Neutral Citation Number: [2021] EWHC 1327 (Comm)

Case No: CL-2017-000657

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

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

Date: 08/06/2021

Before :

SIR MICHAEL BURTON GBE
Sitting as a Judge of the High Court

- -

Between :

ANDREW JAMES BARCLAY-WATT & OTHERS	**Claimants**
- and -	
(1) ALPHA PANARETI PUBLIC LIMITED	**Defendants**
(2) ANDREAS IOANNOU & OTHERS	

- -
- -

Stephen Nathan QC and Nicholas Yell, with Simon Johnson and Oscar Davies (instructed by **Highgate Hill Solicitors**) for the **Claimants**
Paul Parker (instructed by **Spector Constant and Williams**) for the **Defendants**

Hearing dates:
22 - 23, 26 February 2021
1 - 5, 8 - 12, 15 - 17, 19, 22 - 26, 29 - 31 March 2021
1, 28 - 30 April 2021, 28 May 2021

- -

Approved Judgment

.....

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 8 June 2021 at 1:00 pm

Sir Michael Burton GBE :

1. This has been the hearing, over 29 days, of eight sample claims, in respect of 280 such claims by purchasers of apartments and villas off-plan in developments in Cyprus, against the First Defendant Alpha Panareti Ltd (APP) and its managing director Andreas Ioannou. They are the sole remaining defendants, out of more than 63, in respect of the others of which there have been settlements or withdrawals, including the lending bank, Alpha Bank Cyprus ("The Bank" or ABC) (sued in a related, later, action), agents or salesmen marketing the developments, being UVR (Universal Vacations Realty Ltd), ROPUK (variously Roseberry Overseas Property Ltd and ROPUK Ltd) and a number of individual salesman or their companies, in the more than 12 years since the events in general, and the 10 years since the proceedings commenced (extended by jurisdictional and other challenges).

2. The three Cypriot developments in question are St Nicolas, St George Hills and Arcadia Gardens, for which planning permission was given in 2005, 2007 and 2007 respectively, and which were marketed and sold off-plan between then and 2009. St George Hills was largely completed by December 2011 and St Nicolas by April 2013, while Arcadia remains only 30-60% completed. None of the Claimants received completed properties, and, by virtue of settlements with ABC, they have compromised their outstanding indebtedness to the Bank by making payments and giving up their rights in the properties to the Bank. They claim damages against the First and Second Defendants for misrepresentation and negligent advice (any claims for breach of contract having been assigned to ABC), and seek to recover the monies they have paid out, their reservation fees and deposits paid to APP, the sums that they have paid to ABC and other out of pocket expenses. They have lost substantial sums and can now look only to the two remaining defendants if they can establish liability against them in respect of the causes of action pleaded against them. By Order of Cockerill J of 26 November 2020, I have decided all questions of liability, leaving quantification of loss to a further hearing. By a judgment [2021] EWHC 642 (Comm) dated 26 February 2021, I resolved, at the outset of the trial, two issues, the second whereby I concluded that English law was the proper law of the torts alleged.

3. APP, of which the driving force was Mr Ioannou, had a marketing plan for sales, in particular to UK residents, of the properties in the developments, for the purpose of which they entered into contractual arrangements, first with UVR in 2003 and later with ROPUK, which involved the supply to them and their sub-agents by APP of DVDs describing the developments, and the production of brochures, and the establishment of a programme of training the agents and sub-agents, both in the UK, but also by what became regular training sessions, or seminars, in Cyprus. Mr Ioannou, on behalf of APP, was presented (as portrayed in the Arcadia Gardens DVD) at the London Marriott Hotel in November 2006, with a four star award in the Best Development Category in the International Property Awards.

4. I have heard evidence from 14 Claimants, Mr and Mrs Bright, Mr and Mrs Harrison, Mr and Mrs Joyce, Mr Rainford, Mr and Mrs White and Mr and Mrs Williams, from England, and Mr and Mrs Gibb and Mrs Gillespie from Scotland (the juridical difference being that as the Misrepresentation Act 1967 ("the 1967 Act") is not in force in Scotland, the Scottish Claimants put their case by reference to the tort of negligent misstatement). All the Claimants put most if not all of their personal savings into what was for all of them an unusual investment, and it is plain that they were induced to do

so by the salesmen, many of whom had also been from time to time their personal financial advisers (which is why they had the entrée to them), whether from UVR or ROPUK, who had sessions with them at offices, or exhibitions, and in almost all cases at their homes. It was for all of the Claimants a traumatic exercise to relive, and do their best to remember, events which occurred some more than 10 years ago. They made a substantial number of allegations of representations, which those advising them have done their best to slim down to the Representations (in paragraph 9 below), which are relied upon in these proceedings, but much of that material is inevitably, and sensibly, bottomed upon the content of the DVDs, brochures and other documentation which they were shown or given, and have mostly retained, and I have inevitably relied primarily upon that documentation rather than the recollections of the individuals, in my findings.

5. They have all done their best to give their genuine recollections. It was obvious, however, that much of the content of their statements, which in some cases could be compared with earlier statements, prepared 10 years ago and more likely to reflect their recollection (which I directed should be disclosed and could be referred to, in my earlier judgment), was driven by their need to direct responsibility onto the surviving two defendants; and, as they were all represented by the same solicitors and counsel, their recent statements, often in identical language, were unavoidably infected by that mindset. I have however in large part accepted what they said and recalled was stated to them, and I certainly accept that the bulk of what they recalled and spoke of was in accordance with the content of the brochures and other documentation, and consequently with the training, provided to the salesman at the time. There is no doubt that what was sold to them was a package, by way of the purchase of one (or in some cases more than one) apartment or villa as an investment, with a view to its being let to tourists in Cyprus; thus, apart from the 15% deposit, the balance of the purchase price would be met by way of a mortgage or loan advance by ABC, which would enable monies to be drawn down from the Bank to pay for the construction of the properties as the works progressed, and such that the investment would 'wash its face', by virtue of the expected rental from the letting of the villas or apartments matching or exceeding the sums paid by way of mortgage outgoings.

6. I also heard evidence on the Claimants' behalf from a number of the agents who performed that salesmanship. They too, having previously been alleged to be responsible for the Claimants' losses (Mr Pollard in particular as director of UVR), had plainly a purpose of rather directing responsibility towards the two Defendants, as could be seen, for example, from the considerable difference of emphasis in a statement given by Mrs Welsby five years ago, compared with that in her present statement and evidence. Nevertheless, I concluded that both she and Mr Shaw, each having been salesmen on behalf of TailorMade Overseas Property Ltd, a sub-agent of ROPUK, and a previous defendant in these proceedings, were doing their best to give their recollections, albeit in the context of assisting the Claimants and seeking to divert responsibility from themselves. I was less impressed by Mr Pollard of UVR, previously a defendant, and Mr Heath, a sub-agent of ROPUK. Mr Pollard in particular had plainly fallen out with the Defendants, and had indeed been involved in a commercial campaign against them in 2009–11, and I was conscious that the criticisms he made about the Defendants would, if true, reflect as badly upon him as upon them, though he presented himself as free of blame. He has also been provided free legal services in Cyprus by the Claimants' solicitors. It is apparent that Mr Heath was a reluctant witness,

perhaps for similar reasons. In respect of both of them, not least added to the substantial passage of time, I have concluded that I would need corroboration before accepting what they said, insofar as it went beyond what can be shown in the documents.

7. Mr Ioannou was the only witness called for the Defendants, except for an employee of the Bank, Mr Papachristodoulou, to whose evidence, insofar as material, I shall refer below. In particular, he called none of those who had plainly acted for APP at the time, in particular Ms Nurse, who was a significant employee, present at the trading seminars or sessions, voicing over the DVDs, and involved with the contents of the brochures, and his sister Marina. Mr Ioannou was described by the Claimants in their skeleton argument as a Svengali, and in their closing skeleton as having told barefaced lies. I do not think those descriptions are wholly apt. I shall return to the Svengali description when I consider his role in the context of the case against him of personal liability, but as to the lies, he certainly had difficulty in yielding up positions which he had taken now for some 12 years, in the light of documents which appeared to say the contrary: his disavowal in earlier statements of the obvious fact that the developments had been marketed on the express basis that they were an investment by way of 'sale to let', his playing down of his role in the establishment and/or operation of the "*ROPUK Network and Alpha Panareti Sales Incentive",* and of the Defendants' role in the "*Alpha Panareti Mortgage scheme*", as it was described, his insistence that APP's website was not available to the public or drawn on for sales information, which it obviously was, his minimisation of his role in brochures and training seminars, and his defence of the unsatisfactory nature of the Bank's valuation for drawdown purposes. But I do not consider that any or all of this causes him to be characterised as a dishonest witness, as opposed to one who is, in the face of a very substantial attack, as he sees it, on his business and livelihood, doing his best, many years later, to defend himself, in respect of developments of which he still feels proud, against a case by reference to statements in brochures and in sales pitches which were not made directly by him. He is not accused of fraud or running a fraudulent or dishonest business, and, whereas I do not accept much of what he said, I do not regard him as a fundamentally dishonest witness, and in any event, as will be seen, the existence of the main representations on which the Claimants rely is really proved, irrespective of his evidence, and proof of the falsity of them largely does not depend on his credibility.

8. The case against the Defendants is based upon the Representations set out below, inducing the contract of purchase of the properties. S2 of the 1967 Act reads as follows:

> *"(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable for damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable not withstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable grounds to believe and did believe up to the time the contract was made the facts represented were true".*

They are put by the Scottish Claimants (as above, Mrs Gillespie and the Gibbs) as negligent misstatement, by reference in particular to **Esso Petroleum v Mardon** [1976] 1 QB 801, per Lord Denning MR at 820C:

> *"...if a man, who has or professes to have special knowledge or skill, makes a representation by virtue thereof to another – be it advice, information or opinion – with the intention of inducing him to enter into a contract with him, he is under a duty to use reasonable care to see that the representation is correct, and that the advice, information or opinion is reliable."*

There is little distinction between the two routes to liability, though technically s2 of the 1967 Act operates a reverse onus of proof once falsity is shown. Head (3) below is put in particular by reference to negligent advice. Although originally reliance was placed by the Defendants upon clauses in some of the purchase contracts which were said to constitute an exemption clause, this was not pursued.

9. The Representations/negligent advice relied on are as follows: –

(1) That the properties were all lettable to tourists on short lets, so that such income would be available to meet and/or exceed the mortgage outgoings ("lettability"). This applies to all Claimants.

(2) That there was a system in place which would regulate the drawdowns by APP from ABC, to be charged to the Claimants' mortgage account, so that they would correlate to the progress of the works. Of the sample Claimants only the Whites and the Harrisons rely upon such Representation. It is buttressed by a Representation (7) made to the Whites that the Cypriot lawyer whom they chose (from a panel of two or three supplied to them) was independent (and by implication, would hence independently supervise the drawdown). This Representation 7, relied upon also by the Brights and the Williamses as to the independence of the Cypriot lawyer, is in their case not relied upon as justifying any claim in respect of the drawdowns:

(3) Failure to advise as to the nature, import and effect of the Alpha Panareti Mortgage scheme, which led to spiralling of the indebtedness to the Bank of all the Claimants:

(4) Ease of resale of the properties (made to the Joyces, Whites, Gibbs, Williamses and Gillespie and Rainford), accompanied by a Representation (to the Williamses only) as to receipt of the title deeds to their properties after completion:

(5) That VAT was recoverable (in whole or in part), made to the Brights, Joyces, Harrisons and Williamses:

(6) That due diligence had been carried out with regard to the investment (Brights and Williamses) and/or that the contract had been approved by independent solicitors (Williamses):

(7) The 'independent solicitor' representation referred to in (2) above:

(8) That there was no risk to their UK assets (Williamses).

There was consequently said by the Claimants to be an overriding Representation that the purchase of the properties constituted a safe and sound investment.

