Neutral Citation Number: [2012] EWHC 1009 (Ch)

Case No: HC10C01722

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/05/2012

Before :

HIS HONOUR JUDGE DIGHT

- -

Between :

Lauri Ann Stanbridge	**Claimant**
- and -	
(1) John Stanbridge	
(2) Advanced Industrial Technology Corporation Limited	
(3) James McKenzie Morrison Denney	**Defendants**

And between :

Advanced Industrial Technology Corporation Limited	**Part 20 Claimant**
- and -	
(1) John Stanbridge	
(2) Lauri Ann Stanbridge	
(3) Delila Rodriguez de Plaza	**Part 20 Defendants**

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Richard Fowler (instructed by **Penningtons Solicitors LLP**) for **Lauri Ann Stanbridge**
Philip Kremen (instructed by **Hughmans**) for **Advanced Industrial Technology Corporation** and **James McKenzie Morrison Denney**
Delila Rodriguez de Plaza appeared in person
John Stanbridge did not appear and was not represented

Hearing dates: 29, 30 November, 1, 2 December 2011
Written submissions: 21 December 2011

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JUDGMENT

His Honour Judge Dight :

1. Title to 15 Whistlers Avenue, London SW11 ("the Property") is registered at HM Land Registry in the joint names of the Claimant/Second Part 20 Defendant ("Mrs Stanbridge") and her husband ("Mr Stanbridge"), the First Defendant/First Part 20 Defendant. It is said that Mr and Mrs Stanbridge are separated and are in the process of divorcing. According to the register of title the Property was charged by way of a second charge dated 2 June 2009 ("the Charge") to the Second Defendant/Part 20 Claimant ("AITC"), a licensed money lender, purportedly to secure the liabilities of Mr & Mrs Stanbridge under a facility letter ("the Facility Letter") also dated 2 June 2009. It is common ground that Mrs Stanbridge did not sign the Charge or the Facility Letter, her signature having been written by Mr Stanbridge, and she denies that they bind her. She asserts that she did not discover the existence of the Charge or the Facility Letter until 12 May 2010 whereupon she immediately challenged them and shortly thereafter commenced these proceedings.

2. By her Claim Mrs Stanbridge seeks, essentially, a declaration that the Charge and the Facility Letter are void and asks that they be set aside and that the register of title be rectified.

3. Mr Stanbridge has played no active part in these proceedings since putting in a defence in July 2010 and three brief witness statements. He did not appear at trial and his whereabouts are unknown. In his defence Mr Stanbridge admitted that he purported to act on behalf of his wife in executing the Charge and the Facility Letter but denied that he was authorised to do so. He asserted that he had forged her signature on those documents.

4. As at the date of trial AITC accepted that Mrs Stanbridge had not executed either the Charge or the Facility Letter but they assert that Mr Stanbridge was authorised by his wife to execute the documents on her behalf or alternatively that she subsequently ratified the Charge and the agreement contained in the Facility Letter or that she is estopped from denying their validity. AITC allege that Mrs Stanbridge came to know of her husband's execution of the documents at the time of or shortly after the purported execution and that by reason of her failure to challenge the validity of the documents at the time and her joint receipt and use of the proceeds raised as a result of their execution she ratified the Charge and the Facility Letter and AITC acted to their detriment (in advancing the loan monies) and she is accordingly estopped from denying the validity of those documents. Mrs Stanbridge relies on her contention that she knew nothing of the transaction prior to May 2010 and that AITC is the author of its own misfortunes.

5. By its Part 20 Claim AITC seeks a declaration that Mr Stanbridge's beneficial interest is subject to an equitable charge to secure the loan. In addition they seek payment of the sum of £141,750 on dishonoured cheques which had been tendered in repayment of the loan (and interest on it), damages for deceit as against Mr Stanbridge and repayment from both Mr & Mrs Stanbridge of the sum of £135,000 advanced under the Facility Letter as money had and received.

6. Mr Stanbridge in paragraph 10 of his defence to AITC's Part 20 Claim expressly does not dispute that his interest in the Property *"remains subject to an equitable charge to secure repayment of the Loan and contractual interest*

thereon" as claimed by AITC in paragraph 15(i) of their Part 20 Particulars of Claim. On the other hand Mrs Stanbridge denies that Mr Stanbridge's execution of the Charge has that effect, saying that she is entirely innocent, that AITC failed to take even basic steps to protect itself, that she (and the joint bank account through which the mortgage monies passed) were used as a conduit, that the Charge is invalid and that the Court ought not to assist AITC by granting it any of the relief which it seeks. Mrs Stanbridge contends that the Charge and the Facility Letter are nullities and of no effect, and in particular that despite her husband's admission the Charge does not bind his equitable interest in the Property.

7. As to AITC's claim for monies had and received Mrs Stanbridge says that if the loan monies went through an account of which she was a joint holder it was without her knowledge or permission and that the account was, in any event, used as a pure conduit by her husband to pass the monies behind her back to a third party. An earlier assertion by Mrs Stanbridge that AITC is not entitled to succeed against her on its claim for money had and received because of a change of position by her had been struck out at an interim stage of the proceedings and was not pursued at trial.

8. The Third Defendant ("Mr Denney") is the company secretary of AITC and when the loan to AITC went unpaid was purportedly appointed by that company as a Law of Property Act receiver over the Property pursuant to the powers purportedly conferred on AITC as mortgagee by the terms of the Charge. Mrs Stanbridge seeks no separate relief against Mr Denney and his position falls to be considered with that of AITC.

9. Originally AITC also sought relief against the Third Part 20 Defendant ("Ms de Plaza") but by the time that the case came on for trial AITC and Ms de Plaza had reached an accommodation. Consequently she gave evidence in support of AITC, a change from her original position when she had supported the case being advanced by Mrs Stanbridge.

The evidence and the facts

10. On 15 November 1999 Mrs Stanbridge, following her divorce from a Mr Greilsamer, purchased and was registered as the sole proprietor of the Property at HM Land Registry, which comprised a long leasehold interest, under title number SGL440479, having paid the sum of £292,000 of which £200,000 had been advanced by Barclays Bank Plc and was secured by a first legal charge. In 2000 she married Mr Stanbridge following which the Property was transferred into their joint names, although it was not registered as such until 20 August 2002. The Particulars of Claim assert that Mr & Mrs Stanbridge purchased the Property as legal and beneficial joint owners. There has been no challenge to that assertion in the course of the trial and I come to my conclusions in this judgment on the assumption that they remained joint tenants in equity, at least until Mr Stanbridge purported to execute the Charge.

11. At the time of their marriage Mr Stanbridge had led Mrs Stanbridge to believe that he also would be transferring into their joint names a property which he held in his sole name. He failed to do so. This represented a source of friction between them.

12. By a charge dated 15 June 2001 Mr & Mrs Stanbridge remortgaged the Property to Alliance and Leicester Plc. Mrs Stanbridge has produced

valuations which suggest that the Property was in 2010 worth in the region of £725,000. That figure is not accepted by AITC which asserts that the Property was worth considerably less.

13. In addition to the house in London Mr & Mrs Stanbridge had property in South Carolina in the United States of America to which reference was made in the course of the trial.

14. In around 2002 Mr & Mrs Stanbridge opened a joint account (No.20068571) ("the joint account") with the Clydesdale Bank Plc ("the Clydesdale"). At about the same time they let the Property on the first of a series of short-term tenancy agreements and moved to Spain. It is apparent to me from the evidence which I heard, and which I accept, that Mr Stanbridge managed the letting of the Property and instructed the agents who were to do so. It was to him that they reported from time to time. I also find that it was he who was in control of the household finances, information about which he did not readily share with his wife.

15. After moving to Spain Mr & Mrs Stanbridge set up a legal and accountancy business (primarily aimed at non-Spanish clients) which became known as Costa Accountants & Consultants SL ("CCG"), which I understand to be a group of companies. Mr Stanbridge was the CEO and Mrs Stanbridge, who has had a very impressive international public relations career (as is apparent from her profile on the CCG website which she had written herself), was at all material times the Group Managing Director of that company until she resigned on 21 September 2009.

