary loan. There was no defence to this and the application to set aside the Demand for that particular liability should be refused.

THE LAW

26. The court has power to set aside a statutory demand under Rule 10.5 of the Insolvency Rules 2016. Four alternative grounds are identified there, two of which are pertinent to this case

    a. The debt is disputed on grounds which appear to the court to be substantial

    b. The demand ought to be set aside on other grounds

27. For the purposes of this application reliance is placed by Mr Loveday primarily on the first ground, namely that the debt is disputed on substantial grounds although the second ground briefly features on the question of whether payment would facilitate a crime.

28. The law on what is considered to be substantial grounds is judge made. In Smith v Gregory 2022 EWHC 190 HHJ Stephen Davies Sitting as a Deputy High Court Judge said this at paragraph 5

    "As held In Ashworth v Newnote Ltd 2007 BPIR Civ 1012 at para 31-34 there is no difference between expressions such as "substantial grounds" "genuine triable issue" or "real prospects of success"

29. These expressions are ones with which the court is familiar when dealing with statutory demand applications, to which I will make reference later in this judgment,

but to make the point clear, the views expressed by Arden LJ in Collier v P &MJ Wright (Holdings) Limited 2007 EWCA Civ 1329 should be set out where she said at paragraph 21 when dealing with, like here, an application to set aside a statutory demand

"I note that in the recent case of Ashworth v Newnote Ltd 2007 BPIR 1012, para 33 Lawrence Collins LJ with whom Buxton LJ agreed, regarded the debate as to a difference between "genuine triable issue" and "real prospect of success" as involving "a sterile and largely verbal question" and that there is no practical difference between the two"

30. She then went on within the same paragraph

" I accept that the refusal to set aside a statutory demand is a serious step, but so is the grant of summary judgment. The court cannot grant summary judgment under CPR 24 (2) unless it is satisfied that the party against whom the order is to be made has no real prospect of success. To have a real prospect of success a party must have a case which is more than merely arguable: see Alpine Bulk Transport Co Inc v Saudi Eagle Shipping Co Inc 1986 2 Lloyds Rep 221. If the test in the Kellar case 2002 BPIR 544 were applicable, the court would have to apply a lower threshold than real prospect of success and that would mean it would be enough on an application to set aside a statutory demand if the dispute were merely arguable. However, that approach would give no weight to the word "substantial" in the rule 6.5(4); nor would it give any meaning to the word "genuine" in para 12(4) of the Practice Direction. In my judgment, the requirements of substantiality or (if different) genuineness, would not be met simply by showing that the dispute is arguable. There has to be something to suggest that the assertion is sustainable. The best evidence would be incontrovertible evidence to support the applicant's case but this is rarely available. It would in general be enough if there were some evidence to support the applicant's version of the facts, such as a witness statement or a document, although it would be open to reject that evidence if it were inherently implausible or if it were contradicted, or were not supported by contemporaneous documentation: see also Lawrence Collins LJ in the Ashworth case, para 34. But a mere assertion by the applicant that something had been said or happened would not generally be enough if those words or events were in dispute and material to the issue between the parties……."

31. The court can take the view that what is said in a witness statement is inherently implausible if, for example, bare assertions are contradicted by contemporaneous documentation but that type of determination is confined for the main part to clear cases. As was made clear by Carnwath LJ in Mentmore International ltd v Abbey Healthcare (Festival) Ltd 2010 EWCA Civ 761, approved by the Supreme Court in HRH Emere Godwin Bebe Okpabi v Royal Dutch Shell plc 2021 UKSC 3 , when referring to Lord Hope's judgment in Three Rivers District Council v Bank of England 2003 2 AC 1, Carnwath LJ said at para 23

"If Mr Reza was hoping to find in those words some qualification of Lord Hope's approach, he will be disappointed..... Lord Hope had spoken of a statement contradicted by "all the documents or other material on which it is based" It was only in such a clear case that he was envisaging the possibility of rejecting factual assertions in the witness statements. It is in my view important not to equate what may be very powerful cross –examination ammunition, with a kind of 'knock -out blow' which Lord Hope seems to have had in mind"

32. In any dispute of this nature the court has to examine the evidence critically. I caution myself not to reject lightly sworn evidence other than in a clear-cut case, particularly where some of the documents point one way or another. "Is this dispute real or fanciful" to quote the Vice Chancellor, Sir Andrew Morritt in Arena Corporation Limited 2004 BPIR 415.

33. In the oft quoted case of Angel Group Limited v British Gas Trading Ltd 2012 EWHC 2702 Ch , Norris J summarised the various principles at paragraph 22, only two of which I need to quote

"(f) ...the court will be alert to the risk that an unwilling debtor is raising a cloud of objections on affidavit to claim that a dispute exists which cannot be determined without cross examination" and at "g"

"the court will therefore be prepared to consider the evidence in detail even if, in performing that task, the court may be engaged in much the same exercise as would be required of a court facing an application for summary judgment"

Those comments are consistent with my earlier analysis of the test and with what I have had to do here.

34. Finally, to conclude my brief journey through the authorities, Trower J in Integral Law v Jason 2020 EWHC 3698 Ch at paragraph 5 referred to the 'manifest incredibility" of a defence being insufficient to refute a claim.

CONCLUSIONS

35. Drawing all this guidance together I turn to my conclusions.

36. In determining if there are grounds to set aside the demand the starting point is to consider whether there is a genuine triable dispute and not a fanciful argument advanced. That requires an assessment of all the material evidence and a consideration of all the relevant issues. The key point is – is the debt genuinely disputed on grounds which are substantial. I do not need to consider the prospects of success, nor do I need to decide the dispute. As indicated above, whilst I have to examine critically the evidence, I caution myself not to reject sworn evidence other than in a clear case where the documentation all points the other way.

37. Here there are two remaining distinct strands to the Demand, the interest claim not being pursued, and I shall deal with each in turn, linked as both are to the Promissory Notes signed by the parties on 4 April 2023. The first is the Note in favour of Mr Restis for the sum of £7,949,643.19 and the second is the Promissory Note in favour of Mr Neocleous for £2,143,860.13.