10. As I have said, the hearing lasted 29 days, but the factual disputes were in the event not great and the issues can be relatively briefly analysed. The length of the hearing resulted largely from the need to address the separate position of each of the 14 Claimants, and the period between 2004 and 2011 during which the conduct and role of the Defendants needed to be considered. It also resulted to an extent from the regrettable fact that none of the four experts involved in the case did themselves justice. The lengthy evidence of the two surveyors, apart from the value of their agreed evidence as to the stage of completion of the three developments (particularly Arcadia) added nothing to the sum of relevant knowledge, perhaps just as well as it transpired after he gave evidence that Mr Polyviou for the Defendants had not made disclosure of his previous involvement in the case. As to the legal experts, their evidence as to the Cypriot law of assignment was necessarily concise and (particularly since I had resolved the question of proper law at the outset, as described in paragraph 2 above) their advice as to the Cypriot law as to the torts did not in the end take up any time. Insofar however as they each gave evidence as to Cypriot planning and hotel law, with respect to the issue of lettability, I found the evidence of both of them very unimpressive, with perhaps the evidence of Mr Christodoulou marginally more useful than that of Mr Kyriakides. As will be seen, they neither of them contributed usefully to the debate in respect of lettability and planning law, and with regard to the only significant Cypriot authority, namely **Cyprus Tourism Organisation v Stavrides** in the Larnaka District Court AP criminal case 11813/2014 dated 2 December 2019, neither of them had referred to it in their report or in their evidence, until it was produced by Counsel in cross-examination of Mr Christodoulou, and neither had anything material to say, and I was left with the opposing arguments of English counsel in closing to help me reach a conclusion.

11. In order to establish liability in respect of the representations which I have listed in paragraph 9 above, the Claimants must prove (i) falsity (ii) reliance and (iii) subject to the question of onus of proof in the light of the 1967 Act, negligence. They must also prove that the representations were made by the Defendants (I shall use the word generically, leaving till later the question of the personal liability (if any) of Mr Ioannou), and this depends of course upon the question of whether the representations (if made) were made with the authority of the Defendants, express, implied or apparent. As will be clear, I consider that only the first three of the Representations/heads are seriously arguable, and I shall address the question of authority with those three Representations particularly in mind.

12. As to the source of authority for the representations, there is no case made as to Representations made orally by Mr Ioannou himself or (save that she was the voice-over for the DVDs and, according to Mr Pollard, wrote the script, and in relation to one of the Representations alleged) by Ms Nurse or any other employee of APP. It is derived from the sales package, which has been called by Mr Pollard the 'Master plan', a description ascribed by him to Ms Nurse, by which the developments were to be sold, and in particular whereby they were to be marketed as 'buy to let' with the benefit of a loan from the Bank. As to the issue of authority, I have been referred by counsel to (among others) the following: Bowstead & Reynolds on Agency (22nd ed) Articles 34, 72, 90, **First Energy v HIB** [1993] 2 Lloyd's Rep 194 esp at [204]**, McCullagh v Lane Fox & Partners Ltd** [1996] 1 EGLR 35 esp at 43, **UBS AG (London) v Kommunale**

Wasserwerke Peipkiz GmbH [2017] EWCA Civ 1567 esp at [90]–[91] and **Marme Inversiones 2007 SL v NatWest Markets plc** [2019] EWHC 366 (Comm) at [418]–[424]. I have to find express authority to make the Representations (not needing to be express authority to contract – see **Primus Telecommunications plc v MCI WorldCom International Inc** [2004) EWCA Civ 957 at [25]): or implied authority, derived from the usual authority granted in such circumstances – not really applicable in this case: or apparent authority, which needs the clothing by a defendant of authority, by way of a representation, by words or conduct, by the defendant to the relevant claimant that the salesman had authority.

13. In this case I look to the following:

i) The contractual arrangements:

a) The Agreement of Representation dated 1 September 2003 between APP (who "*are land developers and offer property for sale*") and UVR (David Pollard) as "*Agent for [*APP*] in Cyprus or anywhere else*"). The relevant terms are as follows:

> *"3. [UVR] will be working as an agent in favour of [APP] for the purpose of selling property to any proposed purchaser in Cyprus or anywhere else. [UVR] will do his/her best to promote the good name of [APP] in Cyprus or anywhere else and undertakes to organise an advertising campaign in his /her area with his own expenses.*
>
> *4. [APP] undertakes to pay [UVR] for the above works ...Commission at the rate of 8% on the purchase amount of any property sold through [UVR] (except extras)...*
>
> *6. [APP] will provide the AGENT with all necessary promotional information free of charge."*

This was replaced or renewed by a further Agreement of Representation dated 9 December 2003, which was now described as a "*Sole Agency*", with the following additional clauses so far as material:

> *"3.1 [UVR] will be working as the sole agent in the UK in favour of [APP] for the purpose of selling property to any proposed purchaser in Cyprus or anywhere else.*
>
> *3.2 [APP] undertakes not to appoint any further agents in the UK during the course of this agreement.*
>
> *3.3 In return for this sole agency agreement, [UVR] will do his/her best to promote the good name of [APP] in Cyprus or anywhere else and undertakes to organise an advertising campaign and attend exhibitions in his/her area with his own expense."*

In both agreements there is the provision that APP will provide UVR free of charge "*with all necessary promotional information*". In minutes of meetings for 12 to 15 July 2004, it is recorded that Mr Pollard is to set up a management office with APP and appoint a "*manager who will work with*" APP, and it is "*suggested that [Mr Pollard] has stickers printed to put on back of AP folders, stating "authorised sole agent" and giving address etc"*. There is a letter which was sent by Mr Pollard to the Whites dated February 13 2006, on notepaper that is headed "*Universal Realty Inc Alpha Panareti Ltd Land & Property Developers*", and he signs it "*David Pollard Alpha Panareti Ltd*" (though Mr Ioannou denied seeing this). There is an Agreement of Representation between UVR and one of its sub-agents (Churchill Properties Overseas (Paul Wade)) dated 3 April 2004, which is signed by Mr Pollard and has Mr Ioannou's counter-signature.

b) During 2005 ROPUK comes on the scene, initially as a sub-agent to UVR, who take an override on their work. This is later described in a 2008 Newsletter, under the logos of both APP and ROPUK, as follows "*Way back in June 2005, way before the ROPUK network existed, a small group of around nine agents were working with [UVR] selling the St Nicolas development on behalf of [APP]*". ROPUK replaced UVR by 2007, and it entered into a General Service Agreement (GSA) dated 16 July 2007 with APP ("*the Developer*"), the relevant clauses being as follows:

> *"4.1.The Developer appoints the Company for the Term exclusively to carry on the Business in the Territory using, where and if applicable, the Intellectual Property, this is due to the fact that the Developer and the Company have been working together for a considerable period and the Developer has had an association with other agents selling on their behalf: such arrangement/association with other agents were terminated with the signing of this service agreement*
>
> *5, THE DEVELOPER'S OBLIGATIONS*
>
> *5.1. The Developer agrees with the Company throughout the Term;*
>
> *5.1.1. not to appoint any third party as agent distributor or otherwise within the Territory or so as to be in conflict or competition with the Business and not itself to make any approaches to individuals or organisations within the Territory with a view to promoting the sale of Units*
>
> *5.1.2. to support the Company in its efforts to promote the sale of Units and provide introductions to the Developer and in particular and at the expense of the Developer to provide clear and up-to-date Marketing Materials to a high standard including but not limited to*

marketing brochures, virtual DVD's of the Development, generic web pages linked to the Company's website.... making reference to and promoting the relationship between the Developer and the Company and images representing the Development and the Units, including external and internal views layouts and designs.

5.1.3.to promote and make available Furniture Packs with detailed brochures or il selection of alternative furniture and furnishings of a high quality and standard and in accordance with the minimum requirements set out at the Second Schedule to this Agreement.

...

5.1.6. to make available to potential clients the Company's rental programme details of which are set out at the Third Schedule to this Agreement

5.1.7. to make available to potential clients the Company's resale programme as set out at the Fourth Schedule to this Agreement

5.1.8. to provide high quality mortgage product facilities to potential clients on the basis of loan to value ratio of not less than eighty percent with effective and efficient underwriting support, full details of such mortgage products and services at all times to be supplied to the Company

...

6. THE COMPANY'S OBLIGATIONS

6.1. The Company agrees with the Developer throughout the Term;

6.1.1 to note and abide by the Developer's considerations and terms set out in the Fifth Schedule to this Agreement

...

6.1.3 to utilise the Marketing Material in endeavouring to obtain interest from potential clients for purchase of Units from the Developer

...

6.1.7 to continue to assist as presently is the case in respect of each sale with the production and signature of the legal documentation, collection of the payments of deposits by the purchasers of the units and the processing of the necessary information as may be required by the Developer.

...

6.1.10 to use its best endeavours to carry on the Business and to achieve the maximum possible sale of Units, regard being had to present sales.

...

7.1 The Developer shall pay to the Company a service payment of 12% of the Price in respect of each Unit sold by the Developer to a client where that client was introduced to the Developer by the Company..."

Again there are very material clauses as to the provision by APP of brochures, DVDs etc. and generic webpages (clause 5.1.2 and 6.1.3), the purpose being to obtain interest from potential purchasers, the provision of high-quality mortgage product facilities (5.1.8) and the availability of rental and resale programmes. The schedules to the GSA are of significance: the Second Schedule contains minimum specifications of furniture packs, clearly in respect of intended rentals, because they must satisfy the requirements of the international travel industry, the Third Schedule provides details of proposed rental management for purchasers, the Fourth Schedule contains details of ROPUK's resale programme and the Fifth Schedule provides as follows:

"2. Training courses and seminars will be conducted exclusively for the Developer's own developments. Such seminars will be arranged on two weeks' written notice from the Company providing the Developer with details of the agenda and number of agents attending.

3. Performance meetings are to be held at least once a month with the directors of both parties. Meetings can be held in Cyprus or in the UK.

4. The Developer will provide the Company with permanent office space in the Developer's premises for the Company's exclusive use whilst in Cyprus.

5. Website marketing will set out the main aim of the venture and our association for the common purpose.

6. The Developer will advise the Company three months in advance of the listing of the new development;where all marketing materials will be available prior to launch.

7. If training courses and seminars are held in the UK the costs will be shared equally between the two parties."

In ROPUK documentation. they describe themselves as "*the UK support office for [APP] sales"*. In addition to the substantial commissions payable to ROPUK, as above, which were shared with the sub-agents, there was the Sales Incentive Scheme, referred to in paragraph 7 above, by which sub-agents were considerably further incentivised. The terms and conditions of that Scheme are set out in a 2007 ROPUK document, including provisions that "*All the products are to be supplied by [APP] at their cost and handed over by Andreas at selected venues to the recipients… The products will be selected, purchased and acquired by the [APP] board of directors.. [APP] will agree the venue of the presentation with ROPUK directors and all the incentive recipients will need to attend personally"*. In 2009 there was correspondence between ROPUK and APP about the incentives, and Mr Ioannou said, in an email dated 16 November, that "*I have taken the decision [*sic*] to introduce the scheme for those people actually selling the property and not for companies or partnerships holding ROPUK Contracts*". On occasion, the portion of the commissions payable to the sub-agents was paid directly to them by APP.

ii) The DVDs. As agreed in the GSA, DVDs were provided by APP, as they had been to UVR, and were undoubtedly issued and provided to potential customers as part of the sales package by the sub-agents with APP's authority. The script was read by Ms Nurse and the contents were plainly approved by Mr Ioannou. All the present Claimants received and/or watched one.

iii) Training was, as set out above, dealt with expressly in the GSA with ROPUK. But it had also taken place during UVR's time. It seems to me clear that the arrangement of the training was agreed jointly between APP and either UVR or in due course ROPUK. The training consisted of sessions or seminars, regularly attended by Ms Nurse and/or other employees of APP and usually attended for at least part of the sessions by Mr Ioannou, and the agents or sub-agents attending were addressed not only by APP but also by the solicitors who were going to act for the purchasers and by the representatives of ABC which was going to provide the loan/mortgage for the purchasers. Although there is some doubt about how many times Mr Ioannou attended meetings or exhibitions in England (at least seven) there is no doubt about the regularity of the sessions in Cyprus. In the Defendants' solicitors' lengthy letter dated 23 August 2011 they confirmed that "*In the early years of ROPUK acting as an agent, [*APP*] offered training seminars to ROPUK's 'agents' usually once a month over the winter months for a period of two or three years*". It is plain that the regular training sessions continued in 2007. At such sessions ROPUK provided to the sub-agents, such as Mrs Welsby, detailed instructions such as are contained in the January 2006 document prepared by Mr Maddison of ROPUK headed "*Client Buying Experience*" which starts as follows:

"1. Initial Appointment to be confirmed with expectations from the first meeting – email or letter.