16. Despite Ms de Plaza's assertions to the contrary in the course of her testimony I am satisfied from Mrs Stanbridge's evidence, supported by that of Mr Jimenez, the manager of the accounts and tax departments of CCG, who gave evidence by video-link, that it was Mr Stanbridge who managed and controlled the business of CCG and that Mrs Stanbridge was not informed about the majority of what he was doing. She had what was largely a public relations role, in line with her previous experience. Mr Jimenez told me that Mr Stanbridge had a close working relationship with Ms de Plaza and that they kept their work private. Not only did it appear to me that Mr Jimenez was giving truthful evidence but what he told me accorded with the way in which the Charge and Facility Letter came to be executed. I find that while Mrs Stanbridge was involved with presenting the face of the business to the outside world she was not engaged in the nuts and bolts of the business and the fee-earning which lay at its heart. I find that her husband conducted the detailed transactions of the business without reference to her and chose deliberately not to share such information with her. I also find, contrary to Ms de Plaza's evidence that Mrs Stanbridge was content for this to be the case.

17. Ms Sue Greenwood, from whom evidence was sought only during the course of the trial, acted as managing agent for the Property, having been appointed by Mr Stanbridge alone. Douglas & Gordon were appointed by Mr Stanbridge to act as letting agents for the Property. On the third day of the trial Ms Greenwood provided a witness statement, was called to give evidence by Mrs Stanbridge and was cross-examined by counsel for AITC with a view to showing that she had been in contact with Mrs Stanbridge in relation to the events that this case concerned at a much earlier stage than Mrs Stanbridge

asserted and that therefore Mrs Stanbridge knew about the Facility Letter and the Charge prior to May 2010 (which was the date when Mrs Stanbridge asserts that she first knew of them). However, in my judgment Ms Greenwood was a transparently honest witness with no agenda. I find that she was at all material times concerned to perform her role as managing agent, instructed by Mr Stanbridge alone, as best she could. It seems to me that she was scrupulous in her approach to that role and in the evidence which she gave at trial. I unhesitatingly accept the evidence which she gave. Among the tasks that Ms Greenwood performed was the irregular collection of mail from the Property, which she then sent on to Mr Stanbridge at his office address in Spain. She told me, and I accept, that she occasionally opened mail which appeared to be relevant and relayed its contents to Mr Stanbridge before sending it on to him. She did not regard Mrs Stanbridge as her client and I accept her evidence that she did not believe that it was her place to contact her client's wife in relation to the Property. I find that she had no contact with Mrs Stanbridge until about 6 May 2010. Likewise Douglas & Gordon, who had been instructed by Mr Stanbridge as the letting (as opposed to managing) agents, regarded Mr Stanbridge rather than his wife as the client and reported to him rather than to her. That Mr Stanbridge took control of the management of the Property to the exclusion of his wife accords with the way in which he treated her in relation to the business. Mrs Stanbridge appears to have been content to let him do so.

18. Further, Ms Greenwood's credibility and evidence supports Mrs Stanbridge's credibility on a material issue.

19. The Property appears to have been continuously let and the rent which those lettings generated was paid directly into the joint account with the Clydesdale. The payments due in respect of the mortgage to Alliance & Leicester Plc from time to time were paid by direct debit from the same joint account. Mrs Stanbridge asserts that although the account had been opened jointly she had never used it and that prior to May 2010 she had never seen any statements relating to it. In paragraph 20 of her Reply and Amended Defence to Part 20 Claim she pleads that she was not aware *"prior to May 2010, that the Joint Account was still open"*.

20. However, in the course of his cross-examination of her counsel for AITC took Mrs Stanbridge to a bank statement entry dated 15 April 2009 which showed a credit to the account in the sum of £3,490.71 and to a corresponding fax notification from the Clydesdale to Mr Stanbridge of receipt of those funds which purports to show that the remitter of those funds was Mrs Stanbridge who appeared to have sent €4,000 from a Spanish bank account to the English joint account. In evidence Mrs Stanbridge could give no satisfactory explanation of these two documents. Even though her husband plainly concealed matters from her and arranged his business affairs behind her back the inference which I draw is that she could not have been telling the entire truth about her knowledge of the account and that it was, in effect, an active account which she used from time to time, albeit infrequently and albeit that it remained, essentially, under the control of her husband. The inference which I draw as to Mrs Stanbridge's knowledge of the existence of the joint account is supported by a further piece of evidence relating to the subsequent use by Mrs Stanbridge of a bank card while she was on a trip to Bath, in the UK, which I

refer to below. However, it seems to me more likely than not that it was Mr Stanbridge who controlled the account, received the bank statements and dealt with the Clydesdale in respect of it from time to time. Again Mrs Stanbridge was excluded from the detail of this aspect of their life.

21. I heard a certain amount of evidence about an apparently unlimited power of attorney which Mrs Stanbridge had executed in favour of her husband before a notary in Granada on 30 June 2006. I have not been asked to construe it or make findings as to its true effect. Mrs Stanbridge's case is that her husband did not know of the power and had never used it. She told me that it was hidden among her personal possessions in a place where her husband would not have come across it. On the other hand Ms de Plaza gave evidence that Mr Stanbridge had to her knowledge used it on at least 3 occasions before various notaries, whose details she provided. However, none of these notaries were available to give evidence to support Ms de Plaza's assertions.

22. In 2008 and 2009 Mrs Stanbridge appears to have spent a considerable part of each year out of Spain and no doubt there were documents which required her signature in her absence. It seems to me highly unlikely that Mr Stanbridge did not know of the existence and whereabouts of the document. There would otherwise have been little point in its existence. But I am not satisfied that it was in fact ever used. In any event it adds little, if anything, to the evidence in respect of the real issues between the parties: there is no suggestion that it was pursuant to this power that Mr Stanbridge executed in his wife's name the documents at the heart of this case. The dispute about the document has limited relevance to Mrs Stanbridge's credibility as a witness.

23. It is apparent that there was a downturn in the business of CCG which began to manifest itself in about 2008.

24. It is also apparent that, behind Mrs Stanbridge's back, Mr Stanbridge was conducting transactions in the course of which he incurred substantial liabilities. His evidence is that they were personal liabilities.

25. Mr Stanbridge alleges that in May or June 2008 he borrowed €140,000 from Mr Samir Bouyakhrichan, a Dutch national who lived in Spain. In a letter dated 23 November 2010 written in compliance with an order of this Court he stated:

> "*I do not have any documentation as no documents were signed at the time. The loans were made exclusively to me without the knowledge of Lauri Ann Stanbridge and were for my personal living and entertaining expenses. The loans were required to be repaid as quickly as possible and Mr Bouyakhrichan asked me to make the repayment of the loans to Michael Read.* "

26. There is no evidence that Mrs Stanbridge knew Mr Bouyakhrichan or Mr Read or had any dealings with them despite Ms de Plaza's contention that *"it would surprise me if she was unaware of them".* I find that Mrs Stanbridge did not know of the arrangements that Mr Stanbridge apparently entered into with Mr Bouyakhrichan and Mr Read. Nor do I accept the contention that the borrowing was by or for the business of CCG. In my judgment such evidence as there is in relation to these transactions supports the contention that Mr Stanbridge was on a frolic of his own.

27. Mrs Stanbridge appeared to me to be a highly motivated and hard-working woman who expected high standards of those around her, including her husband. I accept unhesitatingly her evidence that had her husband come to

her to seek her consent to borrow against the Property, which had been brought into the marriage by her, to repay his personal debts or to fund an ailing business she would have refused and would, as she forthrightly explained, have told him to go out and get a job. She would not have jeopardised her main asset.