THE PROMISSORY NOTE TO MR NEOCLEOUS

38. I shall start with the easier of the two, the Promissory Note in favour of Mr Neocleous. That part of the Demand was not pursued by Ms Agnello but in any event, for reasons I suspect she had already taken on board, I would have rejected it out of hand. Although the earlier addenda to the 2016 Deed and the subsequent Facilitation Deed as amended refers to legal costs and expenses, allegedly incurred by Mr Restis and due to him, there is subsequently an entirely separate Promissory Note upon which Mr Restis relies within the Demand but, insofar as the Demand seeks payment of it, that claim is misconceived because the payee is not Mr Restis, but Mr Neocleous, who is not defined as the creditor on the face of the Demand. It follows that if liability under this Promissory Note is to be pursued, it has to be by Mr Neocleous alone in entirely separate proceedings however he chooses to formulate them. He, as a third party, cannot ride piggy back on the Demand made by Mr Restis and for that reason that part of the Demand is flawed and should be set aside. As I have said this claim is not pursued by Ms Agnello.

THE NOTE

39. The second part of the Demand relates to the balance of the loan claimed by Mr Restis, which was for a substantial sum of just under £8m. As I indicated when I outlined earlier the relevant facts in this case, I am obliged to discern whether there are substantial grounds advanced by Ms Staveley, sufficient to support her application to set aside that part of the Demand relating to the initial loan made by Mr Restis.

40. There are five principal issues raised here

    40.1 Can the claim be pursued in this Court or should the dispute be referred to arbitration

    40.2 If the court can deal with this matter, was Ms Staveley liable to pay either under the 7 January 2021 agreement and/or the Note of 3 April 2021

    40.3 If she is allegedly liable was she under duress at either of the relevant times

40.4 If she is allegedly liable was she unduly influenced in accepting that liability at either of the relevant times

40.5 Did she incur the alleged liability by misrepresentation.

CAN THE CLAIM BE PURSUED IN THIS COURT OR SHOULD THE DISPUTE BE REFERRED TO ARBITRATION

41. The starting point is whether this court is the appropriate forum to determine the claim. In my judgment, it is. There was an original arbitration clause within the 2016 Deed which was confirmed by the later addenda, the 2016 deed remaining in that particular respect in full force and effect (see pages 17,20,23 and 26 of the Application bundle). This fell away however once the Final Release and Settlement agreement was signed on 1 February 2019, as it contained the Entire Agreement clause (Clause 4). I can see it may be arguable that there is no express clause within that agreement which sweeps away the original arbitration clause but that contention is not sustainable once the Facilitation Deed is signed on 24 April 2019 where at clause 9 it states

"This deed supersedes any prior agreements, understandings or negotiations, whether written or oral"

42. That clause is repeated; albeit in amplified form, in the Amendment Deeds of 6 February 2020 and 7 January 2021. Furthermore, the Note expressly states

"All and any disputes arising out of or in connection with this Promissory Note or its breach shall be resolved by the competent court in the United Kingdom" (see page 59 of the application bundle)

43. In the light of these documents, subject to arguments on distress, undue influence and misrepresentation, all of which I will later address, which, if applicable, would, it is said, undermine these later agreements and Note, I reject the argument that this is a matter which must be referred to arbitration. The 7 January 2021 agreement and the Note remain extant. The Demand is not founded on the 2016 Deed and its subsequent addenda – the comments of the Court of Appeal in Salford Estates No 2 Ltd v Altomart Ltd no 2 [2015] Ch 589 and the views of Sir Terence Etherton are not germane here. As it was pithily put by Longmore LJ in North Eastern Properties Limited v Coleman 2010 EWCA Civ 277,

" If the parties agree that the written contract is to be the entire contract, it is no business of the courts to tell them that they do not mean what they have said"

44. That observation was approved by the Supreme Court per Sumption JSC in MWB Business Exchange Ltd v Rock Advertising Limited 2019 AC 119 at para 14. He also

mentioned the comments of Lightman J in Intrepreneur Pub Co GL v East Crown Ltd 2002 Lloyds Rep 611 at para 7 where he said that such a clause constitutes a binding agreement between the parties that the full contractual terms are to be found in the document containing the clause.

45. I should make it clear that even if there were sustainable misrepresentations as to the necessity of taking legal advice and as to there being no change in the fundamental terms of the 2016 Deed, which I will deal with later in this judgment, the retaining of an arbitration clause is not sufficiently fundamental so as trump an Entire Agreement Clause, nor, as is the case here in the 7 January 2021 agreement, an Integration clause, nor is the failure to take legal advice. In my judgment, the original arbitration clause was expunged and is now of no effect. This court has power therefore to consider the Demand either in respect of the 7 January 2021 agreement or independently of that, the Note.

WAS MS STAVELEY LIABLE TO PAY EITHER UNDER THE 7 JANUARY 2021 AGREEMENT AND/OR THE NOTE.

46. The original loan was made, it is argued, to PCP Capital Partners LLP and PCP Capital Partners LLC and that was confirmed in the 2016 Deed. A natural reading of the 2016 deed places no direct liability, in my opinion, on Ms Staveley. Neither do any of the subsequent addenda to the 2016 Deed. It is only by the Final Release that Ms Staveley in her own right, for what appears, arguably to be the first time, when agreeing to secure a Loan facility, under clause 1e, with the two PCP entities, agreed that she should "remain liable" for repayment of the "final sum" defined as £8.7m

47. It is open to argument that the reference to "remain liable" does not unequivocally burden Ms Staveley with payment on the basis that she was not personally liable prior to 1 February 2019. That was then, however, followed by the Facilitation Deed dated 14 April 2019 when Ms Staveley expressly agreed, joint and severally, at clause 2, to pay the £8.7m (page 35 of the application bundle) The sum payable was amended by two further deeds dated 6 February 2020 and 7 January 2021, both of which re-confirmed Ms Staveley's obligation to pay (pages 58 and 64 of the Application bundle). Both the Facilitation Deed and the subsequent amendments contain a clause, which deals with the superseding of all earlier agreements and to which I earlier have referred (pages 60 and 65 of the Application bundle) – see paragraph 41 above. There then followed the Note where Ms Staveley, signing in her personal capacity as well as on behalf of the PCP entities, acknowledged the liability and promised to pay the sum of £7,949,643.19 by 3 April 2023.

48. It is in my judgment, again subject to the defences to which I have just alluded, that the signing by her of the 7 January 2021 agreement, given the Entire Agreement Clause and the Integration clause there and the Note, prove conclusively liability under the Demand insofar as it relates to the primary obligation identified within

both of them - see the MWB Business Exchange Ltd v Rock Advertising Ltd decision and related authorities at paragraph 44 above. Where a document containing an agreement is signed by the parties, those parties will be bound by the terms of the written agreement whether or not they have read them and whether or not they are ignorant of their precise legal effect – see Chitty on Contracts 35th Edition at paragraph 16-005

49. Turning to the Note, this is governed by s83 of the Bills of Exchange Act 1882 ("the 1882 Act") which states that a Promissory Note is

"an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand, or at a fixed or determinable future date, a sum of money to, or to the order to, a specified person or bearer"

50. A Promissory Note is a negotiable instrument akin to cash – See Fielding & Platt Limited v Najjar [1969] 1 WLR 357 at page 361. The holder is usually entitled to summary judgment in the matter – see Banque Cantonale de Geneve v Sanomi [2016] EWHC 3353 Comm per Blair J at paragraph 33.