2. First meeting to be given enough information about the opportunity to understand the cost and benefits of buying a

property "off plan". DVD, Site Map, Purchase Plan, Sales Literature, etc.

3. Quotation provided with all relevant information to explain what's included in property interested in, currency exchange, taxation, mortgage information, potential rental income and conveyancing process."

By an email of 18 May 2009 to ROPUK Mr Ioannou expressed the view that "*I also think that some retraining is needed, for people like Alfie Morrison, who clearly still doesn't understand how things work*."

iv) The brochures themselves (to be provided by APP to UVR and then, in accordance with clause 5.1.2 of the GSA, to ROPUK) were headed with the logo of both APP and (in due course) ROPUK. Although Mr Ioannou sought in evidence to say that on occasion his logo was not in the correct colours, I am satisfied that he approved the content. I accept Mr Joyce's evidence that Mr Ioannou himself gave him a brochure in Cyprus, and Mrs Welsby's evidence that the brochures were distributed at the sessions (attended by Mr Ioannou) in Cyprus. She also spoke of the attendees at the training being given a PowerPoint presentation to use on their laptops, which she understood was approved by APP (in particular by Mr Ioannou) and was not cross examined in this regard. One such presentation will have been that disclosed by the Defendants which commences with photographs of Mr Ioannou and Ms Nurse and incorporates "*Alpha Panareti's 10 Point Plan*", which includes "*Mortgage Underwriting, Aftersales services, Re-sales services and Rental Services (conditions)".* Ms Nurse had a considerable involvement in the contents and production of the brochures: there is email correspondence between her and Mr Pollard in November 2003 and between her and ROPUK in March 2007 relating to the contents and availability of the brochures.

v) The APP website, which Mr Ioannou said in evidence was a pilot project and not available to be accessed, was, I am satisfied, in fact used and available, as is clear from a schedule prepared by counsel for the Claimants in which there is a persuasive comparison of the wording and information contained in the website and that contained in brochures and in fact-sheets issued to the sub-agents.

14. The combination of the above features is entirely sufficient to persuade me that the agents and sub-agents had authority to make the representations which they then made by handing over the DVDs and brochures and making statements as to buy to let and rentals and the special mortgage arrangements, in accordance with their training, but I also find compelling evidence in the following: –

i) The rubric which was regularly contained, and usually highlighted, in brochures (and in the ROPUK confirmation of receipt of the reservation fee) as follows: "*Please note that in dealing with.....you are dealing with Alpha Panareti directly (as if buying from Cyprus) . There is no extra cost to you*." This may well be intended to reassure the purchaser that there is no extra cost to him by way of the interposition of the salesman, but it plainly also means that the salesman

(and the brochure) has the direct authority of APP. It cannot have been contained so regularly in so many brochures without the approval of APP.

ii) In the APP website, both in 2006 when it was said to be a private pilot (which I do not accept) but also, in the same terms save for an additional phrase which I have included below with underlining, in 2009:

> *"[APP] appointed [ROPUK] to act as our [<u>exclusive partner and]</u> Financial Adviser in the UK for the promotion of our products....This process is .. supported with fully personalised quotations explaining the investment property, the associated costs of purchase, including the mortgage available at less than 3%. All information can be emailed to you immediately following the initial meeting for your consideration. [ROPUK's] advisers sit down and discuss the suitability of the product they recommend with their clients before they recommend that the product is added to your own investment portfolio. All the operating costs of ownership are disclosed and if rental income is a factor, the income forecast is discussed and provided within the quotation system.....Their advisers are available to help you go through the process that can sometimes be daunting if not fully understood."*

It is clear to me, having heard the evidence from the Claimants that they were indeed daunted, and that their concerns were set to rest by the salesmen, who were only selling to them the Defendants' properties. The fact that some of them may also have previously given other advice to the Claimants in respect of mortgages and pensions was only the springboard to the hard sell of the Cyprus properties, in accordance with their training by APP and with the DVDs and brochures, armed with which they were not simply canvassers, as the Defendants suggest.

<u>Representation 1: Lettability</u>

15. It is not any longer in dispute that the Defendants are responsible for the representation that the properties were to be lettable to tourists on short-term lets and that this was a material representation because the properties were presented as being buy to let investments. I have already made it clear in paragraph 7 above that the position taken by Mr Ioannou in his second witness statement dated 10 April 2012 cannot be supported. It may be one thing for him to say (in paragraph 30, and then repeated for emphasis in 61) that APP " *is licensed in Cyprus only to build properties. It was and is not licensed as an estate agent or rental agent and had and has no expertise in either matter*", but the argumentation in the balance of paragraph 30, and in particular in paragraph 52 "*nor was it [APP's] concern as to whether the properties were being bought as investments, second homes or permanent residences"*, cannot stand with the repeated statements in the DVDs. I need only to select a few quotations, first from the St Nicolas DVD "*St Nicolas will be built in two phases… allowing immediate occupation and letting of properties*" and "*.. may be of interest to investors who wish to live in Cyprus for several months at a time as well as those who are planning to rent their properties to holidaymakers*" and "*St Nicolas has been designed to appeal to the investment purchaser and ultimately for the rental market."* As for St George Hills "*there will also be an active rental company if you wish to maximise the potential*

investment property". Having listened to the DVD they are to "*talk to your agent now*". There are then the brochures, and that relating to St George Hills, given to Mr Joyce in July 2006 and now produced by the Defendants, includes information "*About* [APP]… *we branched out into private villas for permanent residence and then property more aimed at the rental market… We've moved on from doing lots of little projects, to bigger developments aimed at the buy to sell/buy to let market*." St Nicolas is also referred to in the same brochure: "*the development can be used on a year-round basis, a bonus for the Buy-to-let market*". The passage in the APP website about discussion with a potential client of the rental forecast (paragraph 14 (ii) above) is also material, as is the specific heading "*The Buy to Let Purchaser*", and the reference to "*Furnishing and Electrical Goods Packages…particularly useful for clients who wish to let their properties".*

16. The lettability representation is relied upon by all the Claimants. All refer to the contents of the DVDs, and the Whites to a "s*lideshow*" by Mr Mawer in February 2006, and a brochure given to them in July 2006, including "*an eye on the vacation rental market*". As for oral representations, evidence was given of similar representations as to exceptional rental potential, so that the income would pay off the bank loans, by Mr Laird of ROPUK to the Joyces in October 2005, by Mr Whittaker of ROPUK to the Harrisons in April 2006, by Mr Mawer of ROPUK to the Whites in April 2006, by Mr Laird to the Brights in July 2006, by Mr McCormick of ROPUK to Mrs Gillespie in January 2007, by Mr Heath to the Williamses in 2007, by Mr McCormick to the Gibbs in January 2007 and by Mr Eccles of ROPUK to Mr Rainford in March 2007. Rental forecasts so as to pay off the loans were given in the reservation receipt confirmation to the Joyces in March 2006 and to the Brights in July 2006: there is a dispute as to whether those receipts were passed on by ROPUK to APP at the time, but although that seems to me to be likely, it is not in the circumstances material, as Mr Parker accepted in his closing submissions.

17. I accept the evidence of the Claimants, all these statements in similar terms being exactly what was intended by the Defendants as part of the 'Masterplan', and that they were induced to buy by this 'Buy to let/receipts covering outgoings' representation. The question is whether the representations were false, that the properties were not lettable. As to this question, I have already stated in paragraph 10 above that I was not greatly assisted by either expert, but the following seems to be the position, namely that there are two questions to ask:

    i) Was a licence from the Cyprus Tourism Organisation (the CTO) required before properties could be let to UK and other EU tourists? The three developments did not have a CTO licence and, if that was necessary, then such lettings were not permitted. It is common ground that short-term letting to other tourists ("foreigners"– not being from the UK or the rest of the EU) was not permitted by virtue of s23B of the Hotels and Tourist Establishments Laws 1969 to 2014 ("the Hotels Act"). I shall ignore this for the moment and use the word "tourists" to mean permitted tourists. It is also common ground that if it was necessary to obtain a CTO licence, application for change of planning use would be necessary and this could well be impossible to obtain, given the need for an application to the Minister. (Question 1)

    ii) If letting to tourists was permitted in general, would there be a breach of planning law in relation to these three developments to do so, by virtue of the

fact that the zones in which the three developments were situated were, as a result of the Paphos local Plan (a development plan as defined in the Urban Planning and Spatial Planning Law 90/72 as amended), designated as residential zones? In a residential zone, as opposed to a touristic zone, only residences (*katoikias*) and apartments (*polykatoikias*) were, apart from a very limited permission for *tourist villas* (as specifically defined in clause 10.7.1, e.g. not smaller than 1000 m²), permitted. (Question 2)

18. Mr Christodoulou did not address in his report the Paphos Plan at all, and only concentrated on the effect of s23B, which of course removed short lets to non-foreign tourists from its prohibition. Mr Kyriakides effectively rested his case, unpersuasively as I saw it, that by reference simply to the meaning of *katoikia* as residence, it could not permit short-term lets to tourists. Neither of them addressed at all what would be the effect of a breach of the Paphos Plan, although Mr Christodoulou appeared to consider that once planning permission was granted then there could not be a breach of the Paphos Plan and only the local authority would be in breach for having given the permission. As I have said in paragraph 10 above, neither of them addressed **Stavrides**. I have reached my conclusions on the basis of such benefit as I have obtained from the experts, and the result of counsel's submissions.

19. As to Question 1, s23A(1) of the Hotels Act reads in material part as follows:

> *"Any person who… (c) keeps or manages a hotel, hotel unit or tourist establishment without the issue of a licence of operation... shall be guilty of an offence."*

By s23A(2) the Court may additionally order the discontinuance of the operation of such hotel, hotel unit or tourist establishment for a period not exceeding two months unless a licence is issued.

20. The issue depends on what is a "*tourist establishment*". It is generally defined in s2 of the Hotels Act as follows: "*Tourist Establishment means premises or organised space, other than hotel, providing by way of business sleeping accommodation or facilities for camping with adequate amenities*". The parties were not agreed as to the meaning of "*by way of business*". Mr Christodoulou indicated that as the Greek word *epangelma* was used, which means 'profession', he is of the opinion that in order to qualify as a tourist establishment the premises must be let in the course of a profession – e.g. of estate agent – and the Defendants rely on the finding of the Cyprus Consumer Council in October 2016 in favour of the Claimants, in considering the unfairness of the purchase contracts with APP, that they were consumers, and hence not entering into a business or profession, and Mr Parker for the Defendants relies upon the English decision of Andrew Baker J, **Ang v Reliantco Investments Ltd** [2020] QB 582 that a private individual investing still remained a consumer. The resolution of this issue was however not material, because of the impact of sections 17 and 18 of the Hotels Law. Notwithstanding the general definition of *Tourist Establishment* in s2, *Tourist Establishment* in s17 is defined by way of a "closed list", by reference to 6 categories: "*The Tourist Establishments shall be… (a)… ..(g)…"*. Insofar as Mr Kyriakides disagrees, and I am not clear that he did, I prefer the evidence of Mr Christodoulou to that effect (which is consistent with **Stavrides**, to which I shall come). S 18 then deals with each category in that closed list. The only apparent potential category in respect

of the three developments is s17(c) Hotel apartments and service flats, as explained in s18(3) (I omit an irrelevant proviso):

> *"(3) Hotel apartments and service flats shall mean premises consisting of a single building or buildings constituting a centralised whole within a centralised space, with furnished flats of at least two rooms and limited public and ancillary spaces, offering to their customers, by way of trade or business, and on payment of rent for temporary sleeping accommodation services of a limited nature (a concierge, reception, clean[ing])."*

These are categorised in planning terms as *"organised apartments". The words "trade or business"* are in fact only one word in Greek namely, once again, *epangelma.* Even assuming in favour of the Claimants that letting by them in the developments, having acquired their properties as buy to let, would be by way of *"trade or business*", a view I prefer, it is common ground that the developments would not qualify in respect of the rest of the clause, because each villa or apartment is individually owned and there is no "*centralised whole within a centralised space*": that apart from the fact that as the developments consist also of villas they would not fall within s18(3) or the definition of *tourist villas* in s18(4).