28. In about late May 2009 Mr Stanbridge appears to have contacted David Englehart of Engleharts Solicitors for a short-term loan of £175,000 for a period of two months to be secured by way of a second charge against the Property. Mr Englehart in turn appears to have contacted a Mr Karl Slack, a director of AITC, and in an email dated 27 May 2009 sent from the email account of his secretary and assistant of nearly 30 years, Ms Beryl Follows, he told Mr Stanbridge that *"The Company which we shall be using will be Advanced Industrial Technology Corporation Limited"*. It was apparent from Mr Stanbridge's reply that from his perspective the matter was urgent. The precise nature of Mr Englehart's role is unclear, at the very least it would seem that he was a very active middle-man in arranging the transaction and I infer from the material be before me that he was in regular contact with both Mr Stanbridge and the intended lender.

29. Mr Englehart appears to have been the sole point of contact for all parties. It is plain that he knew of the existence of Mrs Stanbridge, and that the property to be offered as security was in joint names, but even so he made no direct contact with Mrs Stanbridge. I was very surprised, and somewhat concerned, to learn that the lender and its solicitors generated and held very little documentation relating to the loan. I was told that AITC holds no file and no

records relating to the loan and relies on its solicitors for a paper trail. AITC apparently does not even keep any emails relating to the transaction. There is no application form, no offer letter, no correspondence directly between AITC and Mr or Mrs Stanbridge. There appears to have been no credit check and no money-laundering checks carried out by AITC (they were apparently left to Mr Englehart) and no formal valuation of the Property. There is no report on title. It would appear that it is the practice of AITC not even to sign the loan documentation itself, but to leave it to its solicitors to do so on its behalf. Mr Englehart did not give evidence but his secretary and assistant, Ms Beryl Follows, was called by AITC. She produced Mr Englehart's file for the transaction, such as it is, and gave evidence about a conversation with Mrs Stanbridge which took place in May 2010. Prior to May 2010 there is no record on the file of any direct involvement of or contact with Mrs Stanbridge.

30. AITC was incorporated in 1993. Its business is the provision of bridging finance. Its abbreviated balance sheet for the year ended 31 December 2009 shows that it had a substantial deficit for the second year running but continued to be support financially by its directors, namely Mr and Mrs Slack.

31. At trial I did not hear from Mr or Mrs Slack but from Mr Denney who was only able to give somewhat limited evidence, all of it hearsay, as to Mr Slack's knowledge about the transaction. Moreover, he was unable to give any evidence about any conversations which may have taken place between Mr Slack and Mr Stanbridge. In the absence of any documentary record of the discussions I am left to infer the basis of the transaction from the surrounding circumstances. In paragraph 9 of a witness statement dated 3 June 2010 Mr

Denney describes the intended borrowing as short term finance which Mr Stanbridge needed to repay certain business loans, but the source of that assertion is uncertain. He told me that Mr Englehart was not involved in the negotiations and acted in effect in an execution only role, an assertion which I find difficult to accept given the very limited role of Mr Slack and the absence of evidence from him. Nevertheless once executed Mr Denney said that the Charge and the Facility Letter were kept by Mr Englehart and neither the originals nor a copy would have been seen by anyone at AITC. There was no reference in the few relevant documents to any involvement by Mrs Stanbridge or of her knowledge of the transaction. There was no contact between AITC, or anyone on its behalf, and Mrs Stanbridge at the date of the challenged transaction. After listening to Mr Denney's evidence I remained of the view that the borrowing was by Mr Stanbridge personally for unidentified purposes and that Mrs Stanbridge neither knew of nor was party to the arrangement.

32. Mr Fowler, in the course of his submissions, took me to the well-known expositions by Lord Nicholls of Birkenhead and Lord Hobhouse of Woodborough in *Royal Bank of Scotland v Etridge (No.2)* [2001] UKHL 44 of the steps which a bank and in turn a solicitor should take in respect of a wife who is asked to stand surety for her husband's liabilities to a lender. If either the lender in this case, namely AITC, or the solicitors, namely Engleharts, had taken any of the steps advised in the speeches of the Law Lords in *Etridge* I am satisfied that the loan in this case would not have been made, the Charge would not have been granted and these proceedings would not have taken place.

33. Apparently having taken a view about the value of the Property which was to stand as security AITC offered to lend Mr Stanbridge the sum of £135,000 for two months at 5% interest per month. That offer was accepted by Mr Stanbridge on 28 May 2009. I find that Mrs Stanbridge was not informed about this agreement. Mr Denney told me that AITC had no indication that Mrs Stanbridge was not aware of the transaction, but in my judgment such a stance was naïf: there was no positive evidence to indicate to AITC that Mrs Stanbridge in fact had any knowledge of the transaction whatever. Being engaged in the type of lending undertaken by AITC, namely to borrowers who had difficulty in obtaining finance from primary lenders, the risks inherent in relying on the principal borrower to disclose either the existence or the detail of the transaction to someone apparently in the position of joint borrower or guarantor are obvious. In my judgment AITC must have known of but closed its mind to those obvious risks.

34. In an email dated 29 May 2009 Mr Englehart wrote to Mr Stanbridge as follows:

> "*I enclose by way of attachment draft Facility Letter and Legal Charge which you may want to run across your Solicitor associate before final approval.*
>
> *I also attach a copy of the land registry entries and you will see now why I am asking for a copy of the lease because reference is made to a certificate.*
>
> *When the facility letter is approved and subject to getting an immediate satisfactory response from the Alliance & Leicester I will get a Director of my client/company to sign the approved facility letter, send it to you by way of email attachment and then give you a list of requirements for the completion formalities.*

> *I will need you and your wife's signatures to be witnessed by a UK Solicitor (I am assuming you have many of those handy) with confirmation of proof of ID.*"

I infer that the reference to *"your Solicitor associate"* is a reference to Ms de Plaza, the nearest person to an English solicitor in Mr Stanbridge's office. In fact there were no English solicitors in the office and in reply Mr Stanbridge signified his approval of the documentation and asked whether it was possible to have it witnessed by a member of the Spanish Bar Association: he appears to have received no answer. Had an English solicitor been instructed to witness execution of the documents and carry out the money laundering and identity checks matters might have been different. There is no evidence from which AITC or Engleharts could have concluded, on receipt of the "executed" documents in due course, that a "UK" solicitor had been involved in the way intended by Mr Englehart's email.

35. There is nothing in the email correspondence which I have been shown passing between Mr Stanbridge and Mr Englehart (with the exception of the draft Facility Letter and Charge) which identifies the purpose for which the loan was intended to be made. Nor does any of the correspondence which I have seen, as opposed to the terms of the Charge and Facility Letter themselves, suggest that Mrs Stanbridge was to be a joint borrower. However, her intended role must have been the subject matter of some, albeit limited, oral discussions between Mr Stanbridge and Mr Englehart and/or Mr Slack but as to that no evidence was put before me.

36. So far as the destination of the loan monies is concerned Mr Englehart wrote to Mr Stanbridge on 2 June 2009 asking for:

> "*Confirmation as to where you want the money sent. If this is to be anywhere other than an account in the joint names of yourself and your wife I will need the express authority of whichever is not going to be on the account.*"

In addition he asked that:

> "*The Solicitor should also please certify that he has identified both you and your wife prior to signing and that he is undertaking to send to me a certificate of such identity together with photocopies of your passport and other identification pictures.*"

37. Those steps were not taken.

38. On 2 June 2009 Mr Stanbridge signed the Facility Letter and the Charge in his own name. He also forged the name of Mrs Stanbridge on both documents. In both instances the signatures purport to have been witnessed by Ms de Plaza, who is a lawyer qualified to practise in Spain. She was CCG's Group Legal Counsel, and manager of CCG's legal department, having started working for the business in about 2004. On 3 June 2009 Ms de Plaza also certified photocopies of Mr & Mrs Stanbridge's passports as true copies of the originals which were then sent, together with the executed Facility Letter, Charge and a number of post-dated cheques to Mr Englehart by Mr Stanbridge. In an email of 3 June 2009 Mr Stanbridge referred, inferentially, to Ms de Plaza as a *"third party Lawyer"*.

39. The Facility Letter describes the borrower as "John Stanbridge and Laura Stanbridge" and contains an agreement for them to borrow the sum of £135,000 for a term of 2 months at 5% interest per month secured against the Property. The purpose of the loan is said, somewhat oddly, to be *"…to secure monies loaned or to be loaned to the Borrower to raise funds by way of second charge secured on the Property"*.