51. A number of points were raised by Mr Loveday on whether the Note is enforceable, which are of a technical nature and I shall deal with each in turn

51.1. The Demand does not identify the Note as a freestanding liability. That argument is misconceived. The Demand reflects the exact liability on the Note outside the additional interest claim. Reliance is clearly placed upon it. It was signed by Ms Staveley and there was forbearance for a period of two years given by Mr Restis, at her request, so it was a freestanding agreement with adequate consideration –see Oliver v Davis 1949 2 KB 727 per Denning LJ at p743.

51.2. It was argued that the Note was not delivered to Mr Restis to be compliant with s84 of the 1882 Act. However, the evidence is that it was collected from Ms Staveley's office (see page 472 of the Application bundle). Clearly it was signed by Ms Staveley as the evidence shows and she must have allowed it to be collected with her authority - see s21(2)(a) of the 1882 Act - there is no evidence that challenges that conclusion. That is sufficient to comply with s84.

51.3. It was then submitted that the Note was only payable on 3 April 2023 and if it was not presented on that day, it cannot be demanded later. Reliance is placed on s87 (2) of the 1882 Act as the Note identifies where it is payable. That, however, is not what the Note says. It does not identify a precise geographical location for payment. It had to be paid on 3 April to the Swiss Bank. I do not construe this as a requirement for someone to attend personally on that day at the Bank in Switzerland where no address is provided. However, in any event, the parties to a Note can agree a variation as to how and when it is to be presented, as they did here in the light of the

discussion which took place around 3 April 2023 (pages 567 and 568 of the application bundle) – I note, in particular, that Ms Staveley confirmed in an email dated 5 April 2023 that she had sent both Promissory Notes to her solicitors, Freshfields, presumably to seek advice on them (page 685 of the application bundle) - see Paradiso Finance Ltd v Vdovin [2017] EWHC 3508. Furthermore, even if it was not presented on 3 April 2023 in accordance with clause 12 of the Note, that is not an absolute requirement which would discharge liability under the Note. The liability to pay remained absolute – see Gordon v Kerif 1898 35 SLR 469. A failure to pay on 3 April does not give Ms Staveley a "get out of jail free card"

51.4. It was then said that there is no evidence that Mr Restis served a statutory notice of dishonour. However, this does invalidate a claim under the Note – under s49 of the 1882 Act. The demand has to be given in writing which sufficiently identifies the Note. Indicating non- payment or even that attention be given to the matter is enough. Just asking for payment in the email of 5 April 2023 is sufficient to trigger liability (page 685 of the application bundle) - see Standard Bank of South Africa v Winder 1920 WLD 102 and Nees v Botting 1928 NZLR 209. Furthermore, there was an implied waiver by Ms Staveley as to any deficiencies on presentment by her promises to pay as the evidence shows - see pages 492-494 of the application bundle.

52. It follows that in my judgment liability on the Note is well founded, but if I am wrong and there are technical flaws in the Note which make it unenforceable in its own right, the Note is clearly a strong contemporaneous admission of liability particularly here where, with the Note containing no Entire Agreement clause, the agreement of 7 January 2021 remains in place as to payment of the liability. In any event the Note is a separate contract from the underlying agreement as the Note represents independently an obligation to pay – see Cardinal Finance Investment Corp v Central Bank of Yemen 2001 Lloyds Reports 1 at para 7. Liability is therefore in my judgment established. To state, as she does at paragraph 89.8 of her first witness statement, that Ms Staveley did not realise that she was personally liable until she was served by the Demand ventures into the realm of fantasy and is completely implausible. I reject her contention. I therefore now therefore turn to the duress, undue influence and misrepresentation points which have been raised on her behalf

IF MS STAVELEY WAS LIABLE WAS SHE UNDER DURESS AT THE RELEVANT TIME

53. It was argued by Mr Loveday that Ms Staveley was under duress when she signed the documentation. Given I have identified the relevant times when, in my judgment, liability in my judgment was unequivocally admitted, I focus on the 7 January 2021 agreement and the Note, both of which Ms Agnello relies upon in support of the Demand. I will also, once I deal with the law, identify various documents in the evidence which are relevant to the issue of duress.

54. The law on duress was summarised in the recent decision to which I was taken, Times Travel (UK) Limited v Pakistan International Airlines Corporation 2021 UKSC 40 when in the lead judgment of Lord Hodge JSC he said this at paragraph 1

"I am very grateful to Lord Burrows JSC for setting out the facts of the case and the legal proceedings to date. There is a great deal in the exposition of the law in his clear judgment with which I agree. In particular with what he says about (i) the essential elements of duress (paras 78-80) (ii) the existence in English law of the concept of lawful act duress (paras 82-92) (iii) the importance of clarity and certainty in our commercial law, which means that the concept of lawful act duress must not be stated too widely (para 93) (iv) the rejection of a range of factors approach (para 94) (v) the similar rejection of the use of a wide principle of good faith dealing (para 95) (vi) the appropriateness of focusing on the nature and justification of the demand rather than the legality of the threat (paras 88 and 96) and (vii) the law's general acceptance of the pursuit of commercial self-interest as justified in commercial bargaining and the rarity of cases where lawful act duress will be found to exist in such bargaining (para 97)……."

55. These points resonate here when considering if there was alleged lawful act duress. Did such duress exist here? In my judgment no. There were clearly commercial pressures on Ms Staveley but Mr Restis was perfectly entitled to press for payment. He may have thought, mistakenly or otherwise, that Ms Staveley was already personally liable and that by her signing the Facilitation Deed and all later documents she was simply confirming her personal liability, but there is no evidence that she was under duress either in January 2021 or April 2021. She herself suggested and agreed to arrange a Loan Facility by the Agreement of 1 February 2019. She clearly failed to do so and over two months later entered into the Facilitation Deed. She had ample time to seek to secure alternative finance – the evidence does not show what she tried to do over that period but, picking up on the principles outlined in Lord Hodges's judgment above, the nature and justification for the claim is not one to be challenged in the context of commercial self-interest. As he said at paragraph 44 of his judgment

    "As I have said (paras 26-30 above) there is no doctrine of inequality of bargaining power and no general principle of good faith in contracting in English law. A commercial party in negotiation with another commercial party is entitled to use its bargaining power to obtain by negotiation contractual rights which it does not have until the contract is agreed"

56. Nor can it be argued that any such duress manifested itself when the January 2021 agreement and the Note were subsequently signed, for those same reasons. I do not construe her concerns on the facts, as set out in her first witness statement, as amounting to threats of physical violence but merely of a businessman who would take a tough position on substantial monies which had been owed to him for a considerable period of time, where he had agreed innumerable extensions to facilitate payment being made. In my judgment duress of any kind cannot be shown – see Chitty on Contracts at paragraph 11-011 and 11-057.