21. So these developments do not constitute or consist of "*tourist establishments*". The question is then whether there is a breach of s23A. Although it seems odd to say that the developments do not constitute "*tourist establishments*" as defined in ss17 and 18, and are therefore outside the ambit of s23A (and thus the supervision of the CTO), such must be the result, unless **Stavrides** can be interpreted to the contrary. It is however clear by virtue of consideration not only of the final judgment, referred to in paragraph 10 above, but also the interlocutory judgment dated 26 July 2019 (Criminal case no 11 813/2014), which Mr Parker provided, that the apartments manager in **Stavrides** was convicted under s23A simply because the apartments in question qualified as a *tourist establishment* within the Hotels Act s 18(6). It gives no support whatever for an argument that villas or apartments which do not fall within ss 17 or 18, and are therefore not *tourist establishments,* are subject to the CTO, or that letting them could lead to conviction under s23A . The conclusion in **Stavrides** is clear: "*Pursuant to Article 18 (6) of the* [Hotels Act], *tourist apartments are a complex consisting of at least five apartments in a multi-property building… which are available professionally and for rent for temporary residence. Article 23A (1) (c) prohibits the operation of such tourist accommodation without the permission of the CTO."* To develop and sell these properties as buy to let for tourists without a CTO licence would not lead to a breach of s23A of the Hotels Act.

22. There was no CTO licence for any of the three developments, and Mr Ioannou confirmed in evidence that he knew that that was so "*from the beginning*". There is a peculiar piece of evidence from Mr Pollard about what he suggests may have been a charade, when Mr Ioannou is said to have asked his assistant Ms Skordi to ring up the CTO office to see whether he could get a CTO licence for St Nicolas, and was told that the properties would have to be leasehold not freehold to qualify for CTO status. Mr Ioannou cannot recall this, but it may or may not tie up with the fact that subsequently he did explore the possibility of an application for a CTO licence, when he was told, by letter dated 11 September 2009 from the CTO, that to qualify for a CTO licence the accommodation should be "*under single ownership and management package*"

(obviously a reference to s18(6) of the Hotels Act, and *organised apartments)* and Mr Ioannou, it seems, did then float the possibility of persuading the owners to restructure, so as to interpose a management company (obviously never a possibility). The following seems clear:

i) in 2004 Mr Pollard and Ms Nurse discussed whether there were restrictions on letting (a problem raised clearly by reference to s23B) and Ms Nurse understood that as a result of Cyprus' EU membership there was no longer such restriction. Mr Pollard suggested that a definitive answer be sought, and it is unclear whether this was obtained or not, but the answer would have been and is that s23B was not a problem in respect of short term lettings to permitted tourists.

ii) in April 2009, Mr Ioannou reported to Mr Vickers of ROPUK that he had visited the CTO in Nicosia to look into the progress of an application for a CTO licence in respect of St Nicolas, which would apparently need to change to St Nicolas Holiday Apartments or Holiday Village if it were granted, and Mr Vickers then discussed with Ms Nurse by email of 30 April 2009 whether a CTO licence (which, as Mr Vickers said, *"was never part of the original proposition and is an example of the constant improvement which [*is*] ongoing*") could be obtained, because it was *"a vital component of my being able to contract with the major tour operators, and I was given to believe that we would see a licence in place for March 2009*". Mrs Welsby spoke in evidence of a similar conversation she had had with a tour operator, namely that the big travel agents would not contract if a CTO licence was not in place: "*So although the CTO licence was not actually..paramount to the letting of the properties, because it was allowed… The big tour operators won't take a risk on a property without the licence*". This appears to be why the question was asked of the CTO, which led to their letter of response referred to above, and at the February 25 2010 meeting of owners in Manchester, attended by Mr Ioannou, he canvassed the advantages of a CTO licence, and then in an email dated 4 June 2010 to St Nicolas owners from Ms Ireland of APP the benefits of a CTO licence were again set out, coupled with the following statement:

> *"Letting a property in Cyprus on a short-term basis is illegal unless you apply to the Cyprus Tourism Organisation (CTO) to have the property licensed. Although the law is clear, it isn't policed vigorously, as the Cypriot Government realises that the increased investment and revenue resulting from such lets are boosting the economy."*

In the light of my conclusions in relation to **Stavrides** and the effect of s23A of the Hotels Act, and as Mr Ioannou said in evidence, this statement was incorrect, and Mr Christodoulou agrees that it is incorrect. In the event the vote which was called for as to applying for a CTO licence for St Nicolas was defeated on the "*simple yes or no vote*" called for.

I am satisfied that Question 1 should be answered in the negative.

23. I turn to Question 2. The applications for planning permission were sought and granted in relation to the three developments, each situated in a zone of the Paphos Plan designated as "*residential*", for the construction of the relevant numbers of apartments

(*polykatoikias)* or houses (*katoikias*). No permission was sought or granted for *tourist villas* or *organised apartment*. There is no declaration (nor is there a relevant box on the application form) that the houses or apartments were intended for letting on a short-term basis to tourists, foreigners or otherwise. As referred to in paragraph 18 above, Mr Kyriakides considered that *katoikia* of itself means a residence which cannot be let out to tourists. Mr Christodoulou disagrees, and I am wholly unpersuaded. There are conditions in the planning consent, none of which relate to not letting to tourists. Mr Kyriakides says that there must be a condition of the planning consent, whether express or otherwise, for compliance with the Paphos Plan, and it is not necessary to say so, but that assumes that it is not a compliance with the Paphos Plan to build houses and apartments in accordance with the planning permission and let them out to tourists. It is noteworthy that neither expert was prepared to agree that S 87 (2) of the Town and Country Planning Law 90/1972, which provides for the failure "*to comply with any obligation or condition imposed by this Regulation, Order, planning permission, plan, notice or order issued, granted, issued or given under this Law*" would apply the word "*plan*" to the Paphos Plan, but I so assume. However, I am not persuaded that there is a breach of the Paphos Plan. Mr Christodoulou makes it clear that if there is a decision to apply for touristic use, i.e. for *tourist villas* or *organised apartments* falling within the ambit of the Hotels Act, then this will be applied for in the planning application, usually with an anticipatory application to the CTO, or afterwards by way of an application for change of use in respect of a proposed change to *tourist establishments*. That has not occurred, and it is clear from the letter from the CTO, referred to in paragraph 22 above, that if there were to have been an application for a CTO licence (and the necessary alterations were made as to ownership so that the residences could become *tourist establishments* within the Hotels Act) then an application for change of use from residential development would be necessary. I accept Mr Christodoulou's evidence that there has been no breach of the Paphos Plan. It may seem counter-intuitive to one who is not familiar with Cypriot planning law, but I am satisfied that to use residences for short term lets to holidaymakers does not offend against the requirements of a residential zone within the Paphos Plan, so long as the residences are not *tourist establishments* (as defined).

24. The result is that the properties in the three developments could be let out on short-term lets to holidaymakers, provided that there was no breach of s23B of the Hotels Act. They could be let out to holidaymakers provided that they were Cypriots or UK or other EU residents, or non-EU residents, such as those from USA or Russia, who were taking a let of more than one month; but not on short term lets to non-EU residents. This is not the case which was specifically pleaded by the Claimants, but it was addressed by Mr Parker in cross-examination of the Claimants, and is dealt with in his closing skeleton. He rightly refers to **Avon Insurance plc v Swire Fraser Ltd** [2000] CLC 665 at [17] for the proposition that "*a representation may be true without being entirely correct, provided it is substantially correct and the difference between what is represented and what is actually correct would not have been likely to induce a reasonable person in* the *position of the claimant to enter into the contracts*". It was not in dispute that in 2006 82% of all tourist arrivals in Cyprus came from the EU (of which 69% came from the UK). Leaving aside the possibility of local Cypriots, if the properties were in fact lettable to 82% of the tourist footfall then it is plainly substantially correct to have said that they were well lettable, and neither the Claimants (as was very clear from the answers of Messrs Bright, Joyce, Rainford and Williams), nor indeed any reasonable person, would have regarded that as a reason not to enter into the purchase contract, or

been affected in their decision to do so. The premises would still have been lettable to large numbers of tourists, with the same impact as to the receipts from such lettings in 'washing the face' of the investment. Although this argument in the Defendants' closing skeleton was not dealt with by the Claimants in their closing submissions, I invited them to put in written submissions in response after the hearing. These submissions contained much that was not put or evidenced at the hearing, and in particular there was at the hearing no challenge to the 2006 statistic in the 2007 Cyprus Economic Review for 2007, and consequently the more than 2 million UK and other EU tourists to Cyprus out of a total of 2.4 million, indeed the Review was actually relied upon by the Claimants in opening. The case suggested in the submissions as to the desirability of a CTO licence (as referred to in paragraph 22 above), as opposed to the alleged legal necessity of one, was neither put nor pleaded. I am totally confident with my conclusion in the light of the evidence I heard.

25. I conclude that the Claimants' case in respect of Representation 1 does not succeed.

Representation 2: Drawdown

26. This representation is relied upon only by the Harrisons and the Whites (made to them by Mr Whittaker of ROPUK and Ms Nurse, each in April 2006). I accept the evidence by them that they were each told that there was a system in place which would ensure that drawdown payments requested by APP were effectively monitored and supervised by the Bank and by the Cypriot solicitors whom they instructed. There was also a far more generalised statement in the brochure given to Mrs White, but it did include the words *" The Bank will… check that work has genuinely been completed before releasing funds to* [APP]".

27. Mr Ioannou in evidence described the system as he said it operated, namely that the Bank sent someone to value the work done. Ironically it turned out from Mr Papachristodoulou's evidence on behalf of the Bank later that one of those valuers was Mr Polyviou, the ostensibly independent expert called in this trial for the Defendants. I am satisfied from this evidence that there were such valuers. Mr Ioannou then described how he or his team then made regular telephone calls to the Bank and that the Bank paid out if they were satisfied that the sum claimed was reasonable by reference to the surveyors' valuations. Mr Nathan QC for the Claimants suggested that Mr Ioannou was lying when he said that he made such oral applications, but it seems to me that that is exactly what happened. It is not a very satisfactory system, but, given the amount of plots on which work was being done it was not an outlandish system, and the release of the monies from the purchasers depended upon the valuation from the Bank. Mr Papachristodoulou confirmed that the Bank did sometimes respond to oral requests for drawdown, but in any event the Bank would keep records of all the valuations and all the payments. Mr Papachristodoulou is no longer employed by the Bank. I was not shown any requests by the Claimants to the Bank for such records, and in any event if they made any such requests, they were not followed up, and so no such records were before me.