40. The Charge is an unlimited "all monies" charge and purports to have been executed as a deed by both Mr and Mrs Stanbridge in the presence of Ms de Plaza.

41. Mrs Stanbridge alleges that she did not become aware of either the Facility Letter or the Charge until 12 May 2010.

42. By an email timed at 16:52 on 4 June 2009 and headed "090604 question" Ms de Plaza wrote to Mrs Stanbridge as follows:

> "*Hi Laura,*
>
> *I forgot mention you before that yesterday I certified your signature in a document that John gave me. I asked him if you knew about this and he told me yes. Is this correct?*
>
> *Only to be sure that everything is OK*
>
> *Thank you!*"

By an email of a few minutes later on the same day Mrs Stanbridge responded

> "*Hi,*
>
> *No, I am not aware that he needed my signature for anything. Do you know what it is about?*
>
> *Laura* "

There appears to have been no further response to that email.

43. Ms de Plaza made three witness statements concerning these events. The first was made at the request of Mrs Stanbridge's solicitors, prior to commencement of proceedings, and was very supportive of Mrs Stanbridge's case, and two were made in the course of the following year (after she had been made a defendant to AITC's Part 20 Claim) in which she was critical of Mrs Stanbridge, which were plainly calculated to undermine Mrs Stanbridge's

case in these proceedings and show considerable hostility to Mrs Stanbridge. They and Ms de Plaza's oral evidence at trial paint a picture of Mrs Stanbridge as a ruthless and manipulative woman who was deeply involved with her husband in controlling all aspects of the business of CCG.

44. All three of Ms de Plaza's witness statements were verified by statements of truth. In the first Ms de Plaza expressly stated that she had seen Mr Stanbridge forging his wife's signatures on documents and gave graphic evidence of having seen him shape the letters in his wife's name. In the second she said that she could not be sure that Mr Stanbridge was forging his wife's signature. In the first she failed to mention the exchange of emails between Ms de Plaza and Mrs Stanbridge which had taken place on 4 June.

45. The emails were, however, referred to in the second statement, which also contained the following assertion immediately after the reference to the exchange of emails:

> "*29. I subsequently spoke to Mrs Stanbridge on the telephone on the following day and informed her than the documents related to a loan agreement; that her signature appeared on the documents and that I had been asked by Mr Stanbridge to witness her signature, although I was not sure she had in fact signed them.*
>
> *30. During our telephone conversation, she now told me that she had already talked to John, and all was clarified now, so I had not to worry about it.*"

46. She said that she believed that at the time of the conversation Mrs Stanbridge was in the USA, which I find was not correct. She also said she had felt pressurised into making the first statement because she was worried about being sacked from her job by Mrs Stanbridge, which is in fact what happened shortly after Ms de Plaza disclosed the emails to the parties in this litigation

but before she made her second witness statement. Mrs Stanbridge says that she did so because Ms de Plaza betrayed her trust. Ms de Plaza subsequently brought proceedings against CCG for unfair dismissal which was settled in April 2011 by the payment to her of €7,000 as a redundancy payment.

47. At least one of the statements made by Ms de Plaza in terms which contradict the other must be untrue. I have carefully weighed the evidence, both written and oral, of Mrs Stanbridge and Ms de Plaza and considered each in the context of the surrounding documentation and the oral evidence of other witnesses. Although Mrs Stanbridge was in some limited respects an unreliable witness, as I have indicated above, I have come to the conclusion that on the central issues in this case her evidence is to be preferred to that of Ms de Plaza. Ms de Plaza worked closely with Mr Stanbridge and, as Mr Jimenez confirmed, they shared secrets about the business from Mrs Stanbridge. The act of witnessing a signature of someone who was not present is, of itself, dishonest. Ms de Plaza told me in the course of cross-examination that she did not see Mr Stanbridge write either of the signatures and that when she came into his room he had finished writing the documents, which were on the table. Ms de Plaza, knowing Mr Stanbridge's working methods must have been aware of the risk that he did not have his wife's authority and would not disclose the nature of the transaction to her voluntarily. She was complicit in concealing it from Mrs Stanbridge. A preparedness to make witness statements which contradict each other on the central factual disputes shows a propensity not to tell the truth being carried into effect. I reject Ms de Plaza's evidence where it conflicts with that of Mrs Stanbridge unless there is independent corroboration of it.

48. In paragraph 14 of her second witness statement Mrs Stanbridge responds to Ms de Plaza's evidence in the following terms:

> "*In paragraph 29 of her statement Dalila refers to a conversation with me on 4 June 2009. I confirm that such a conversation took place. It was on the telephone. Dalila's recollection of it is wrong. I think I called her or the office put me through to her. I am not sure which it was. I asked her what the document was that she referred to in her email of the same date. She said that she did not know, but thought that it might be a mortgage application. She used the word "application". At that time John Stanbridge was attempting to arrange a remortgage of a house of ours in South Carolina in order to pay for the work to the house and he said he could get a lower rate of interest. We had two properties in South Carolina, 15 Crosstree Drive, Hilton Head and Mariners Points,, 216C Skull Creek Drive, one was a house and the other was a "condo". I thought the document referred to by Dalila related to that application. She did not mention the Property or AITCO. Dalila only referred to one document. She did not say that she had witnessed two documents. I was very unhappy with Dalila, but was not aggressive with her. At that point I had not spoken to John, so paragraph 30 of Dalila's statement is untrue and made up.*"

49. Mrs Stanbridge goes on to say that she confronted her husband later that evening and he misled her into believing that he was in fact dealing with a mortgage application over the property in the USA. Mrs Stanbridge says that had he told her that he had forged her signature on a mortgage application or a legal charge over the Property she would have "hit the roof". She later adds that had he asked for her consent to the Facility Letter or the Charge she would have "flatly refused" and for that reason lied about the documents which Ms de Plaza had purported to witness. I accept that. I am sure that Mr Stanbridge was also aware of the likely reaction if he had told the truth to his wife. Similarly, she asserts, and I find, that had AITC or anyone on its behalf contacted her in relation to the transaction she would have "refused point blank" to co-operate.

50. On the morning of Friday 5 June 2009 Mrs Stanbridge left Spain for a short trip to the UK, where she visited Bath, and from there to the USA. My attention was drawn to an entry on the Clydesdale bank statement for 8 June 2009 which appeared to show 2 uses of a bank card on the joint account on that day, the first at Barclays Bank in Bath and the second at Austin Reed in Bath. Mrs Stanbridge denies that the card was used by her. However, there is no evidence to suggest that Mr Stanbridge was in Bath at the time and the only possible inference is that the card was used by Mrs Stanbridge. That does not, however, persuade me that on the central issues in the case Mrs Stanbridge was not telling me the truth.

51. AITC alleges that had Mrs Stanbridge informed them that her signature on the documents had been forged they would not have advanced the loan monies on the following day. I am asked to draw the inference that Mrs Stanbridge authorised her husband to enter into the loan arrangement and execute the relevant documentation on her behalf, alternatively that in the course of the evening on which the emails had been sent Mr & Mrs Stanbridge would have discussed the contents of Ms de Plaza's email and Mrs Stanbridge learned about the Charge, the Facility Letter and the advance made by AITC. I reject those assertions. I find that not only would she have "hit the roof" if she had known about the transaction at the time but far from ratifying it she would have taken steps to prevent it from being carried into effect.

52. On 5 June 2009 Engleharts transferred the sum of £134,553 to the joint account of Mr & Mrs Stanbridge at the Clydesdale Bank Plc. The credit is recorded in a bank statement for the joint account dated 5 June 2009 which

appears to have been posted to Mr & Mrs Stanbridge in Spain. Neither AITC nor Mr Englehart nor Mr Stanbridge draw the payment to Mrs Stanbridge's attention. I find that she did not know, and did not for some considerable time become aware, that the payment had been made.