57. Mr Loveday submitted that Ms Staveley was subject to unlawful pressure. He could, however, point to no documents which specifically supported that contention but relied on paragraphs 39 of Ms Staveley's first witness statement where the word "dangerous" was allegedly used which initiated concerns by her for not only herself but also her family and how she felt when later agreements were signed. The word "dangerous" can be construed in different ways – it can of course be a threat to violence, dependant primarily on the individual making that threat, or alternatively a threat to take precipitative action which could damage the economic livelihood of the person to whom that word is directed.

58. I accept that a genuine threat of violence to any person is recognised as an unlawful form of pressure which could vitiate a contract on the ground of duress. However, in my judgment, on the evidence before me I discern no allegation of a threat to violence here for reasons I will shortly give.

59. Was there any illegitimate pressure?. In my judgment on the facts in this case – no. Even if one were to accept that Ms Staveley was concerned at the time, her evidence is non-specific as to when it occurred. At paragraph 39 of her first witness statement at page 475 of the application bundle, she states

    "My recollection throughout my dealings with him was that he also consistently re-iterated that Mr Restis was not a man to be messed with, that he was dangerous and that I should not cross him. This alarmed me considerably and encouraged me not to challenge Mr Neocleous when he presented new agreements as I was concerned about getting on the wrong side of Mr Restis."

60. As I have said, no dates are given as to when these remarks were allegedly made, just a generalised claim of consistent re-iteration, which Mr Neocleous denies, assuming that they were allegedly made, both before and after the 2016 deed was finalised.

61. In fact, the emails and Whatsapp messages in evidence show, conversely, a relatively warm commercial relationship – see by way of example

    61.1 page 216 of the application bundle, Ms Staveley by email dated 24 May 2017, in response to a letter of demand – thanks Mr Restis and Mr Neocleous for being "so understanding"

    61.2 page 450 contains Whats app messages on 24 November 2017 to Mr Restis from Ms Staveley – " Wonderful to see you yesterday" and then "Thank you for everything – you're such a sweetheart" and then on 28 November 2017 from Ms Staveley to Mr Restis "Hi darling. It was so lovely to see you last week. Do you know if John is on his way to us? Xxxx" and then "All done my darling Victor. John was great and we are in fabulous shape for the settlement meeting on Friday. I love you so much Xxxx"

61.3 Page 346 of the application bundle in a Whatsapp exchange on 21 January 2020 (which incidentally was a Tuesday) Mr Neocleous says “Good morning, I spoke with VR explained the situation and insisted that unless he gives you a chance to complete your quest for justice then he may end up losing out. I will prepare a new agreement to sign until August-September of this year with an added amount that you will pay immediately. I will keep it nominal. I will send it today. when can we meet to sign so I can get Quin Emanuel what they want? sooner the better. Today? Tomorrow?”. Ms Staveley replies “Friday or Saturday love xx Mr Neocleous then says “Ok I leave tomorrow evening for Davos and coming back Sunday so shall we say Monday or Tuesday?. [EMOJI SMILING]” (I pause to observe that this was a week later) Ms Staveley replies “Monday great –we should exchange on Newcastle in the next few days Xxxx.” Mr Neocleous responds “Ok congratulations on that … do it and then let’s get behind as well 2020 seems to be a good year for everyone so far let’s keep it going” and Ms Staveley finishes the exchange “You’re the best my love”

61.4 page 351 of the application bundle – in a Whats app exchange on 6 March 2020 with Mr Neocleous Ms Staveley says “I just want to get Victor paid back” and then “And can’t wait for us to work together – you are very special”

61.5 On page 356 of the application bundle Mr Neocleous writes on 30 December 2020 “good morning Amanda, had a good chat with Victor about it all. He prefers to wait and supports you all the way as well. He asked me if we could just extend our agreement for another 3-6 months from the date of the last expiration. Are you ok with that If yes then I will pass by and collect signatures tomorrow or next week.” Ms Staveley replies “Thank you my love – that is very kind of you and Victor. Pass by whenever sweetheart Xx” I interject here to observe that this exchange was just before the January 2021 agreement

61.6 On 19 April 2021, at the time of the Note, there was a further exchange by Whatsapp when Mr Neocleous wrote “I need an update please we need to move forward” Ms Staveley replies “okay- just filed the appeal and I’m dealing with the PL. I’ll call you tomorrow and we can re-draft the notes to reflect the position”. Mr Neocleous says “Ok please we need to have it done what time tomorrow would you like?” and Ms Staveley responds “I’ll call you around noon” – see page 376 of the application bundle

61.7 Finally, an exchange of Whatsapp messages on 29 April 2021 when after discussing the Promissory Notes which Ms Staveley wanted to be changed Mr Neocleous says “Should I prepare a new one with the changes in? Or just a signature on the other one?” Ms Staveley answers “No – you can prepare a new one.” About 10 minutes or so later Mr Necleous says “sent to your email” and then an hour or so later “Hello Amanda should I pick them up from the security guy”. Later that evening Ms Staveley sends a final message

"Hi love had a lovely chat with Victor. He called me to speak to one of his friends." Mr Neocleous says "Glad he did that" and Ms Staveley replies "I said how amazing you both have been" – see page 383 of the application bundle.

62. These exchanges either demonstrate a high level of disingenuity on Ms Staveley's part or a warm business relationship. I do not need to find which piece fits this puzzle but what I can say is that it cannot be construed in any way fashion or form, to support a claim to unlawful duress.

63. I add that even if it is arguable, which I do not find here for the reasons just given, that any of the agreements entered into by Ms Staveley were entered into by duress, these are voidable - see Chitty on Contracts 35th Edition at Paragraph 11-077. Nothing was done by Ms Staveley to seek to avoid them or set them aside. Having therefore acted upon some, if not all of them, they were either ratified or affirmed, particular in circumstances where open offers of settlement were made late in the day. This can be clearly seen from the Whatapp messages just before 3 April 2023 when mentioning outstanding sums due to her by a Qatari sheikh at page 493 of the application bundle, there is talk of giving security and a potential Aramco deal with China offered to Mr Restis at page 494 of the application bundle.