28. The absence of the system which was represented to the relevant Claimants is sought to be established by them in two ways (i) allegations of fraud against Mr Ioannou by Mr Pollard (ii) what was called 'the proof of the pudding' by reference to the lack of correlation between drawdowns and work done in the event. I deal with each in turn:

i) Mr Pollard's allegations. He says that Mr Ioannou had the lawyers "*in his pocket*" and that they would do his bidding because they were anxious to keep his custom. There were two lawyers mainly involved, Mr Kalavas and Mrs Korakidou. Mr Kalavas was the lawyer for both the representees, the Harrisons and the Whites. Neither the Harrisons nor the Whites make any allegations against Mr Kalavas in these proceedings, and Mr and Mrs White had a meeting with him in Cyprus early on, which left them satisfied. I shall return to him when I deal with the 'proof of the pudding'. As to Mrs Korakidou, Mr Pollard alleges that at some stage she told him that Mr Ioannou had put pressure on her to allow progress payments to be made, or she would not get any more business from him. This was of course hearsay evidence, and if I am to believe it as Mr Pollard intends it, then it amounts to an allegation of fraud as between Mr Ioannou and Mrs Korakidou, a practising solicitor in Cyprus. If there were any actual evidence from her - and this is of course the vice of hearsay evidence, particularly where effectively fraud is being alleged - it might well be that, even if such conversation occurred, a much less sinister interpretation could be put on it. But Mr Pollard additionally puts a more direct case against Mr Ioannou. I was not impressed by his evidence, coming as it did from a history of obvious animosity between APP and Mr Ioannou and himself, arising from the termination of their relationship and its aftermath. He began his evidence in relation to his understanding that drawdowns were paid out to APP without any proper reference to the progress of the work with the statement "*I think the order came from Andreas Ioannou*". Then somewhat later in his evidence he said:

> *"A: What I am saying is that the drawdowns were faster than the building work they were supposed to support.*
>
> *Q: Right, and you say that that is the result of some impropriety that has been ordered by Mr Ioannou?*
>
> *A I have to conclude that, yes*
>
> *Q You have to conclude that?*
>
> *A There is no other explanation that I can think of."*

Then from that unpromising start, later, when I asked him, with reference to his alleged discussion with Mrs Korakidou, "*And you didn't mention that to Andreas, complain about it, stop acting, tell the clients?*", he only then said: "*I am sure I had that conversation with him."* Mr Ioannou was not cross-examined about it. I would need more persuasive and reliable evidence than this to consider a finding of fraud against Mr Ioannou (and the solicitors) in relation to the drawdowns.

ii) The 'proof of the pudding'. Was there a system which was inadequate and failed to work, contrary to the representations made to the Harrisons and the Whites? Both of those Claimants had properties in St George Hills. The position in relation to St George Hills was that the grace period under the purchase contracts for an extension of the building work in St George Hills began on 7 September 2009, in that work in the development was not by then completed. It was not completed until December 2011. In relation to the Harrisons the last drawdown was on 21 June 2010, by which time, including the deposit (and the

reservation fee) the moneys drawn down amounted to approximately 88% of the total purchase price. As for the Whites, the last drawdown was 15 January 2010, by which time (on the same basis) again approximately 85% of the purchase price had been drawn down. Thus the works at St George Hills were completed in the case of the Harrisons 18 months, and in the case of the Whites, 23 months after the last drawdown. However:

a) There was a decision of the St George Hills owners at the February 2010 meeting in Manchester, resolving that all properties should be completed and handed over together. It is thus impossible to know whether 100% of works on the properties of the Harrisons and the Whites were completed earlier, possibly much earlier, than December 2011.

b) There is no evidence, from photographs or otherwise, as to whether the properties were less than 88% or 85% completed at the date of the last drawdown. It may be that the most expensive works had been completed and that the finishing works left up to the time of completion were only 10% of the cost.

29. I am thus left in difficulties in making any conclusion, but Mr Parker then refers to evidence disclosed by the Harrisons which does not support any case to be inferred that there was no valuation carried out by the Bank's surveyors, or that the solicitors were not doing their job. By email dated 31 July 2008 Mr Kalavas wrote to the Harrisons, after receipt of a request for drawdown by APP, to state that "*the request is in accordance with paragraph 2 of your contract of sale. The independent chartered surveyor who is employed by the Bank can confirm the progress of the construction work justifies payment to the developer."* There were similar emails dated 8 October 2008 and 2 January 2009 in relation to the next requests. Emails dated 6 August, 9 November and 24 November 2009 are in similar terms. There is no reason to conclude that these statements by Mr Kalavas were false, and Mr Harrison accepted that he had the opportunity to ask more. I also have no reason to doubt that similar letters were sent to others, who have not been as diligent as the Harrisons in retaining documents. A comparison can be made with the position of Mrs Gillespie, who dispensed with the services of Mr Kalavas in June 2010 and instructed another lawyer. Mr Ioannou wrote to Mr Pankhurst of ROPUK on 10 June 2010 that "*further to the latest Bank's independent valuer's assessment of work undertaken at St George Hills, the assessors have defined that the amount of £5000 is now due*…". Mr Pankhurst passed this on to Mrs Gillespie, who responded that Mr Kalavas was no longer her lawyer and *"I will decide authorisation on the Bank's independent valuers' assessment which, I take it, you will send to me.… I will be instructing my new lawyer Louise Zambartis regarding this*…". Mr Pankhurst responded on the same day: – "*the Bank's independent valuer's assessment is available from Alpha Bank but they will charge a fee for this service, we do not have a copy of the assessment, we send a request to the Bank for them to send an assessor, who visits the site, the Bank* then *advises us of the amounts as defined by the assessor*." It seems that neither Mrs Gillespie nor her new lawyer took the matter any further.

30. I am unable to conclude that the Harrisons or the Whites have any grounds to establish a misrepresentation as to the existence of a system to ensure correlation. Representation 2 is therefore not proved.

31. It seems to me that the position may be different in relation to Arcadia Gardens. As I understand it, only three of the existing Claimants have purchased properties in Arcadia Gardens and none of those has made a claim by reference to Representation 2. If any other claimants in the cohort of cases has a misrepresentation claim that can be made by reference to lack of correlation between drawdown and work done in relation to Arcadia Gardens, there may be a different conclusion.

Issue 3: Advice as to the Alpha Panareti Mortgage Scheme

32. The most significant aspect of the investments sold to the Claimants was that they were 'armchair' investments, not only because the properties would be easily lettable but because the rent receipts would cover the 'special' mortgage arrangement, which would be exclusively available for APP customers, from the Bank.

33. When Mr Ioannou first brought Mr Pollard on board, in response to a 'cold call' email, he wrote informing him about APP, and enthused that "*our clients are particularly impressed by our responsibility, good value for money and the unique financial packages offered to each and every client based on his/her individual needs including un-competitive (sic) mortgage arranged exclusively for our clients with only 2.5% interest rate charged*." It was portrayed as a special feature in the Arcadia Gardens DVD: "*Unusually easy and flexible payment terms with low-cost mortgages available to most clients make the purchase process highly attractive*." An early brochure for Arcadia Gardens, which emphasises that "*investing or buying in Cyprus is made easy by our unique process, all buyers are able to purchase the property without having to visit Cyprus*", specifically records that "*your adviser can discuss in detail the preferential finance arrangements on this development. This exclusive deal is only available in Cyprus on property developed by* [APP]." Similar information appeared in all subsequent brochures. There is soon reference to the "*Alpha Panareti Mortgage Scheme*", both in Brochures and on the APP Website by June 2006. In some places it is referred to as an "*Alpha Panareti Housing Loan*": thus "*if you do not wish to purchase a property outright, an Alpha Panareti Housing Loan is available at an interest rate of approximately 2.75%. This is possible by denominating the mortgage in Swiss francs (CHF), a practice becoming more popular in the UK. Switzerland is a low inflation economy and a haven for foreign currency*." The Swiss Franc mortgage became a regular selling point. This, coupled with such information in brochures as "*the Alpha Panareti Low Deposit Reservation originally designed for the investor… but now available to all purchasers… The balance of 75% can be mortgaged at a rate of approximately 2.75% and can be fixed up to a period of 15 years with no prepayment penalties*." The APP website in August 2006 announced "*New mortgage terms for Alpha Panareti clients*. [APP] *is delighted to announce the negotiation of new terms for mortgages on its properties"* and "*This mortgage is only available against* [APP] *properties."* The document *"Mortgages - General Information",* which was distributed to agents, an APP document as explained by Mr Pollard, as indeed is likely, because it includes information obtained from ABC, records "*Mortgages are managed in Swiss francs by Alpha Bank … The Swiss franc is used because it is exceptionally stable by comparison with other currency, allowing a low interest rate*." Specific reference is then made to the APP website for more information.

34. The Defendants plainly set out to induce and purportedly advise potential customers in their homes, in accordance with the training (attended also by representatives of the Bank) given to the agents and sub-agents; and the exclusive Alpha Panareti Mortgage

Scheme was an integral part of that package. Mr White in his original statement in 2012 stated "*the big selling points were cheap mortgage in Swiss francs so the value would stay stable*". In his original statement Mr Williams stated that "*the basis of the mortgage being in Swiss francs was sold as a positive as it would provide stability*".

35. In fact the Swiss franc mortgage was an incredible risk, and as Mr Pollard confirmed, and is obvious, foreign exchange currency risks were never mentioned. The risk is well defined in the decision of the Cyprus Consumer Council, after making an investigation into the business practices of the Bank, dated 24 October 2016: "*In this case, the Bank granted mortgage loans in ....Swiss francs, I.e. in a currency other than the currency of the country where consumers, mostly residents of Cyprus or the UK, receive their income. Loans in foreign currency involve risks stemming both from the fluctuations of the exchange rates between two currencies [and] the interest rate fluctuations. These risks may result in a significant financial charge on the borrower, due to the increased payable instalments and unexpired loan capital. This is particularly true for mortgage loans that have long repayment periods. Thus, it is significantly affecting the ability to repay the loan and thus the economic data relied upon by the consumer to decide on whether to conclude a loan agreement and under what conditions. Furthermore, the average consumer does not have the necessary technical, specialised knowledge of foreign exchange and interest rate risk assessment*."

36. The Claimants' position was made worse by the fact that the interest was not fixed in any event. In the loan agreements which they subsequently signed with the Bank, or rather which the Cyprus lawyers signed on their behalf as the result of a power of attorney, which was part of the APP sales package, the conditions allowed the Bank to vary the margin over LIBOR (which of course could itself move in any event) which they could charge (clause 4(a)), and they did increase that margin substantially. A copy of a significant circular letter to all banks in Cyprus from the Central Bank of Cyprus, dated October 11 2006, was supplied to the Defendants, at a date which is unclear, though it seems highly unlikely that it would not have been at the contemporaneous October 11-15 Cyprus training session, attended by Mr Ioannou and no doubt as usual by the Bank representatives. It was never passed on to APP's customers, certainly not to the Claimants. In it, the Central Bank gave advice that foreign currency lending was risky in the event that such currencies strengthened against the Cyprus pound, that customers should be advised as to those risks and given illustrations to show how percentage changes might affect their repayments, and that financing in foreign currencies should be avoided where the customer's ability to repay was limited. The Defendants continued thereafter to market and effect their mortgage scheme as before. Under cover of that letter there was supplied a draft declaration which was supposed to be supplied to, and signed by, a customer prior to entering into such a loan, stating that the customer had been informed about the foreign exchange and interest rate risk due to fluctuation of the exchange rate and increase of the interest rates. None of the Claimants ever saw this declaration, and the Claimants who purchased properties and entered into loan agreements thereafter are the Gibbs, Mr Rainford, the Williamses and Mrs Gillespie. Mr Ioannou was not asked about this. The consequence was that as the Cyprus pound and indeed sterling substantially lost value against the Swiss franc the cost of the mortgages spiralled (and any rent receipts would have remained in sterling or Cypriot pounds) and the increasing and overwhelming indebtedness of the Claimants to the Bank led to the eventual settlement with the Bank referred to in paragraph 2 above.

37. The question for me is whether the Claimants from 2005 onwards should have been so advised by the Defendants, even without the impact of the advice by the Central Bank of Cyprus, given the following: –

i) The information about the mortgage as an integral part of the package was being given to the potential customers, as the Defendants well knew, by those who would be trusted by the Claimants, many of them former or actual financial advisers, to give recommendations and advice. The Defendants in their Defence at paragraph 11.8 accept that they "*understood that the third-parties engaged by ROPUK and/or UVR to introduce prospective purchasers were usually independent financial advisers who had long-standing and close relationships with their own clients, which they had built up over many years and who were able to offer their clients a range of different products for investment purposes."*

ii) In that same subparagraph of their Defence they deny that these salesmen were their agents or sub-agents, but I have already concluded in all the overwhelming circumstances that they were their agents and had actual or apparent authority to deliver, explain and expand upon the package they were selling on the Defendants' behalf. The package was the result of the unusual and specific training given by the Defendants to the salesmen, which had included involvement by representatives of the Bank, and the advantages of the exclusive mortgage were right in the very forefront of the delivered package, which the salesmen, and not the Claimants, were in a position to understand. To advise on the benefits carried with it the duty (and authority) to advise on the detriments and risks.

iii) The central aspect of the package was that the loan was to be in Swiss francs, sold as an advantage, when it was in fact an obvious risk, not needing the Central Bank letter to point it out, to be considered and assessed by anyone delivering their sales talk to ordinary consumers, wholly inexperienced in finance.

iv) The duty of care of the Defendants was the clearer when they were training the salesman and arming them with the DVDs and brochures. Even if the currency risk had not been obvious, it required to be carefully researched before it could be sold as a positive advantage and as a central part of the deal. The *low cost* mortgages, financed by the (sterling or Cyprus pound) rent receipts, were a fundamental part of the Masterplan.