53. On 9 June 2009 the sum of £134,000 was transferred from the joint account to a Mr Michael Read at Clariden Leu Bank in Zurich, allegedly for the benefit of Mr Samir Bouyakhrichan, on the written instructions of Mr Stanbridge alone. In the authorisation form the address given for Mr Read is the same as that of Mr Stanbridge. This transfer is also recorded in the joint account statements sent to Spain. I find that Mrs Stanbridge had no knowledge of or involvement in the transfer of these monies and did not see the bank statements relating to the receipt of the advance or the transfer to Mr Read. I accept her evidence that when these matters came to light copies of the bank statements had to be requested from Clydesdale. Further, there is no evidence that she received any benefit from the sum transferred into the joint account and I find that she did not.

54. At completion of the remortgage Mr Stanbridge drew 3 cheques on the joint account in favour of AITC. They bear his signature alone. The first cheque for £6,750 was met on presentation on the day that the advance was made: in other words the payment came out of the advance. Thereafter Mr Stanbridge defaulted on the loan.

55. Very shortly afterwards the term date of the loan arrived, and the cheques for the principal (£135,000) and the accrued interest (£6,750) which Mr Stanbridge had drawn on the joint account were presented for payment but

were not met. Notice of dishonour was given to Mr Stanbridge in the Particulars of Claim served pursuant to the Part 20 proceedings. Notice of dishonour has never been given to Mrs Stanbridge. Mr Stanbridge has asserted no defence to the claim on the cheques and in my judgment AITC would be entitled to judgment in the sums for which they were drawn, less the payments which have been made from time to time and the other sums received by AITC.

56. On 14 August 2009 AITC purported to exercise its powers under the Charge to appoint Mr Denney as a Law of Property Act receiver. On the same day Engleharts gave notice of his appointment to Ms Alice Umfreville of Douglas & Gordon, the managing agents of the Property, although Mr Denney himself did not give notice of his appointment to Mr & Mrs Stanbridge until 10 September 2009, and even then he only gave notice by email to Mr Stanbridge. There is no evidence to show that Mrs Stanbridge was notified of his appointment. Subsequent emails from Mr Denney are likewise addressed to Mr Stanbridge only. Insofar as he collected income in respect of the Property during the period of his appointment he is under a duty to account to Mr & Mrs Stanbridge. AITC admits that it must give credit for any sums received by Mr Denney.

57. On 17 August 2009 Douglas & Gordon notified Mr Stanbridge by email that they had been requested by Engleharts to pay the rental income from the Property over to Mr Denney. Mr Stanbridge replied that he was *"aware of the situation"* and was expecting to be able to repay the money due to AITC. There followed a chain of emails which were copied to Ms Greenwood on the

same day with the comment *"Please feel free to forward this on to Mrs Stanbridge"* because Douglas & Gordon did not have her contact details. But I accept Ms Greenwood's evidence that she did not do so.

58. On 21 September 2009 Mrs Stanbridge resigned as a director of CCG. I accept her evidence to the effect that she did so because she was no longer so involved with the business. She was cross-examined as to the co-incidence of her resignation with the borrowing by her husband of a £15,000 loan from Clydesdale for the benefit of CCG but she told me, and I accept, that she knew nothing of this.

59. On 28 April 2010 AITC, acting through Engleharts, exchanged contracts for the sale of the Property to a company called Platte Fougere Holdings Limited, which had been incorporated in Guernsey as recently as 4 November 2009. Although the purchase price was £499,950 a deposit of only £10,000 was paid. Mr Denney did not commission a valuation report to satisfy himself that he was complying with the equitable duties which he owed the mortgagors. Further, despite his assertion that he knew the purchaser and had sold to them before a deposit of £10,000 on a sale at £499,950 is surprising.

60. On 13 May 2010 Mrs Stanbridge's solicitors wrote to AITC's solicitors asserting, among other things, that the Charge was void. Shortly thereafter the contract was rescinded by mutual agreement between Mr Denney and the Guernsey company and, I infer, that the deposit was returned. The purchaser was dissolved in July 2011. Mrs Stanbridge, relying on the valuation of the Property at between £725,000 and £750,000 alleges that had the sale proceeded it would have been at a considerable undervalue and in breach of

the duties AITC and Mr Denney owed her and her husband if the Charge were valid. It is also said that this fact also adds to the suspicion surrounding the intended sale and its rescission. Despite the suspicions I am not asked to make findings about Mr Denney's purported exercise of his powers as receiver.

61. I am satisfied that from about January 2010 Ms Greenwood knew that there were problems with AITC and that Mr Stanbridge was attempting to remortgage the Property but Mrs Stanbridge was not made aware of this either by Ms Greenwood or Mr Stanbridge until Ms Greenwood telephoned and spoke to her (for the first time) in Spain on about 6 May. In paragraph 6 of her witness statement dated 1 December 2011, which I accept, Ms Greenwood said:

> "*…I, therefore, spoke to Laura on the telephone at [the letting agent's] suggestion, I think, probably on the evening of 6 May 2010. I had never met or spoken to her previously. I told her about the appointment of a Law of Property Act receiver over the Property and the letter from Engleharts dated 14 August 2009 [notifying Douglas and Gordon about the appointment of the receiver] and about a buyer having been found. I did not provide her with a copy of the letter in question until 11 May 2010, having clarified with Douglas and Gordon that all rental payments had been made to AITCO since Sept 2009 on John's instructions…I have a clear recollection of her being so shocked and horrified by what I told her.*"

62. That independent evidence supports my conclusion that until 6 May 2010 Mrs Stanbridge did not know of the existence of the transaction between AITC and her husband. It was by an email dated 11 May 2010 Ms Greenwood sent to Mrs Stanbridge a pdf file containing a copy of Mr Denney's appointment as receiver. In their earlier conversation Mrs Stanbridge had asked Ms Greenwood to send her whatever she had on her file which might clarify the position.

63. On 12 May 2010 Mrs Stanbridge called Englehart Solicitors and spoken to Mrs Follows, whose attendance note of the conversation reads as follows:

> "*Attending Laura Stanbridge (T) calling from Spain regarding 15 Whistlers Avenue it has come to her notice via a friend that her property is being sold by Jim Denney of Aitco. This property she says was part of her divorce settlement and she has never signed any loan agreement over it.*
>
> *Advised her of the signed Facility Letter and Legal Charge and that her signature had been witnessed by Dacra (sic) Rodriguez Lawyer and that following completion of the loan the net advance had been sent to her and her husband's joint account at Clydesdale Bank on the 5th June.*
>
> *She said that in any event had (sic) name had been incorrectly spelt on the documents. Advised the names had been taken from the proprietorship register of the land registry entries – she said her name was spelt as per her passport which was Lauri Ann Stanbridge. Advised that the error in the land registry entries was down to the Sol who acted for them on purchase.*
>
> *She is contacting a Solicitor requesting him to make urgent contact with us she denies ever signing the documentation.*"

64. AITC submit that I should infer from this conversation that Mrs Stanbridge had copies of the Charge and Facility Letter in her possession from the time that they were signed by Mr Stanbridge but in my judgement such a finding would be wholly inconsistent with the other evidence and my findings in respect of it. The attendance note is brief and necessarily only records what Ms Follows considered to be the essence of the conversation which took place with Mrs Stanbridge. I find that Mrs Stanbridge only saw the Charge and Facility Letter for the first time when copies were obtained for her by Penningtons.

65. By a letter dated 13 May 2010 Mrs Stanbridge's solicitors wrote to Engleharts informing them that their client had just seen copies of the Facility Letter and

Charge, that the Facility Letter bore an electronic version of her signature, that her signature on the Charge had been forged and it was therefore invalid and of no effect.

66. These proceedings were commenced on 24 May 2010 and were followed by AITC's Part 20 claim on 4 June 2010 at which date they were granted a worldwide freezing order by the Hon Mr Justice Norris against Mr Stanbridge in the sum of £220,000. By consent the Hon Mr Justice Lewison continued that freezing order until trial.