64. In addition, I take note of the assertions made by Mr Neocleous in his witness statement at paragraph 51 (page 477 of the application bundle) when he states, in dealing with the documents sent to Ms Staveley

"On each occasion I would send the document to her and leave it with her to review and sign. Often there would be several weeks between my letting her have the document to review and her eventual signing when I was led to believe that she was consulting lawyers. At no stage was a document ever presented to her and her signature required"

65. That particular paragraph and the assertions within it were never rebutted or challenged in Ms Staveley's 2nd witness statement in reply.

IN THE ALTERNATIVE IF MS STAVELEY WAS LIABLE WAS SHE UNDULY INFLUENCED AT EITHER OF THE RELEVANT TIMES

66. It was argued on behalf of Ms Staveley that her medical condition, that of Huntingdon's disease, was known to both Mr Restis and Mr Neocleous and prevented her from understanding the implications of the documents she was signing. In other words, she was unduly influenced, by reason of that incapacity, to sign. There are two forms of undue influence as outlined in the seminal decision of Royal Bank of Scotland v Etridge no 2 [2002] 1 AC 773

1 Overt acts on improper pressure or coercion such as unlawful threats or

2 A relationship where one has acquired over another a measure of influence or ascendancy of which the ascendant person then takes unfair advantage… without any specific acts of coercion.

67. There is no doubt that Ms Staveley is an experienced business woman. I ask myself - how is it possible that she did not understand what she was signing when she was a party in her own right to the 7 January 2021 agreement and the Note. Mr Loveday sought to persuade me that her evidence was credible and relied on the comments of Waksman J in PCP Capital Partners LLP v Barclays Bank plc [2021 EWHC 307 Comm at paragraphs 164-170. What he did not show me, which I can only assume was an oversight on his part, were the preceding comments of the Judge at paragraphs 157 to 163 which, during the course of his submissions, I had to draw to his and Ms Agnello's attention

"157 "In my judgment Ms Staveley, the driving force of PCP was and is a tough, clever and creative entrepreneur" and then at

159 "……..the fact is that by 2008 she was acting for the sellers of Manchester City. and at the time of this trial she was acting for Saudi Arabian investment interests in the negotiations to buy Newcastle United" and at

161 "that she was an able negotiator is demonstrated by the fact that she secured an excellent deal for Sheikh Mansour" and at

162 "Her refusal to let Barclays have direct access to Sheikh Mansour has also been criticised. But I cannot see why. She wanted to remain in control of the negotiations"

163 "The truth is that this was a case where the corporate investment arm of a major bank facing almost unprecedented pressure had to deal with a persistent and determined counterparty (i.e. Ms Staveley acting for PCP) who had the trust of some major players in the Middle East business world"

68. I have already found that there were no overt acts of improper pressure present here to support a claim to duress. Indeed there is clear authority that the court will be slow to treat differently a plea of duress "rebadged and relaunched" as a plea of undue influence – see KSH Farm Limited v KSH Plant Ltd [2021] EWHC 1986 Ch when at paragraph 622 Judge Mark West sitting in the Upper Tribunal said this

"If a plea of duress fails on the pleaded grounds, as I have held it does, by the same token the plea of undue influence which relies on exactly the same factual averments must also fail. There is no room for a different and more expansive case of undue influence other than the one pleaded as being co-terminus with and relying on the very same averments as the case on duress. An unsuccessful case in duress cannot be rebadged and relaunched as a good case in undue influence if it relies on exactly the same factual allegation. To paraphrase Nugee J in Holyoake v Candy

2017 EWHC 3397 the plea of undue influence does not add anything to the plea of duress and it cannot succeed if the plea of duress fails on the facts"

69. That said there is an argument that duress and undue influence are not distinctions without a difference and whilst the evidence I have already identified here is clearly material, I propose to look at undue influence afresh, particularly as it brings the issue of Huntingdons Disease to the fore. I should say at the outset that there is no question for the reasons earlier given when addressing duress that there was here any wrongful overt pressure or coercion.

70. Was there however a measure of influence or ascendancy which enabled Mr Restis, through his relationship with Ms Staveley, to take unfair advantage.

71. It was argued by Mr Loveday that there was "actual undue influence" here. In Bank of Credit International SA [1990] 1 QB 923 Slade LJ said this at page 967

"…we think that a person relying on a plea of actual undue influence must show (a) the other party to the transaction had the capacity to influence the complainant (b) the influence was exercised (c) its exercise was undue (d) that its exercise brought about the transaction"

72. In Royal Bank of Scotland v Etridge No 2 ante Hobhouse L said at paragraph 103

"Actual undue influence presents no relevant problem. It is an equitable wrong committed by the dominant party against the other which makes it unconscionable for the dominant party to enforce its legal rights against the other. It is some typically express conduct overbearing the other party's will. It is capable of including conduct which might give a defence at law, for example, duress and misrepresentation…. Actual undue influence does not depend on some pre-existing relationship between the two parties though it is most commonly associated with and derives from such a relationship. He who alleges actual undue influence must prove it"

73. That point requires some analysis of the background to the signing of the 7 January 2021 agreement and the Note. There is no solicitor /client or family relationship here which the majority of cases address. These were commercial transactions. Ms Staveley states that it was difficult for her to stand up to Mr Restis. When these documents were sent to her, she alleges she was not permitted to take legal advice and she needed Mr Restis' assistance in supporting her claim against Barclays in ongoing proceedings through a witness statement he had given to her.

74. There is no evidence that either Mr Restis or his lawyer were told specifically by her of her unfortunate medical condition. It may have been a matter of public knowledge but that is not enough. I will return to that later.

75. Whilst there may be an argument that at some time the evidence of Mr Restis in the Barclays litigation may have been of importance to Ms Staveley, on her own

evidence it was not pivotal by June 2020 when other documentary evidence supporting her case on the discrete issue which his evidence had addressed, emerged (see paragraph 75 of her first witness statement at page 107 of the application bundle.) Furthermore, it was certainly of no significance after the Barclays trial concluded in October 2020. After then Ms Staveley signed the 7 January 2021 Agreement and the Note.