38. I have considered in particular **Esso Petroleum**, and the significant point at 820 is that Lord Denning includes the duty in respect of the giving of advice in his definition. I have also considered the words in particular of Lord Reed in **Cramaso LLP v Ogilvie-Grant** [2014] AC esp at [42]. I conclude that the Defendants plainly owed a duty of care in marketing their wonderful new mortgage as a fundamental part of the offering, to put these Claimants on notice of the risks, which should have been obvious to them and their agents, and to include a caveat in their brochures rather than the trumpeted advantages of that special exclusive mortgage arrangement. I conclude that the Defendants by their agents and their literature owed and were in breach of a duty of care to these Claimants in failing to advise of the risk of the Alpha Panareti Mortgage Scheme. As a result of the inevitable risks created by the Swiss Franc mortgage it was not a safe investment, and the Defendants failed to take care that the investment they

were recommending was safe and sound. The fact that the practice continued after the Central Bank warning exacerbates the position (insofar as the Defendants had seen the Central Bank memo), and renders liability clearer in respect of all who purchased after October 2006, but I am satisfied that there is liability from the beginning, when the package was so assiduously put together, trained and marketed without consideration of such a flaw, which was obvious, or should have been so, had the slightest thought been given to the risks and consequences. I find Representation/head 3 proved.

Representation 4: Ease of resale

39. There were representations that there was easy resale potential and/or that there would be an easy process to resell, to the Joyces by Mr Laird in October 2005/March 2006, to the Whites by Mr Mawer in April 2006, to Mrs Gillespie by Mr McCormack in January 2007, to Mr Rainford by Mr Eccles and to the Gibbs by Mr McCormick in April 2007, and to the Williamses by Mr Heath in 2007 (when they were also told by him that they would receive the title deeds on completion).

40. There is no doubt that ROPUK did agree with APP to operate a resale programme (see the reference to the GSA and its Fourth Schedule in paragraph 13 (i)(b) above) and there were "Resales Guidelines" issued by ROPUK in 2008, including a website available to interested owners (*resales@ropuk.com*). The only reference in a brochure is to there being a "*resale proposition after just 12 months*" This is not a promise of an easy, and certainly not a profitable, resale.

41. The Claimants' case is that such representations were not true since there would be a problem on resale, because of the existence of a mortgage by APP to the Bank of the entire development, and there would be delay in production of the title deeds after completion. The case is pleaded by the Claimants as follows:

> *"… Consent to a sale or registration as the legal owner depends upon the purchaser paying off his own loan and paying off the whole ...or part ...of the developer's borrowing."*

42. The Defendants deny that any such representations were material, in the light of the intention of most (if not all) of the Claimants to retain the properties for long-term investment. However, I am not persuaded that the representations were false. Significantly the two legal experts (at issue 38) agreed that there was nothing to prevent a resale, and Mr Christodoulou explained that he had carried out many such transactions, and has never experienced any difficulty in transferring title to a purchaser on such a resale. The statement, if made, as to when the title deeds would be received is, if anything, a warranty and not a material representation.

43. Representation 4 is not established.

Representation 5: Recovery of VAT

44. Representations are alleged to have been made to the Joyces in 2005/6 by Mr Laird, to the Harrisons in April 2006 by Mr Whittaker, to the Brights in July 2006 by Mr Laird and in 2007 to the Williamses by Mr Heath, that it would be possible to reclaim 2/3 of VAT (Joyces) or (seemingly) all VAT (Harrisons), and that VAT could be reclaimed (Brights and Williamses).

45. The purchase contracts in the case of the Joyces said nothing about VAT in one of their contracts and in their second and third contracts said that "*If the Purchaser fulfils the legal requirements, she may be entitled to claim a VAT return/refund"*. The Brights, the Harrisons and the Williamses had a similar clause in their contracts ("*If the purchaser qualifies for a VAT refund then and in such event the Vendor undertakes to provide the Purchaser with the necessary*…"). Most of the Claimants contend that they did not or did not adequately read their contracts and had no legal advice at the time; or they would be entitled to regard such representations as overriding what was said in the contract. However Mrs Welsby's evidence was that in the presentations at the training courses it was said that there was a potential that the VAT payable on the purchase could be recovered, while Mr Shaw, another agent called by the Claimants made it clear that he recalls that the instructions as to what was to be said to purchasers was that there was a possibility of getting back the VAT. Nothing was said in the brochures.

46. The reality was that VAT was only recoverable if the Claimants were acquiring the properties as their sole or principal permanent residence, and an application for a reclaim would have to be made on that basis.

47. The information that was actually supplied to the agents in August 2005 was as per a memo to Mr Ioannou dated 26 August 2005, circulated to ROPUK (specifically to Mr Laird, who was an alleged representor) and given to Mr Pollard of UVR, namely that a partial refund of VAT could be claimed after completion of the property, but only where the property was to be the buyers "*first*" residence. The point was again clarified in a circular by ROPUK to all agents dated 31 July 2006, that such (partial) refund was only available if the owner was "*deemed resident in Cyprus for 183 days (not consecutively) in the tax year and… After the VAT refund is made, Cypriot residency is* required *for up to 10 years*." This was repeated in clear terms in a joint memo from APP and ROPUK dated April 2007, which was received by Mr Harrison from Mr Whittaker without complaint.

48. If the representations were made to the Claimants, going beyond the *possibility* or *potential* of a VAT refund, they were plainly not authorised or known about by the Defendants, and (see Bowstead 8-185) do not render them liable. If made, they were, in my judgment, not least judging by the reaction of Mr Harrison to receipt of the memo in 2017, not material representations inducing the relevant Claimants to contract. The apparent suggestion that the agents ought to have advised the Claimants that VAT would not be recoverable by them was a new case raised by Mr Yell in closing and not put in evidence, and is equally unpersuasive and would (if not caveated) be equally outside the salesmen's authority. In any event none of the salesmen who were called for the Claimants said that they said anything about VAT.

49. Representation 5 is not established.

<u>Representation 6: Due diligence carried out.</u>

50. There were representations claimed to have been made to the Brights by Mr Laird in July 2006 as to due diligence – by the solicitors, APP and ABC – and by Mr Heath to the Williamses in 2007 – by legal, accountancy and banking professionals; and as to the contract having been approved by independent solicitors and the Association of International Property Professionals (AIPP) by Mr Heath to the Williamses in 2007. The Williamses referred to a statement in a brochure given to them that ROPUK

"*undertakes a full due diligent assessment of each investment opportunity, working closely with legal accountancy and banking professionals to ensure all aspects of the purchase and opportunity have been researched*." The Gibbs pleaded a similar case, but it was not referred to in evidence nor included in the schedule of misrepresentations prepared by Mr Yell in his closing submissions.

51. I do not believe that either Mr Bright or Mr Williams when they gave evidence understood what "due diligence" or indeed a "due diligent assessment" was. Mr Williams thought there was reference to the RICS as well as to the AIPP. Mr Heath, as the alleged representor, did not support Mr Williams in this regard, and it is noteworthy that Mr Williams' such evidence is in a 'standard' paragraph in his statement, repeated in others' witness statements, though not pleaded by them.

52. It is certainly the case that (i) the contract emanated from APP (ii) although each Claimant was in principle able to choose a Cypriot lawyer from a list of two or three supplied to them, there was no opportunity to consult with such lawyer prior to the contract being signed at the instance of the salesmen (save for the Whites' meeting with Mr Kalavas (described in paragraph 28 above) (iii) the contracts, or certainly the later ones, which purported to include an exemption clause, were concluded to be unfair by the Cyprus Consumer Council in 2016. However I do not consider that the representations, insofar as made (and that in the brochure seems to me to be not much more than 'mere puff') were material representations inducing the contracts, or can be shown to have been misrepresentations.

53. I do not find Representation 6 proved.

Representation 7: Independence of lawyers

54. I have already addressed in relation to Representation 2 the allegation of the lack of independence of the Cypriot lawyers, insofar as it was an important part of the allegations as to drawdown, and I have not found Representation 2 proved. The representations that the lawyers were not independent were said to be made to the Whites in April 2006 by Ms Nurse (the same time as that in Representation 2), to the Brights by Mr Laird in July 2006 and by Mr Heath to the Williamses (who make no complaint about drawdown) in 2007. With regard to the drawdown, I have found no lack of independence on the part of Mr Kalavas (lawyer for the Brights and the Whites) and in respect of Mrs Korakidou (the lawyer for the Williamses) I have concluded that the hearsay evidence of Mr Pollard was unpersuasive and uncorroborated (and she too in correspondence with Mr Williams in June 2009 referred to the Bank's independent chartered surveyor confirming the progress of work). The same can be said of the generalisation by Mr Heath that the lawyers were "*in cahoots*" with Mr Ioannou, when he never raised this at the time. As I said in paragraph 28 above, Mr Ioannou was not cross-examined on the subject. As to any other bases upon which a case of lack of independence can be inferred or established, the matters relied upon by the Claimants are that (i) the Defendants only suggested two or three names of English-speaking Cypriot solicitors to the Claimants; (ii) on one occasion, according to Mr Pollard, Mr Ioannou was annoyed when a purchaser (unidentified) wished to appoint his or her own lawyer; (iii) lawyers attended the training sessions for the salesmen; (iv) their advice as to the purchase contracts and the loan agreements was inadequate or non-existent. They point out that the Defendants have not called any of the solicitors who acted for the owners involved in this litigation (Mr Kalavas, Mrs Korakidou, Mr Efthymiou, or on

one or two occasions Mr Korakides or Mr Kourides) to rebut the Claimants' case of lack of independence.

55. The case in respect of professional solicitors effectively amounts to dishonesty, to "s*uborning*" of them by Mr Ioannou, as Mr Parker put to Mr Pollard in cross-examination, from which case when questioned he seemed to backtrack. I am not persuaded as to the case of lack of independence: as to (i) I do not find this at all unusual or suggestive of any impropriety; as to (ii) I have already expressed my scepticism as to the evidence given by Mr Pollard where it concerned his antagonism towards Mr Ioannou; as to (iii) I do not find it at all strange that the lawyers should be involved in training of the salesmen as to the process; and as to (iv) the Whites were not dissatisfied as a result of their meeting with Mr Kalavas referred to in paragraph 28 above, but although the lawyers may have been negligent, they have not in my judgment being shown to be dishonest. I cannot reach such a conclusion on the basis of the evidence before me or by reference to the fact that the witnesses were not called. I do not find it proved that there was a misrepresentation as to the independence of the proposed Cypriot lawyers.

Representation 8: no risk to UK assets.

56. This was said to be a Representation by Mr Heath to the Williamses in 2007, although it was not pleaded to be a misrepresentation. In any event leaving aside that technicality, and the fact that it would appear to be outside the authority of Mr Heath (who gave no evidence about this), I do not see that it adds anything to the negligent failure to advise as to the risks caused by the Swiss franc mortgage, which I have already found proved by virtue of Representation/head 3, I make no finding in this regard.

57. For the same reason I need to make no finding in respect of the asserted "overriding" misrepresentation.

Personal liability of the Second Defendant Mr Ioannou

58. This is put by the Claimants in two ways, first he is said to have owed a personal duty to the Claimants, and secondly he was a joint tortfeasor. As to the latter, I consider that this can only amount to a case that he was a joint tortfeasor with the First Defendant APP, as I have not been tasked to find, and do not find, that the agents and sub-agents such as Messrs. Pollard, Shaw and Heath, Mrs Welsby, and all the others were liable in negligence to the Claimants. But, even then, I would need to be satisfied that he was a joint tortfeasor personally as opposed to APP, so the question is the same.

59. Mr Ioannou is said to be personally liable to the Claimants because he was a Svengali, because the marketing scheme was his masterplan or brainchild, and he was its hub, that he micromanaged at least UVR if not ROPUK, that he approved the content of the brochures and DVDs, and that he has been the only witness for the Defendants, and no other witnesses have been called, although others have featured on behalf of APP, not just Ms Nurse, and his sister and father, but Ms Skordi, Ms Ireland and Ms Birkin. It was not put to him that APP is or was a one-man company and indeed in the light of at least those individuals it would seem it plainly was not, although that of itself would not be enough. No board minutes or articles of association were produced, though I do not know if discovery of them was sought.