Ratification

67. AITC submits that even if it is the case that Mrs Stanbridge's signature on the Facility Letter and the Charge was put there by her husband without her prior authority she nevertheless ratified those acts and is therefore bound by the two documents. Mr Kremen cited the principles of ratification as identified in Halsbury's Laws of England (5th Ed), Volume 1: Agency in the following terms:

> *"**66. Essentials of ratification***
>
> *Ratification must be evidenced either by clear adoptive acts, or by acquiescence equivalent thereto. The act or acts of adoption or acquiescence must be accompanied by full knowledge of all the essential facts, and must relate to a transaction to which effect can be given, unless the principal shows an intention to take all risks, but it is not necessary that he should know the legal effect of the act ratified…*
>
> ***67. Evidence of ratification***
>
> *The receipt of purchase money is generally sufficient evidence of ratification of sale, but not if it is received in ignorance of the true facts. If the act alleged to be ratified is a fraudulent act, full knowledge and unequivocal adoption thereafter must be proved, or the circumstances of*

> *the alleged ratification must be such as to warrant the clear inference that the principal was adopting the agent's acts whatever they were and however culpable. In a case of alleged false imprisonment where a servant of the railway company took a passenger into custody for an alleged breach of a byelaw, the fact that the company's solicitor attended to prosecute before the magistrate was not a ratification of the servant's acts. The assignment by the principal of the benefit of a contract entered into by the agent without authority is a ratification of that contract.*
>
> ***68. Ratification by acquiescence***
>
> *Although a ratification must be clear and must bear distinct reference to the facts of the particular case, it need not necessarily be proved by positive acts of adoption. In certain cases it is sufficient evidence of ratification that the intended principal, having all material facts brought to his knowledge and knowing that he is being regarded as having accepted the position of principal, takes no steps to disown that character within a reasonable time, or adopts no means of asserting his rights at the earliest time possible.*

68. Mr Kremen submits that the evidence shows that Mrs Stanbridge knew that Mr Stanbridge was borrowing money secured against the Property on 4 June 2009 and that those monies were to be paid into the joint account. Given that she took no steps to disown the Charge the court should find that she ratified her husband's execution of it on her behalf.

69. Mr Fowler submits that being a nullity, because of the forgery of her signature, the Charge, as against Mrs Stanbridge, could not be ratified and he relies on Bowsted & Reynolds on Agency (19th Ed) at 2-057 to 2-059. The passage which I cite below from the decision of Park J in *Edwards v Lloyds TSB* supports that contention.

70. However, as a matter of fact AITC's argument is unsustainable. There is no evidence which could persuade me that Mrs Stanbridge "adopt[ed] or acquiesce[d in the transaction in]…full knowledge of all the essential facts".

Estoppel

71. AITC submit that Mrs Stanbridge was under a duty to bring to its attention the existence of the alleged fraud and because of her failure to do so she is estopped from denying her liability under it. In support of that proposition it relies on the decisions of the House of Lords in *Greenwood v Martins Bank Ltd* [1933] AC 51 and of the Privy Council in *Fung Kai Sun v Chan Fui Hing* [1951] AC 489. In the first of those a husband was held to have been estopped from denying the validity of certain cheques, notwithstanding his wife's forgery of his signature on them, because of his failure to reveal the forgeries to the bank for a period of 8 months after he had become aware of them. The House of Lords held that he had a duty to disclose the forgeries to the bank so as to enable it to take steps to recover the monies which had, prima facie, be paid out in breach of mandate. In the second case the owner of property was held to have been under a duty to disclose to a purported mortgagee the fact that the owner's signature on a mortgage had been forged and that the owner thereby took the risk that he would later be estopped from asserting the forgery if by reason of keeping silent the lender's chance of recovering from the forger had suffered material prejudice.

72. The cornerstone of AITC's submission that Mrs Stanbridge is estopped from relying on the invalidity of the Charge is that she had discovered the existence of the forgery by the evening of 4 June 2009. Had she done so she would, in my judgment, arguably have been under a duty to disclose the forgery to AITC before the loan was transferred to the joint account and before the monies were paid out from that account. However, in the light of my findings that she

did not become aware of the Charge, the Facility Letter or the advance until May 2010 the question of estoppel does not arise.

Money had and received

73. AITC contends that whatever the status of the Charge Mr & Mrs Stanbridge are liable to repay the monies received in the joint account as monies had and received.

74. In *Re Bishop, Deceased. National Provincial Bank v Bishop* [1965] 1 Ch 450 Mr Justice Stamp held, in respect of an account which had been opened jointly by a husband (the deceased) and a wife, that:

> *"…in the absence of some circumstances or some evidence of intention that the joint account was to have a limited operation or was set up and kept for some special purpose, each spouse has power to draw on the joint account not only for the benefit of the spouses but for his or her own benefit. In the absence of some circumstances from which one infers an agreement to the contrary, one must treat the joint account as truly a joint account, a joint account on which each party had power to draw to take the money out of the ambit of the joint account and to employ it as he or she thinks fit either for his own purposes or not, and if he does draw money out and invests it in his own name I see no room for any inference that he holds that investment on trust for himself and his wife either in equal shares or in any other shares".*

75. AITC cites the above in support of the proposition that because the advance was paid into the joint account, to which Mr & Mrs Stanbridge had equal and unlimited access, they are each liable to restore the advance to AITC as monies had and received. Mr Kremen says that prima facie the monies were received by both Mr & Mrs Stanbridge and were used for the purposes of their business, in other words for the benefit of CCG.

76. On the other hand Mrs Stanbridge relies on the principle considered by Peter Smith J in *OEM Plc v Schneider & others* [2005] EWHC 1072 (Ch) in which the claimant sought to recover monies paid into a joint account in the name of the second defendant and her late husband on the grounds that the second defendant had been unjustly enriched thereby. In the course of argument in respect of a number of interim applications the claimant acknowledged that:

> *"…if the Second Defendant establishes that the operation of the account was done by the deceased and the account was used as a conduit for him to siphon off the stolen monies so that she achieved no benefit, that may be a basis for suggesting that she has not been unjustly enriched as regards the entirety of the funds that passed through the joint account."* [para 29 of the judgment].

77. At paragraph 43 of his judgment Peter Smith J accepted the principle which is set out in the *Bishop* case above and appeared to accept that the potential defence of siphoning was viable as a matter of law:

> *"As I have said, Mr Boyle [for the claimant] conceded that if it can be shown that money was merely siphoned through the account of which Mrs Schneider was unaware that might be a basis for suggesting that it would be unjust to require her to make restitution in respect of such payments. One example I posed to him was £20,000 paid in one day and removed almost immediately to a third party source or purchase in respect of which Mrs Schneider had no direct or indirect benefit. Mr Boyle was careful not to concede that as being anything other than a possibility."*

78. Mr Kremen reminds me and relies on the fact that in the above case the "siphoning" defence was based on a concession and that the concession was made at an interlocutory hearing only.

79. Further, Mr Kremen drew to my attention that the learned editors of Goff & Jones , The Law of Restitution (7th Ed), noted the OEM case and the siphoning defence and commented, in a footnote at 2-025, *"then that might be a basis for suggesting that it would be unjust to require her to make restitution".*

80. As a matter of evidence Mr Kremen submits that Mrs Stanbridge could not, in any event, satisfy any of the factual requirements of paragraph 43 of the judgment by Peter Smith J. With that last proposition my findings of fact show that I disagree. It seems to me that for all practical purposes the present case is indistinguishable from the hypothesis posed by Peter Smith J to Mr Boyle QC as set out in paragraph 43 of that judgment.

81. In his closing written submissions received some time after the conclusion of the trial, in accordance with an agreed timetable, Mr Fowler referred me to the edition of Goff & Jones which had since been published. The new ($8^{th)}$ edition, now entitled "The Law of Unjust Enrichment", considers the *OEM* case in further detail in a number of places. At paragraph 20-069 the learned editors write that:

> *"Claims in unjust enrichment are usually brought against a single defendant who alone receives a benefit from the claimant. But it can happen that a single benefit is received by more than one defendant – for example, where a payment is made into a joint bank account, or where a debt owed by several debtors is discharged. In such cases, the law generally holds that all the defendants are jointly and severally enriched, with the result that a claim for the whole amount of the enrichment lies against any or all of them, but the principle against double recovery prevents the claimant from recovering from every defendant in full."*

In the footnotes to that paragraph the *OEM* case is cited.