76. Dealing first of all with the 7 January 2021 agreement whilst it is arguable that Mr Restis had the capacity to influence Ms Staveley, there is no persuasive evidence that any influence was exercised, the burden of proof falling on Ms Staveley- see the comments of Slade LJ in Bank of Credit International and Lord Hobhouse at paragraphs 71 and 72 above. In any event the argument as to actual undue influence fails, as on the facts here, even if there was influence, which I have found there was not, any such influence was not in my judgment undue if one looks at what happened in January 2021. Ms Staveley is sent the agreement on 7 January and reviews it. It is not returned to Mr Neocleous until 22 January. There is no evidence that there were any discussions between the parties in that 14 day period. There was a friendly Whatapp exchange just before the New Year in December 2020 which speaks for itself to which I have earlier made reference at paragraph 61.5 above.

77. So far as any undue influence defence to the Note, that she could not stand up to Mr Restis, that is in my view, untenable. Insisting on the Note being signed, if that is what happened, is insufficient without more evidence to support an undue influence claim. The burden of proof, as I have said, is on her which she has singularly failed to discharge. On her own evidence when the draft Note was sent to her, neither Mr Restis or his lawyer was personally present at any time, exchanges were by mail or Whatsapp only, she had time if she had wished to take legal advice, which she says she did not do, and crucially she made her own amendments to the draft Note, including extending the time for payment to two years, which was agreed. There is no documentary evidence that she was put under pressure, undue or otherwise to sign.

78. I do take into account that Ms Staveley suffers from Huntingdons Disease which can be a debilitating condition but she has shown throughout her business career a determination, a business- like attitude, and a resilience which I find quite remarkable. Sufferers of the disease do suffer periods of cognitive malfunction, impaired attention and concentration and poor judgment as the medical evidence before me shows, but those periods are transient by nature and manageable by medicine (see pages 406/407 of the application bundle). By June 2020 her condition had “stabilised”. Importantly Ms Staveley has not asserted in her own evidence that in January 2021 and April 2021, her ability to think clearly was affected. I put that point to Mr Loveday but he could offer nothing in the evidence to dissuade me that between the beginning of January 2021 to May 2021 there was anything which showed an impairment to her cognitive thinking. Furthermore, the 7 January 2021 agreement was with Ms Staveley for two weeks or so and the Note, the terms of which were amended by Ms Staveley herself, for over three weeks. I asked Mr

Loveday to take me to any evidence which supported a contention that she was unwell at that time – he could not. It would have been very easy to cover that point in her witness statements but it is noticeably absent. In the absence of any such supporting evidence that she was unwell at the time, which incidentally she was happy to rely upon with regard to the Facilitation Deed in April 2019 (see paragraph 66 of her First Witness Statement), bearing in mind again that the burden of proof is upon her, I therefore reject any suggestion that her medical condition materially affected the signing of either of those two documents.

79. In those circumstances, the evidence fails to support a defence of undue influence. It is, in my judgment, unsustainable and does not pass the threshold test. It may be a matter of "he said, she said" but Ms Staveley's case is unsupported by contemporaneous documentation. In fact, all the material documents point one way only and not in her favour - I make no apology for repeating in part the observations of Arden LJ in Collier at paragraph 21 earlier cited in this judgment when she said

"If the test in the Keller case 2002 BPIR 544 were applicable, the court would have to apply a lower threshold than real prospect of success and that would mean it would be enough on an application to set aside a statutory demand if the dispute were merely arguable. However, that approach would give no weight to the word "substantial" in the rule 6.5(4); nor would it give any meaning to the word "genuine" in para 12(4) of the Practice Direction. In my judgment, the requirements of substantiality of (if different) genuineness would not be met by showing that the dispute is arguable. There has to be something to suggest that the assertion is sustainable. The best evidence would be incontrovertible evidence to support the applicant's case but this is rarely available. it would in general be enough if there were some evidence to support the applicant's version of the facts, such as a witness statement or a document, although it would be open to reject that evidence if it were inherently implausible, or were not supported by contemporaneous documentation see also Lawrence Collins LJ in the Ashworth case, para 34. But a mere assertion by the applicant that something has been said or happened would not generally be enough if those words or events were in dispute and material to the issue between the parties……"

80. That last sentence I have just quoted wholly supports my conclusions in this case. I find a complete lack of credibility to her assertions both as to duress and undue influence, particularly when reading the 7 extracted exchanges I earlier quoted. There is nothing which gainsays these documents. The comments of Carnwath LJ in Mentmore International are pertinent. Furthermore, standing back and looking in the round at the extracted comments of Mr Justice Waksman at paragraphs 156 to 163 identified by me, for Ms Staveley to argue otherwise in fighting off the principal sum claimed in the Demand , is a doomed leap by her across the widening chasm of credibility, akin to Micawberism. It fails to support her contention that these particular issues require to be determined at trial.

DID MS STAVELEY INCUR THE ALLEGED LIABILITY BY MISREPRESENTATION

81. Any defence based on misrepresentation must show that Ms Staveley entered into the relevant agreements, here the 7 January 2021 agreement and the Note, after a statement had been made to her upon which it was reasonable to believe Ms Staveley would rely. That statement must be shown to be reasonably untrue and must have induced Ms Staveley to enter both the 7 January 2021 agreement and the Note. That statement is set out at paragraph 40 of her first witness statement in the following terms, in identifying what she alleges Mr Neocleous said to her

    "He also expressly informed me in relation to all the subsequent agreements I signed that there was no requirement for me to take legal advice because he was a lawyer and these further agreements were doing no more than updating the terms of the Settlement Deed and Release without changing their fundamental terms"

82. Here with regard to the 7 January 2021 agreement but not the Note, there was at paragraph 13 an Entire Agreement clause (page 66 of the application bundle) the relevant part of which read as follows

    "This Agreement constitutes the complete understanding between the parties. No other promises, representations, or agreements shall be binding unless signed by the parties. This Agreement cannot be altered, amended, or modified in any respect except by a writing duly executed by all Parties to the Agreement……"

    and at paragraph 14 an "Integration" clause (page 66 of the application bundle) which read as follows

    "This Agreement is entered into by each of the Parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This Agreement constitutes the entire agreement between the Parties concerning the aforesaid settlement"

83. Each of those clauses in their own right introduce a contractual estoppel with regard to relying on any representations which can only take effect if the clause meets the test of reasonableness under s3 of the Misrepresentation Act 1967 – see First Tower Trustees Ltd v CDS (Superstores International) Ltd [2018] EWCA Civ 1396 per Lewison LJ at paragraph 67.