60. The question is whether he has become liable as well as the company of which he is managing director. This is not a case of a joint tortfeasor ancillary to another independent party, such as in **Fish & Fish Ltd v Sea Shepherd UK** [2015] UKSC 10. I have been referred to the following authorities: **Williams v Natural Life Health Foods Ltd** [1998] 1 WLR 890 esp at 835–6, **MCA Records Inc v Charly Records Ltd** [2001] EWCA Civ 1441 esp at [49]–[53], **Koninklijke Philips Electronics NV v Princo Digital Disc GmbH** [2003] EWHC 2588 (Pat) esp at [23], **Contex Drouzhba v Wiseman** [2006] EWHC 2708 (QB) asp at [60] and [97]–[98] , **Global Crossing Ltd v Global Crossing Ltd** [2006) EWHC 2043 (Ch) esp at [44]-[45] and **Societa Esplosivi Industriali SpA v Ordnance Technologies (UK) Ltd** [2008] 2 AER 622 esp at [103].

61. It is not suggested that the company does not have any independent existence, nor that it is a facade or a sham to cover a personal adventure by Mr Ioannou. It obviously owns substantial property in Cyprus, and there was no cross-examination of Mr Ioannou in relation to the company's accounts. There is no arguable basis for 'piercing the corporate veil'.

62. Even assuming all the matters set out in paragraph 59 above, though I am not convinced that he is a Svengali, I am not at all persuaded that in relation to the one issue which I have found in favour of the Claimants, the negligent failure to give advice to the Claimants in relation to foreign currency risks, nor even if I had found the other misrepresentations as to lettability, drawdown or ease of resale, that he undertook or had personal liability. There was certainly no "*singular feature which would justify belief that [he] was accepting a personal commitment , as opposed to* [a] *company obligation*" nor "*crossing the line which conveyed to the plaintiff that the defendant was assuming personal liability",* such as Lord Steyn looked for in **Williams** at 836E, nor his "*participation or involvement in ways which go beyond the exercise of constitutional control*" of APP, referred to by Chadwick LJ in **MCA Records** at [50]. When these Claimants were induced to contract, it was with APP, and I am satisfied that the existence or role of Mr Ioannou would not have crossed their mind, notwithstanding the wording in their 2020 witness statements. What there has been in my judgment is an understandable attempt by the Claimants, who have suffered loss and distress over a period of more than 10 years, to ensure a solvent defendant. I have no idea whether APP will be sufficiently solvent to meet the claims by the present Claimants or those who form part of the cohort of 280, but there must be a ground for personal liability of Mr Ioannou, and I find none.

Assignment

63. The Defendants made a case by way of defence by virtue of the assignments to ABC referred to in paragraph 2 above. On various dates between 2006 and 2009, at the same time as the loan agreements with the Bank, each Claimant entered into an assignment including (in material part) the provision in clause 2 that each Claimant "*by this document assigns for the benefit of the Bank all his rights which derive from the contract of sale and especially his right for specific performance of the contract of sale and registration of the property in his name*".

64. The Defendants originally made a case that the Claimants had thus assigned to the Bank their claims in these proceedings, effectively for misrepresentation. That case is not now pursued in the light of the agreement of the Cypriot law experts that, as in English

law, the assignment was of claims for breach of contract i.e. "*which derive from the contract of sale*" and not tortious claims for misrepresentation etc. However Mr Parker ran an alternative case in closing, namely that in practice the contractual claims which have been assigned included the possibility, by way of measure of damage, of recovery of reliance loss, so that the Claimants are seeking in these proceedings, by way of tortious claim, the very same damages which they could have recovered for breach of contract, which they have assigned away. Thus, he says, the Claimants have lost the right of recovery of those damages.

65. However, both the experts agreed the relevance of the law of double jeopardy in Cypriot law, which would prevent the Bank (whose claim would in any event by now be statute barred) from claiming in contract the same sums as are now sought by the Claimants, and indeed a fortiori, by virtue of Article 61.2 of Cap. 148 the Cypriot Civil Wrongs law, which provides that "*no person shall recover any compensation or other relief in respect of any civil wrong if such civil wrong also constituted a breach of any contract or of an obligation resembling those created by contract, and compensation for such breach of contract or obligation <u>has been awarded</u>"*(my underlining), which is of course not the case here. I accept the evidence of Mr Kyriakides that there is in Cyprus law no room for an argument that the Claimants have assigned their entitlement in tort in Cyprus law nor that they cannot in Cyprus law pursue the claims in these proceedings.

66. Even if this had not been the obvious answer to the Defendants' case, there is the further fact that in the various settlement agreements between the Bank and the Claimants entered into since 2018, in respect of the various proceedings between them, there has been agreed in each settlement agreement a proviso to clause 2, namely "*for the avoidance of doubt nothing in this assignment agreement shall prevent the assignor from continuing its claims, including claims in respect of misrepresentation, negligent misstatement and/or negligent advice, or any such equivalent claims in respect of which the assignor has suffered an actual loss, against other defendants (i.e. other than the assignee) to the English proceedings as defined in the Settlement Agreement"* (i.e. these proceedings). Thus, for the avoidance of doubt, the Bank and the Claimants agreed that the Claimants retained their claims in tort against the Defendants.

<u>Damages</u>

67. As discussed at the end of closing submissions, I shall hear argument from counsel as to the impact upon the Order of Cockerill J, referred to in paragraph 2 above, of these findings on liability, and also as to the extent to which these findings, in relation to these sample claims, will be binding on the Defendants and on the rest of the cohort of claimants.

<u>POSTSCRIPT</u>

1. This judgment was due to be handed down on 19 May, and the draft judgment had been delivered by me in confidence to the parties' counsel in advance in the usual way, and corrections had been made and accepted ready for hand-down. On the previous day, 18 May, the Claimants' Counsel, Mr Yell, who inherited the mantle from Mr Nathan QC, sent me an email requesting me to delay the hand-down in order that the Claimants

could make an application to reopen the judgment prior to its being issued, relying on what has been called the **Barrell** principle [from **In re Barrell Enterprises** [1973] 1 WLR 19 (CA)], as recently reviewed in authorities such as **Robinson v Fernsby** [2003] EWCA (Civ) 1820 and **in re L and another (Children)** [2013] 1 WLR 634 (SC), which can permit such a course in certain circumstances. The circumstances here were said to be that the Claimants had fresh evidence to put before me. I held a hearing on 28 May, and this is my judgment by way of Postscript to my judgment above, which in the event stands unaltered.

2. As can be seen from paragraphs 15 to 22 of my judgment above, there were two questions for me to decide on the issue of lettability. The first, and only relevant one for the purposes of this application, was whether a CTO licence was necessary at Cypriot law before these properties could be let to UK and other EU tourists. As there appears, this depended upon the construction of s23A of the Hotels Act, cited in paragraph 19. I concluded, at the end of paragraph 22, that, as set out at the end of paragraph 21 "to develop and sell these properties as buy to let for tourists without a CTO licence would not lead to a breach of s23A of the Hotels Act".

3. The Claimants' solicitors obtained, as a result of investigations commenced some time in April 2021, after the close of the evidence on 1 April, by about 7 May a series of documents on which they wish to rely, obtained from the CTO and/or the Paphos District Court, which they obtained permission from the Paphos District Court on 20 May to use. These documents appear to show that Mr Ioannou and APP were involved with the Paphos District Court as follows:

    i) An indictment 20968/09 relating to alleged offences on 26 August 2009 by APP, Mr Ioannou and others was seemingly at some stage discontinued.

    ii) An indictment 8103/15 related to alleged offences by APP, Mr Ioannou and others, in the first count dated 5 August 2009 and in the other three counts dated 5 August 2015. There is a copy email sent to the Paphos District Court, received on 12 April 2018, from a lawyer for a complainant, alleging events involving serious injury at a hotel, Saint Nicolas Elegant Residence, owned by APP, which it was said did not have a licence from the CTO to operate as a hotel. This was described in all four counts as a "*building complex*", and if indeed, as it seems, it is a hotel, is irrelevant to our consideration. It is unclear what happened, but it seems there was a plea of guilty at the Paphos Court in 2018.

    iii) An indictment 7170/2016 relates to alleged offences by APP, Mr Ioannou and another on 10 August 2016. An undated letter from a complainant refers to incidents said to have occurred at "*St Georges Club*" in Paphos between 7 and 10 August 2016. The repeated references to "*my room*", suggests that St Georges Club was a hotel. It is described in both counts of the indictment as a "*building complex*". Again therefore it is likely to be irrelevant. There was a plea of guilty on 7 October 2020, leading to a fine of £400.

    iv) An indictment 5635/18 against APP, Mr Ioannou and another, relating to offences dated 21st August 2018 seemingly led to a plea of guilty on 11th January 2021 and another £400 fine. Both the two counts refer to "*the hotel and/or tourist accommodation Saint Nicolas Elegant Residence*."

4. The following can be discerned:

   i) I can learn nothing from the discontinued indictment.

   ii) Save in one respect (the first count in 8103/15) the dates of the offences were long after the period 2005 to 2009 relevant to the proceedings before me when the representations made in 2005 to 2007 fall to be tested: the law or the prosecution practice may have altered (see further at (iii) below) or it is possible that the facts may have altered and some or all of the villas or apartments may have become tourist establishments and thus subject to the remit of the CTO, but in any event it would seem that most if not all of the offences related to hotels and not to villas or apartments at all. As for the first count in 8103/15, it does seem extremely strange that the date of it should be 5 August 2009 when the other three counts all relate to 5th August 2015. It would seem in any event likely to be way out of time for prosecution. It is suggested by Mr Yell that perhaps it was a leftover from the discontinued indictment of 2009, but it does not appear to be the same as any of the counts in the discontinued indictment, either as to the description of the offence or in particular as to the date, which in the discontinued indictment was in each case 26 August 2009, not 5 August 2009. Given that the other three counts in 8103/15 were all dated 5 August 2015, it does seem to me most likely, as Mr Parker suggests, that 2009 in the first count was a typographical error.

   iii) As for the offences charged in all the indictments they relate to a swathe of legislation described as "*in violation of the Hotels and Tourist Accommodation Laws of 1969 to 2005 (Basic Law 40/1969) articles 2,3,4,5,7,8,11 (1) (2), 17, 22, 23A (1) (b), 2,5,7 and 23 (B) as amended to date and on (sic) the Hotels and Tourist Accommodations (General) Regulations 1985 to 2005 Regulatory Administrative act 192/1985 and on Hotels and Tourist Accommodations (General) Regulations 1985 to 2005 Regulatory Administrative Act 205/1993, Regulatory Administrative Act 178/2006 and Regulatory Administrative act 193/1985 as amended today and Article 20 of the Criminal Code"*. The reference is to "*tourist accommodation*" (as it is in relation to each of the relevant counts) and not to tourist establishment, which of course was carefully defined, as I have set out in my judgment, and in any event there is reference as can be seen, to a myriad of Regulations.

   iv) The counts themselves make reference to a number of other allegations in addition, or as opposed, to operating tourist "*accommodation*" without a licence.

5. This is the material upon which the Claimants rely, and Mr Yell submits that it justifies opening up my conclusions and the trial so that there can be cross- examination of Mr Ioannou about them and also of the Defendant's expert Mr Christodoulou, who gave evidence of having searched electronic databases and found no single case of the criminal offence of renting residential premises (Mr Kyriakides gave no evidence at all on this topic). Mr Parker submits that if there were to be an attempt to cross-examine Mr Ioannou as to these convictions, evidence would likely be inadmissible by virtue of the doctrine in **Hollington v Hewthorn** [1943]1 KB 587, which is still the law so far as convictions in foreign courts are concerned.