82. In paragraph 4-54 of the new edition the learned editors recite for the first time the above passage in similar terms and then comment on the OEM case:

> *"Claims in unjust enrichment are usually brought against a single defendant who alone has received a benefit from the claimant. However, it can happen that a benefit is received by more than one defendant…In such cases the law generally holds that all the defendants are jointly and severally enriched, with the result that a claim for the whole amount of the enrichment may lie against any or*

> *all of them. Note, though, that where a payment is made into a joint account, and money is then withdrawn by one of the account-holders without the other's knowledge, she may have a change of position defence."*

It is in support of the proposition contained in the last sentence of that passage that the *OEM* case is cited together with a number of other English and Australian authorities.

83. The first of those cases is *Euroactividade v Moeller* (1995) (Unreported, Court of Appeal, 1 February 1995). In that case Simon Brown LJ, ruling on an unsuccessful application for permission to appeal against summary judgment against a wife for money had and received in respect of money paid into a joint account with her husband, held:

> *"As the Judge pointed out, however, the second defendant's difficulty is that no evidence was adduced from her as to her having changed her position or as to good faith. So far as changing her position goes, Miss Benbow submits, inventively, and not un-appealingly, that here the second defendant's husband changed her position by making payment to the plaintiffs of substantial sums that had initially been paid into [the joint account]. Let me for present purposes assume that to be a sufficient change of position in law to satisfy that aspect of the matter. The second defendant's difficulty remains, however, that there is to this day no evidence from her as to good faith. There is not even, in all the voluminous material before the court, a contention from her that she knew nothing whatever of these payments, either into, or out of, her joint account with the first defendant."*

Mr Fowler submits, and I accept, that Simon Brown LJ was considering a variant of the siphoning defence and found it not "unappealing". The difference between the facts of the *Euroactividade* case and the present is that I have found that Mrs Stanbridge knew nothing of the payments into and out of the joint account and for the purposes of this issue I would hold her to have acted in good faith.

84. In *Primlake Ltd (in liquidation) v Matthews Associates* [2006] EWHC 1227 Lawrence Collins J considered whether a wife was obliged to make restitution of monies which her husband had wrongfully caused to be paid into their joint account. The learned judge dealt with the questions of principle in the following paragraphs of his judgment:

> *"335. The prevailing view is that there is no separate cause of action for unjust enrichment as such, and that it is necessary for the case to be brought within one of the recognised restitutionary heads, such as money had and received…In my judgment the authorities would justify the conclusion that Mr Matthews is liable for money had and received…on the basis of an absence of consideration in the sense of no legal basis for the payments…*
>
> *336. So far as concerns Mrs Matthews, she would be liable, as a volunteer, to make restitution of the money still in her control. But, subject to what is said in paragraph 341 below [as to tracing], she would not be liable for money which went through the joint accounts, but is no longer held by her, except on the basis of dishonest assistance or knowing receipt. But there is no evidential basis for such claims…"*

It may be thought that this statement of principle goes beyond what was in consideration in the *OEM* and *Euroactividade* cases but it supports the proposition that where the joint account was used as a means of siphoning the money from the claimant and the wife was unaware of its use she would have a defence to a claim for money had and received.

85. The Australian authorities cited in Goff & Jones are relied on by Mr Fowler as persuasive support for the proposition that an innocent joint account holder in the position of Mrs Stanbridge is not liable on a claim for monies had and received to restore the funds paid via her account without her knowledge or consent.

86. The positions taken by the court and the reasoning of the judges in the *Euroactividade* case, the *OEM* case and the *Primlake* case persuade me that as a matter of principle the court may refuse to order restitution by a joint account holder of monies siphoned through her account where she has not benefitted from them as a matter of fact and had no knowledge that her account was being used as a conduit by the other joint account holder.

87. In my judgment the fact that the earlier "change of position" defence asserted by Mrs Stanbridge in respect of AITC's counterclaim was struck out does not mean that AITC is entitled to succeed on its restitution claim. The basis of the change of position which was struck out was entirely different to the principles involved in considering the siphoning issue and in my judgment does not prevent Mrs Stanbridge from asserting that AITC is not entitled to succeed on this part of its case.

88. I find that in this case the advance was of no benefit to Mrs Stanbridge and she was not "enriched" by it. Further, I repeat my earlier finding that she was innocent of the use being made of the joint account and in the sense intended by Simon Brown LJ in the *Euroactividade* case acted in good faith. In my judgment it would be unjust to require Mrs Stanbridge to make restitution by repaying to AITC a sum equivalent to the advance monies. AITC could have protected itself by making direct contact with Mrs Stanbridge at any stage prior to the drawdown of the advance and ensuring that she was aware of the transaction and checking whether she was a willing participant in it. The email sent by Mr Englehart to Mr Stanbridge about the intended destination of the loan monies (see paragraph 36 above) shows that the decision to pay the

money into a joint account avoided the need to obtain Mrs Stanbridge's express consent to its drawdown. In my judgment AITC took on the risk of Mrs Stanbridge's ignorance of the transaction.

Mr Stanbridge's beneficial interest in the Property

89. AITC contend that even if the Charge is not a good legal charge over the legal estate in the Property it is nevertheless a valid charge over Mr Stanbridge's beneficial interest in it, a contention which, as I mention in paragraph 6 above, Mr Stanbridge admitted and, in my judgment, is accordingly bound by. However, the admission would not, in my view, prevent Mrs Stanbridge asserting that the charge does not bind her husband's interest in the Property even though it would no longer be open to him to do so. Mr Kremen submits that Mrs Stanbridge's position on the admission is "*as questionable as it is unattractive"* but he does not submit that by virtue of the admission is it unarguable.

90. It is, as I understand it, common ground that if the Charge were in respect of Mr Stanbridge's interest in the Property the effect would be to sever their former joint tenancy such that they thereafter held the Property on trust for themselves as tenants in common in equal shares.

91. The principal submission of AITC is that the forgery of Mrs Stanbridge's signature does not render the Charge a nullity and reliance is placed on the decision of Mr Justice Park in *Edwards v Lloyds TSB Bank* [2004] EWHC 1745 (Ch) where he was asked to find that the effect of a charge over jointly owned property on which the husband had forged the wife's signature was that the lender thereafter had the benefit of a charge over a 50% undivided share in

the house as security for a debt owed by the husband. Mr Kremen relies on the following passages from the judgment:

> *"15. The first point to make is not controversial. Although the mortgage deed purported to grant to the bank a mortgage of the entire legal estate in the house (subject only to the prior mortgage in favour of the Alliance & Leicester), it did not succeed in doing that. The reason is that Mrs Edwards did not execute the mortgage and had not consented to it. Nor did she agree with it when she found out about it, and even if she had I apprehend that a new mortgage deed would have been required.*
>
> *16. However, the bank contends that although the mortgage deed was not effective as between itself on the one hand and the husband and Mrs Edwards on the other as respects the entire ownership of the house, the deed was effective as between itself and the husband as respects the interest in the house which belonged to the husband: that is as respects his 50% beneficial interest. In my judgment the bank's argument in that respect is correct in principle, and is amply supported by authority. As a matter of principle it would be extraordinary if the husband, having induced the bank to give continued credit to his company on the basis of a mortgage which the husband had said he could grant, could then turn round and say that, not merely did the bank not obtain the mortgage interest in the entirety of the house which he (the husband) had told it it would obtain, but also it could not have the lesser mortgage interest in the one half undivided share in the house which he could grant to it…*
>
> *18. [Counsel for Mrs Edwards] submitted that, because the deed which purported to be a mortgage of the house was a forgery, it was a nullity, and could not bind anyone. In my judgment that cannot be right. The position must surely be that the deed would not bind any person whose signature to it had been forged…but it would continue to bind the person who had forged it, in so far as it affected any property interest which that person owned. One cannot suppose that the forger could, by relying on the illegality of his own conduct, escape the liability which by his own deed he purported to impose on himself. Moreover, the proposition that he cannot do that is in any event supported by authority. For example, in First National Securities Ltd v Hegerty (supra) a husband had executed a deed of charge of the house owned by himself and his wife. He signed his own name and forged his wife's signature. The deed was held to be effective as regards the husband's interest. Further, I quote a few sentences from the judgment of Hoffman J in Bowers v Bowers (also supra; see page 7 of the transcript):*
>
> > *"In any case it is hard to see why the addition of a forged signature which is not relied upon should make any difference…[I]t would allow Mr Bowers to repudiate his own*