84. The requirement of reasonableness is set out in s11(1) of the Unfair Contract Terms Act 1977 which states that the term in question

    "should have been a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been known to or in the contemplation of the parties when the contract was made"

85. There are three alleged statements which Mr Loveday categorised as representations upon which he relied in submitting they were false

1 There was no need to take legal advice because Mr Neocleous was a lawyer
2 The legal effect of the documents was mis-stated as the 2016 Deed fundamentally changed with regard to interest
3 The legal fees were unsubstantiated –

86. Before I deal with each of these I make the general observation that with both the 7 January 2021 agreement and the Note, drafts of each were sent to Ms Staveley well in advance of when they were given back, reviewed or amended and signed, to Mr Neocleous. Both documents made clear Ms Staveley's liability, were signed in her own right by her as well as by her on behalf of the PCP entities at a time where there is no evidence from her that she was unwell. That is critical. These points wholly undermine her claims to actionable misrepresentations particularly when arguing, as she did, both duress and/or undue influence. However, arguments on duress and/or undue influence are predicated on the basis that she was aware that she knew that a personal liability was being laid at her door which she was unable to resist. It follows that what was allegedly misrepresented to her by Mr Neocleous can only have legs, particularly with regard to a change in the fundamental terms, if she relied on them when she signed the 7 January 2021 agreement and the Note. Arguments of duress and undue influence say otherwise. Misrepresentations which introduce personal liability, by either of the two claimed paths ie no need for legal advice and a change in fundamental terms, when she knew what the documents said but failed to take legal advice and knew the 2016 Deed had changed and that she was personally liable, show a marked inconsistency and, in my judgment, fail. If, however I am wrong in reaching that view, I turn to each of the three alleged misrepresentations

87. Firstly, as to the question of seeking legal advice I start on the premise that Ms Staveley was an experienced business woman as Mr Justice Waksman concluded in the Barclays case I earlier quoted. It beggars belief that when legal documents were presented to her she did not understand them, so the need to take legal advice did not arise. There is not one shred of evidence in the Whatsapp messages on the position regarding legal advice. I asked Mr Loveday to take me to any document which supported her contention. He could not. I note specifically that with regard to the 7th January 2021 agreement she only assumed that the capital sum claimed was accurate and that legal costs were properly incurred. She also claims that the interest rate was not drawn to her attention (paragraph 77 of her first witness statement at page 108 of the bundle). She does state that she was expressly informed that with all subsequent agreements, presumably after the 2016 Deed was signed, that legal advice was not needed. Indeed, it was thought, wrongly it appears, that she was taking such advice.

88. In my judgment, her argument that it was represented to her that she did not need to take legal advice is not tenable. I struggle to construe that what was allegedly said by Mr Neocleous amounted to a statement of fact rather than a statement of

opinion in circumstances where it is not actionable, so the Entire Agreement and Integration Clauses remained engaged. If however I am wrong in taking that view and even if it was a statement of opinion which can, in these circumstances, be categorised as a representation, there is not one document, email, or Whats app message, which talks about legal advice not being required. If, in her evidence, she had expressly stated that she relied in January 2021 on this representation, if indeed it was a representation, I would have borne that in mind but she only, with regard to the January 2021 Agreement, refers to interest, which it is conceded by Ms Agnello, is not being pursued. Ms Staveley's claim is simply not supported on the evidence before me particularly when she had ample time in January 2021 to look at the documents and take advice. No- one was stopping her from doing so.

89. If and insofar as she relies on this to undermine the Note, for the same reasons I have just given, there is nothing that persuades me that anything was ever said to her before the Note was signed, particularly because on the evidence before me, she reviewed the Note and made amendments to it before it was signed – there is simply no evidence of inducement. A defence of misrepresentation on the issue of there being no need to take legal advice with regard to the Note is, in my judgment, completely unsustainable.

90. I make one further point. When analysing what Ms Staveley says at paragraph 40 of her witness statement as set out at paragraph 81 above, I note she refers on the issue of legal advice to agreements she "signed". The past tense is used. This leads me to conclude that Mr Neocleous was referring to agreements she had already signed, not agreements she was to sign in the future. If that is a correct analysis it points to this representation being made as an assurance to what has happened in the past not with regard to what may happen in the future which further supports my conclusion that this statement made by him, if indeed it was made, is not actionable, there being no inducement.

91. Secondly it is claimed that there was a misrepresentation about the fundamental terms not changing after the 2016 Deed was signed. It is not known when this was allegedly said. Clearly, if it was, it must have been after the 2016 Deed was signed but it is debateable whether anything was said about a change to the fundamental terms when either the 7 January 2021 agreement or the Note was signed. Analysing again paragraph 40 of her witness statement, when dealing with changes to terms Ms Staveley refers to "these further agreements were doing no more than updating…" Again the past tense is used which leads me to conclude that if these words were said they could only have referred to the addenda to the May 2016 Deed and nothing later.

92. Furthermore, Ms Staveley's evidence was directed only to the failure of Mr Neocleous to draw her attention to the default interest rate. That is entirely consistent with the skeleton argument Mr Loveday filed and his opening submissions before me when he contended that the misrepresentation as to no change in fundamental terms related solely to interest sought under the agreements (see paragraph 70.3 and 73.2 of his skeleton). However, that changed in his closing

submissions when he sought to advance an argument that by the Facilitation Deed of February 2019, Ms Staveley became a debtor and that Mr Neocleous' claim that nothing had changed was clearly false. All the earlier agreements identified the two PCP entities as the Debtors and he submitted it followed that the representation that there had been no change to the fundamental terms was false.

93. Amplifying that point Mr Loveday argued that as the Entire Agreement Clause which featured in the Facilitation Deed and all the agreements after that date, excluded claims for misrepresentation, these clauses were unreasonable so contractual estoppel did not apply relying on the comments of the Court of Appeal in First Tower Trustees Ltd v CDS (Superstores International) Ltd [2018] EWCA Civ 1396 to which I earlier referred.

94. Given his pivot on expanding the issue of misrepresentation on the change to fundamental terms from interest calculations to the "Entire Agreement" clauses, which would affect the change to the identity of the debtors, to include Ms Staveley, Ms Agnello sought an adjournment at the last hearing on 19 March to consider these new arguments, which was agreed, to enable her to file written submissions by way of reply. This she did do and I have considered them.