6. I turn to consider the context in which it is now sought to reopen the trial for such purpose. As I set out in paragraph 1 of my judgment above, these proceedings have taken more than 10 years to come to trial. There has been a 29 day hearing in which there were frequent applications by the Claimants to adduce further evidence not in the bundles, which I accommodated, as there was still time for the Defendants to deal with them, together with a change of case just prior to the hearing, for which I permitted the proceedings to be amended. Investigations were no doubt commenced on behalf of the Claimants well before the proceedings themselves were issued, and the same solicitors for the Claimants have been in place throughout. The enquiries now spoken of did not apparently begin until after the close of evidence on 1 April and/or after the end of the hearing on 30th April 2021 and were relatively speedily adduced. I am entirely clear that the information now sought to be introduced (still not properly explained and analysed or accompanied by any proposed further expert's report as to Cyprus law) could have been discovered and introduced long ago and certainly before the trial and a fortiori before the end of the trial:

i) In Dr Alexander's 24th witness statement of 24 May 2021, in support of this application, she said:

> *"4. Unfortunately, none of these properties had a [CTO] licence. This meant that they faced serious issues over renting to tourists or as sound investments. The cases that I fought related to developments at [7 different developments] They had identical problems with the [APP] properties.*
>
> *5. As a result of the complaints for the absence of a....CTO licence, I became very knowledgeable of the procedures of the CTO. The [APP] developments were one of the many developments where the [CTO] was concentrating its attention for some time.*
>
> *6. In 2014, I had several meetings with Mr.. Yiallourides, a senior officer of the [CTO], and we discussed numerous complaints by purchasers against [APP]. The complaints related to the lack of [CTO] licences and the lack of a sound basis of investment by the purchases. I was told that the [CTO] was keeping a close watch on what was happening, but at that time I was never informed about the prosecution which was initiated by the CTO in 2009. Nor was I informed by the CTO about the three subsequent prosecutions commenced in 2015, 2016 and 2018 against [APP] and its directors."*

ii) She exhibited to that witness statement her affidavit of 16 May 2021, which she put before the Paphos Court in support of her application for permission to use the documents:

> *"8. I personally had experience of speaking to the [CTO] and I knew that the [CTO] had taken a very active role in identifying the breaches of [APP] and its directors. As a result of the above knowledge, we investigated the matter and we discovered that there were prosecutions and sanctions but we had to know the*

numbers of the cases, in order to retrieve, by permission of the Court, the files from the Paphos Court.

9. I wrote a letter to the [CTO] and Ms Ioanna Fylaktou kindly replied, giving us the references to the three different actions by the [CTO]."

It seems that this letter, which was so promptly replied to, was only sent in April or May 2021. The affidavit of Dr Alexander was accompanied by a declaration from a Mr Zannoupas which falsely informed the Paphos Court that in these proceedings "[APP] *and Mr Ioannou falsely informed the Supreme Court of the United Kingdom that they never appeared in a criminal case and were never convicted in any case against them."*

iii) I directed on 24 May that the Claimants support their application by explaining through Dr Alexander why the enquiries of April 2021 were not, in the light of her personal knowledge and experience described in her 24th witness statement, made at any time since 2014, or certainly well before the trial. In her 25th witness statement the answer given was as follows:

"As from 2014 onwards, there was a reorganisation of the CTO, and the CTO became the Ministry of Tourism. Mr S Yallourides, the officer of the CTO who was my contact, was moved to the Ministry of Defence, and the employees with whom I was communicating were not in their previous positions. Further from 2020 onwards on account of the Covid – 19, I was restricted to travel to Cyprus."

Clearly the fact that Dr Alexander was restricted in travel to Cyprus from 2020 cannot have been material, given that she has a law firm there, with other personnel. Mr Parker pointed out that, according to his research, the CTO was not replaced by the Government Ministry until 2019, to which Dr Alexander responded by saying that there was a gradual changeover, starting earlier, but no suggestion is made of any attempts to renew her contacts with the CTO or to follow-up any of the "*numerous complaints*" at all, prior or subsequent to Covid-19.

7. To add to Dr Alexander's asserted familiarity with the position as described above, there were the following significant matters which plainly ought to have led to the making of the investigations which did not start until April/May 2021:

i) The Gibbs in an early statement in or about 2010 given to the Claimants' solicitors stated "*During our visit to St Nicolas apartments in September 2009, the ROPUK office was closed by the police, they were instructed to remove all ROPUK signage and cease trading with immediate effect until a CTO [licence] was obtained."* This was repeated and expanded in their witness statement for trial, at paragraph 19, with the added information that Mr Ioannou procured the reopening of the office. It does not appear that this was followed up at all prior to the trial and there was no cross-examination whatever of Mr Ioannou in relation to it, nor any mention of it made to the legal expert witnesses.

ii) Mr Ioannou disclosed a letter dated 15 January 2010 written by him to ROPUK, which was included in the trial bundle. It read:

> *"I'd like to inform you that yesterday, 14th January 2010, we were obliged to attend the local court for a hearing, because the CTO believes that we have involvement in renting out properties in Cyprus. It was discovered by the ...CTO that your company ROPUK.. has been carrying out rentals without our knowledge, which is not permitted under CTO rulings."*

Mr Ioannou referred to this himself in his witness statement at paragraph 22. Again no investigations seem to been carried out and there was no cross-examination at all of Mr Ioannou in relation to it.

8. It is quite apparent to me that any degree of investigation of these matters between 2010 and 2021, which Dr Alexander was plainly in a position to make, would have led to discovery of the involvement of the Paphos District Court in allegations made by the CTO. In the event the only evidence that was explored before me at all relating to the CTO is that set out in paragraphs 21 and 22 of my judgment above.

9. I have considered what I conclude to be the very considerable delay in this case by the Claimants in adducing this information. Against this must be set the fact that there was no disclosure of such information by the Defendants. The position at this stage taken by the Defendants is that the discontinued indictment was irrelevant and the very recent pleas/convictions were considered by Mr Ioannou not to be relevant because of their being so long after any relevant events. I do consider that they ought to have been disclosed, notwithstanding what I have said in paragraphs 3 and 4 above, which further reduces their materiality. However I do not conclude that there has been a question of dishonest concealment:

i) This is plainly not a case of concealing evidence from the Claimants that the Claimants could not themselves have discovered. The investigations commenced at the end of April 2021 bore fruit within a matter of weeks. I note that in the pre-CPR case of **Sincroflash Ltd v Trusthouse Forte PLC** The Times 7 January 1983 Sir Douglas Frank QC did not reopen a trial where a document which was belatedly found and sought to be relied upon by the defendant had in fact been signed by both parties.

ii) The Defendants' disclosure of the letter of 15 January 2010 referred to in paragraph 7 (ii) above, which could and should have opened up the line of enquiry for the Claimants, shows that there was no concerted attempt at concealment.

Mr Yell submitted in his skeleton that the information now discovered is highly relevant to Mr Ioannou's state of knowledge and understanding. I am not persuaded of that. I have already found in favour of the Claimants that <u>if</u> the properties were unlettable, then APP would be liable for misrepresentation. It is not a question of the belief of the Defendants but of the fact, which I have resolved against the Claimants, of lettability at Cyprus law.

10. I have looked at the authorities referred to in paragraph 1 above, and in addition at **Townsend v Achilleas** (2000) CA unreported, 7 July, which is of relevance because it relates to a **Barrell** application such as this, based on availability of fresh evidence. The following principles appear to me to emerge:

    i) A **Barrell** application to reopen a trial after a draft judgment has been circulated but before its delivery can arise in a number of different situations (a) in the event of a plain mistake by the Court or (b) the failure of the parties to draw the judge's attention to a plainly relevant fact or a point of law or (c) the discovery of material new facts after judgment was given or (d) a carefully considered change of mind by the judge ("*judicial tergiversation*" as it is called by Peter Gibson LJ in **Robinson** at [120]).

    ii) The grant of such application is no longer to be limited to "*exceptional circumstances*" (**Robinson** at [94] approved in **Re L** at [26]), but it is a jurisdiction which will be "*cautiously and sparingly exercised*" and so as to accord with the Overriding Objective (**Robinson** at [79]: **Re L** at [27]). Effectively there must be "*strong reasons*" to exercise the jurisdiction (**Robinson** at [84], approving the words of Rix LJ in **Noga v Abacha** [2001] 3 AER 513 (CA): **Re L** at [25].)

    iii) Nothing in **Re L** seems to me to disapprove the approach of Mummery LJ, giving the judgment of the Court of Appeal in **Townsend** at [10]-[11], in a case of fresh evidence, who, while emphasising that the Court must seek to give effect to the Overriding Objective, considers as the critical question whether the fresh evidence could have been obtained with reasonable diligence for use at the trial.

11. Taking into account the facts of this case I would seek to enunciate the following principles as to what is important:

    i) As the first important question, the significance of the fresh evidence to be adduced: to that extent I would palliate the views of Mummery LJ in the light of **Re L**;

    ii) The circumstances and reasons why it has not been previously adduced, including both delay by the party seeking to introduce it and whether it should have been disclosed by the opposing party (including whether there had been deliberate concealment of it): the more inexcusable the delay the more significant the fresh evidence must be;

    iii) The effect on the hearing by way of the need to reopen trial and admit further disclosure, evidence and cross-examination, in terms of time and costs.

    The first question is inevitably the starting point, but it is a balancing act, in which inexcusable delay and the cost and prejudice of reopening the trial are weighed. If the proposed evidence is a 'game-changer' then that is likely to be the most persuasive factor.

12. In this context I turn to consider the significance of the proposed evidence/information, as to whether it is or could be a game-changer:

i) The starting point is my examination in paragraphs 3 and 4 above of the nature of what has been put before me, leading me to conclude that it is a long way from amounting to a case that can be put which would make a substantial difference. It is not even clear from the plethora of sections and regulations cited in the indictments whether the charges were laid by reference to a breach of s23A by virtue of letting out of any tourist accommodation to UK/EU tourists on short lets, or whether the facts by 2020/21 when the pleas were entered were different from those being considered by me, not least in relation to whether villas or apartments as opposed to hotels were the target.

ii) If, with further explanation and analysis of the indictments and counts (and the numerous Regulations listed, none of which were before me), they could support a conclusion that a Cyprus court was entertaining a plea of guilty to convictions for letting any accommodation to tourists (tourist establishments or otherwise) during the relevant period, then Mr Parker accepted that although there would be objection to such pleas being put to Mr Ioannou by reference to the principle in **Hollington v Hewthorn**, they could be put in cross-examination of Mr Christodoulou as a counter to **Stavrides**. Here, it would be said, are examples of the Paphos District Court entertaining a plea of guilty in respect of letting out (any) tourist accommodation. The scenario only has to be postulated to see the obvious result. There is no reasoning, no explanation by the Paphos District Court, whereas **Stavrides** is fully and persuasively argued: guilt under s23A depends upon there being a tourist establishment as defined by the Hotels Act, and at least as things were in 2005–2007 the accommodation in APP's developments in issue before me were not tourist establishments (and in order to become such would have needed to have complied with the CTO letter referred to in paragraph 22 of my judgment above). There would be no contest, no doubt as to which would be preferred, as between these pleas of guilty and the established reasoned judgments, both interlocutory and final, in **Stavrides**.

13. There is thus no game-changer. The substantial delay by the Claimants may be set against the failure to disclose by the Defendants, but after a 29 day hearing and at this late stage, and with the consequences in terms of opening up the trial which must follow, I am wholly unpersuaded that there are *strong reasons* to allow the application. In any event there is a further point made by Mr Parker. The Claimants have by virtue of the content of my judgment above, succeeded against the First Defendant, and Mr Yell rightly accepts that nothing in what he relies on to reopen my judgment could make any difference to my conclusion in respect of the position of the Second Defendant. As Mr Parker pointed out in his skeleton argument, the understood position right from the outset of trial was that the success on any one misrepresentation or misstatement would suffice, and the Claimants already have that success. To reopen the case, with the very considerable cost that would follow by way of the giving of further disclosure, probably the rendition of further legal advice and then the need for cross-examination of Mr Ioannou and examination of the legal experts, would not alter the Claimants' success. As Mr Parker put it at paragraph 13.2 (c) of his skeleton, "*The only conceivable basis for the Claimants having a second bite at the lettability cherry is to influence the Court's decision on costs (which is for another occasion). That of itself is an insufficient basis for exercising this exceptional discretion*". I agree that the resolution of a question of costs could not possibly justify such reopening, but in any event it must be borne in mind that, by virtue of what I have concluded to be the

extraordinary delay by the Claimants in adducing the proposed new information, the Claimants would be at considerable risk as to meeting the costs of the very reopening and rerunning of the case in any event.

14. I am satisfied that the Claimants' application to reopen the judgment should be refused.