> *deed because a superfluous, forged signature had been added…I therefore do not accept that the addition of the forgery made any difference and I adhere to the view that the building society took an equitable charge over the husband's beneficial interest under section 63"*
>
> *The reference to section 63 is to that section of the Law of Property Act 1925, whereby every conveyance is effectual to pass whatever estate or interest a conveying party has in the property expressed or intended to be conveyed."*

92. However, Mr Fowler, puts Mrs Stanbridge's case on a different basis, distinguishing *Edwards,* and submits that despite Mr Stanbridge's admission the purported charge over her husband's beneficial interest in the Property is nevertheless void for three reasons:

i) the conduct of AITC in procuring the Charge meant that it was the author of its own misfortunes and should not be afforded the assistance of the Court in seeking to rely on the Charge for any purpose;

ii) on the proper construction of the Charge and the Facility Letter when read together there were conditions precedent which meant that no contract ever came into existence;

iii) the documents do not comply with the necessary formalities so as to constitute either a charge by deed over Mr Stanbridge's share (because Ms de Plaza purported to witness the execution of it despite the fact that it had not been signed in her presence: in breach of section 1(3)(a)(i) of the *Law of Property (Miscellaneous Provisions) Act 1989)* or an enforceable agreement to create such a charge (because the lack of a signature by AITC meant that it did not comply with section 2 of the *Law of Property (Miscellaneous Provisions) Act 1989).*

93. As to the first of those grounds AITC says first that a finding as to whether it has the benefit of an equitable charge over Mr Stanbridge's interest is not a matter of discretion and secondly the refusal of a remedy for Mr Stanbridge's undoubted fraud would be akin to recognising that contributory negligence is a defence to fraud contrary to the decision of Mummery J in *Alliance & Leicester Building Society v Edgestop Ltd* [1993] 1 WLR 1462. I agree.

94. The alleged conditions are, by clause 7, "precedent to the making of the Facility"; ie the loan. The loan was in fact made. Further, although the Charge and the Facility Letter are to be read together I can not construe the two documents as meaning that on a failure to comply with the conditions precedent to the making of the advance the security for that advance is rendered a nullity.

95. Without prejudice to their earlier contention AITCsubmits that the conditions were inserted entirely for their benefit and that it was open to it to waive them and sue on the Charge was if the conditions had been met. They assert that the waiver took place by the making of the advance. In support of those contentions AITC rely on an extract from Chitty on Contracts (30th Ed) at paragraph 2-157 which states the relevant principle as follows:

> *"Where a condition is inserted entirely for the benefit of one party, that party may waive the condition. If he does so, he can then sue and be sued on the contract as if the condition had occurred. Obviously this rule does not apply to cases falling within the first of the categories above, in which there is no contract at all before the condition occurs".*

96. I agree with Mr Kremen's submission that the conditions precedent, if that is what they be, were obligations imposed on the borrower for the benefit of

AITC and which AITC was entitled to and did in fact waive in making the advance.

97. As to the relevant formalities, section 1(3)(a)(i) of the *Law of Property (Miscellaneous Provisions) Act 1989* provides that:

> *"An instrument is validly executed as a deed by an individual if, and only if –*
>
> *(a) it is signed-*
>
> *(i) by him in the presence of a witness who attests the signature; …"*

98. At the place in the Charge where the signature of Mr Stanbridge appears there are the words "Executed as a Deed by John Stanbridge in the presence of:-" followed by Ms de Plaza's name and description as "Lawyer". The evidence suggests that Ms de Plaza did not sign the document until after it had been completed by Mr Stanbridge. Mr Stanbridge, when he sent the Charge to Mr Englehart, knew that the attestation was false in that he had not signed it in Ms de Plaza's presence but he tendered it intending that the document be relied on as a deed and that AITC should be induced to release the loan monies to him, which they duly did. On a strict construction of section 1(3)(a)(i) of the 1989 Act the Charge, not having been signed by Mr Stanbridge in the presence of Ms de Plaza, was not a deed.

99. As to that Mr Kremen relies on the Court of Appeal decision in *Shah v Shah* [2002] QB 35. In that case the signature of a witness attesting the defendants' signatures was added shortly after they had signed but, in breach of section 1(3)(a)(i), not in their presence. At first instance the judge held that

nevertheless the defendants were estopped from denying the deed's validity. The Court of Appeal upheld that conclusion. In paragraph 33 of his judgment, with which the other two Lords Justices agreed, Pill LJ held as follows:

> *"Having considered the wording of section 1 [of the 1989 Act] in the context of its purpose and the policy consideration which apply to deeds, I am unable to detect a statutory intention totally to exclude the operation of an estoppel in relation to the application of the section or to exclude it in present circumstances. The section does not exclude an approach such as that followed by Sir Nicolas Browne-Wilkinson V-C in TCB Ltd v Gray [1986] Ch 621. For the reasons I have given the delivery of the document, in my judgment, involved a clear representation that it had been signed by the third and fourth defendants* in the presence of the witness *and had, accordingly, been validly executed by them as a deed. The defendant signatories well knew that it had not been signed by them in the presence of the witness, but they must be taken also to have known that the claimant would assume that it had been so signed and that the statutory requirements had accordingly been complied with so as to render it a valid deed. They intended it to be relied on as such and it was relied on…In my judgment the judge was correct in permitting the estoppel to be raised in this case and in his conclusion that the claimant could bring an action upon the document as a deed."*

100. Mr Fowler submits that the *Shah* case should be distinguished on the basis that in that case both defendants signed the charge in the absence of the witness before procuring attestation of it and that the defences of both were unmeritorious. In my judgment that does not provide a basis for drawing a distinction between *Shah* and the instant case. I am presently only concerned with Mr Stanbridge's execution of the Charge, the premise of this discussion being that the document does not bear Mrs Stanbridge's signature, and with Mr Stanbridge's interest in the Property. On that basis it seems to me that the reasoning of Pill LJ in *Shah* is of direct application.

101. The Charge was put forward by Mr Stanbridge as a valid deed, containing a clear representation that he had executed it in the presence of Ms de Plaza. He

intended it to be relied on and it was. In my judgment Mr Stanbridge is accordingly estopped from denying the validity of the Charge. It amounted to a dealing with his interest in the Property and accordingly severed the joint tenancy and charged his equitable interest to AITC. It was always open to Mr Stanbridge to deal with or alienate his beneficial interest without the consent of his wife and in my judgment it is not open to her to challenge the effect of the estoppel in respect of his interest.

102. I need not therefore consider whether the Charge, if not a deed, nevertheless constituted a contract for the creation of an equitable charge because of the absence of a signature on the part of AITC.

Rectification of the register

103. I am satisfied that by virtue of Section 65 and Schedule 4 of the Land Registration Act 2002 I am entitled to correct the register of title to the Property by removing the entries relating to the Charge. AITC was never entitled to register the Charge as a charge against the legal estate of the Property because of the forgery of Mrs Stanbridge's signature. It would be wrong in principle to allow the legal charge to remain on the title merely to protect the charge over Mr Stanbridge's equitable interest in the Property. That would be to the unfair prejudice of Mrs Stanbridge. I am satisfied in all the circumstances that it would be unjust not to rectify the register by removing the entries relating to the Charge.

I will hear counsel on the form of order to be made to give effect to the conclusions reached by this judgment.