95. Having reviewed the matter and bearing in mind that Ms Agnello only relies on the 7th January 2021 agreement and the Note dated 1 April 2021, I am firmly of the view that this particular alleged misrepresentation does not cover either the 7 January 2021 agreement or the Note. The following ten factors support that conclusion

95.1 There is no evidence before me from Ms Staveley that whatever was said about a change to fundamental terms before the Facilitation Deed was signed, that representation was re-iterated before either the 7 January 2021 Deed was signed or the Note given in April 2021. There is nothing in the numerous Whatsapp messages which I have again read which say otherwise (see pages 356, 376 and 383 of the application bundle, earlier referred to at paragraph 61) There is just the generalised observation at paragraph 40 of her first witness statement that she was expressly informed by Mr Neocleous (presumably sometime after May 2016) that all further agreements were doing no more than updating the terms of the 2016 deed without changing their fundamental terms. That is unsatisfactorily imprecise. I would also pick up on my comments as to what was said allegedly by Mr Neocleous to her – see paragraphs 81 and 90 above. He is said to have represented that "these future agreements were no more than updating". Again, the past tense is used which leads me to the view that he was speaking about the addenda to the May 2016 Deed which had already been signed by her and nothing about documents which may be produced in the future.

95.2 There is no evidence that Ms Staveley relied on that representation and was consequently induced to sign the 7 January 2021 Agreement by it. I accept that neither her evidence nor that of Mr Neocleous, on this discrete issue, has been subjected to cross examination and that in a summary application such as this the court will not normally disbelieve witness evidence but a natural reading of

paragraph 40 leads me to conclude that whatever was said it was much earlier. There is, I accept, evidence which may support the contention that this is a triable issue but as was stated by Rimer LJ in Coyne v DRC Distribution Ltd [2008] EWCA 488 at paragraph 58, this is not an inflexible principle, as the court can reject evidence as manifestly incredible, if it is shown to be the case by other facts which are admitted, or, as is the case before me, by reliable contemporaneous documents. Here we have the Whats App messages to which I have earlier referred. At the risk of sounding like a long playing record, I repeat the observations made by Arden LJ in Collier at paragraph 21 and in particular the last sentence I have quoted dealing with the weight to be given to unsupported oral assertions.

95.3 Even If I am wrong in reaching my conclusion that the terms of the 7 January 2021 agreement were not misrepresented to Ms Staveley, I am in no doubt that no such misrepresentation was made to Ms Staveley before she signed the Note for the very simple reason that the Note was an entirely different document and a stand alone admission of liability to Mr Restis. Ms Staveley could not have possibly relied on that representation, if indeed it was ever made, so as to induce her to sign the Note. This was not a change to the fundamental terms but the creation of an independent contractual liability – see paragraph 52 above.

95.4 If the representation was made before 24 April 2019, as I believe it was (see paragraph 95.1 above) it could only arguably affect the Facilitation Deed. It fell away once the contract was amended on 6 February 2020 by which time Ms Staveley knew she was personally liable and it certainly did not exist by the time of the 7 January 2021 agreement. At no time did she seek to challenge that position before the Demand was made. I have already found implausible as to when she says she first discovered she was personally liable – see paragraph 52 above.

95.5 In any event the Facilitation Deed when amended by the 6 February 2020 agreement was affirmed by Ms Staveley agreeing to its terms by making a payment of £150,000 as she was obligated to do under it.

95.6 I am satisfied that Ms Staveley properly read the 7 January 2021 agreement which plainly identified her liability. She was an astute business woman well used to dealing with business documents. I do not have to believe she would know or understand all the legal verbiage which accompanies this type of loan documentation but It beggars belief that she failed to see the liability which she accepted she personally had when one looks at page 2 of the agreement, let alone the February 2020 agreement (see pages 64 and 58 respectively of the application bundle).

95.7 That observation is reinforced when one sees the Note she signed initialling each page which made absolutely clear her personal liability to pay the loan by 3

April 2023 particularly when, on the evidence, which is not challenged, she must have read the Note when it was first sent to her and made amendments to it before it was agreed. This was a new document – a representation that there were terms which were fundamentally changed cannot apply here.

95.8 I also find that the incorporation of the "Entire Agreement' and the Integration clauses in the 7 January 2021 agreement (see paragraph 80 above) did act as contractual estoppels and the representation that the fundamental terms had not changed, if it was made before 7 January 2021, was not unreasonable when the Facilitation Agreement as amended in February 2020 had already fallen away once the 7 January 2021 agreement was signed, where Ms Staveley had already been identified as personally liable.

95.9 I take note that until this argument was raised at the death by Mr Loveday, it had been Ms Staveley' position, as advanced by Mr Loveday on her behalf, presumably on her instructions that the only fundamental terms which she alleged had changed related to how interest on the principal sum was to be calculated

95.10 I also agree with Ms Agnello's submission that the observations made by the Court of Appeal in First Tower Trustees are not specifically applicable here, based as they were on a different factual matrix, the 7 January 2021 agreement and the Note dealing with a primary obligation to pay the balance of a loan made – see paragraph 47 of Lewison LJ's judgment in that case.

96. Taking all these factors into account both separately and cumulatively a defence of misrepresentation under this head is inherently implausible and I reject it.

97. I do not need to address the third alleged misrepresentation although I struggle to understand how an argument on the substantiation of legal fees can be a misrepresentation which induced her to sign either the January 2021 Agreement or the Note but as I have already indicated that part of the Demand so far as it relates to legal fees is not pursued so I will not need to say anything further on that issue

98. Finally, I deal with the one further point raised by Mr Loveday as to other grounds to set aside the Demand, namely the concern that any payment made to Mr Restis may be a criminal offence as there is no evidence that the monies advanced were those of Mr Restis. The evidence before the court is that it came from Mr Restis (see paragraph 10 of his witness statement and the Bank transfer document at page 436 of the application bundle). To claim that Ms Staveley is entitled to withhold payment because of doubts as to the source of funds and the bona fides of Mr Restis, relying on anecdotal evidence, is wholly without merit and is being used as a screen to avoid payment. If it is seriously being argued to be a defence to the Demand I wholly reject it.

99. To conclude I therefore find that there was no duress or undue influence placed on Ms Staveley and there were no misrepresentations made which would support an

argument that any triable issue has been raised. The 7 January 2021 Agreement and/or the Note are unimpeachable, each in their own independent right, showing a clear acknowledgment of liability to pay the balance of the primary loan. Claims under the Demand so far as it relates to the legal fees and interest accrued both before and after 3 April 2023 are not being pursued. The only part of the Demand which remains extant for the purpose of the application before me is therefore the balance of the primary loan. Having found that none of the grounds put forward by Ms Staveley is of sufficient weight to avoid liability, the Demand totalling £3,477,000 is sound and the application to set aside, confined to that figure only, is dismissed.

100. Permission is given to Mr Restis to present a petition on or after 22 April. I have extended the time of presentation to a period of 21 days so as to give Ms Staveley a reasonable opportunity to raise the monies due or offer acceptable security to meet or secure the liability.

101. I will hear the parties on all other consequential matters.