Neutral Citation Number: [2018] EWHC 3334 (Ch)

Case No: HC-2017-001068

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 December 2018

Before :

JUDGE ELIZABETH COOKE sitting as a Deputy High Court Judge

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Between :

(1) Gurnam Kaur Gill	**Claimant**
(2) Daljeet Kaur Gill	
- and -	
(1) Harmit Singh Brar	**Defendant**
(2) Teja Singh Brar	

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Neil Vickery (instructed by **Teacher Stern LLP**) for the Claimants
Amanda Eilledge (instructed by **Talat Naveed Solicitors**) for the Defendants

Hearing dates: 6 - 9 and 12 November 2018

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JUDGMENT

Judge Elizabeth Cooke sitting as a Deputy Judge of the High Court:

1. On 4th June 2014 the Defendants, Harmit Brar and his father Teja Brar, bought 1Barford Grange near Warwick for £927,000. The Claimants say that they paid £477,552 of that price by way of loan to the Defendants, and have brought this action seeking repayment. The Defendants say that the Claimants' payment was made in satisfaction of debts that the Claimants' family owed to the Defendants and that there is therefore nothing to repay.

2. At the trial in the Rolls Building from 6th to 12th November 2018 the Claimants were represented by Mr Neil Vickery of counsel and the Defendants by Ms Amanda Eilledge of counsel; I am grateful to them both. In the paragraphs that follow I set out the factual background, summarise the case for the two parties, comment on the evidence of the witnesses, and then consider the issues that have to be resolved on the evidence.

The factual background

3. The factual background that follows is, I believe, agreed except where I say otherwise. The Claimants are married respectively to two brothers, the First Claimant to Kuldip Singh Gill and the Second Claimant to Manjinder Singh Gill. They live together as an extended family along with the Gill brothers' mother and their children. I will refer to members of the Gill family by their first names, without intending any disrespect.

4. Kuldip and Manjinder have worked together for years buying and selling property, seeking out business opportunities and starting new businesses; they are also builders. By the early 2000s they owned property and businesses to the value of around £14 million, but much of that was lost after the financial crash in 2007/8, and litigation arising from the crash drained the family's resources.

5. In 2008 the two brothers became interested in Barford Grange; it was big enough for the extended family, and they thought its 4 acres of land had development potential. They made contact with the sellers, Barry and Gill Doherty. The brothers' intention was that the property would be owned in the joint names of the two Claimants, as were all the family houses. Over the next couple of years Kuldip negotiated the price down from £1.2 million to £900,000.

6. In 2011 contracts were exchanged for the purchase of the house by Gurnam; Daljeet's name was added later by agreement. A deposit of £50 was paid, with completion to be one year from the commencement of an assured shorthold tenancy taken by the Claimants so that the family could live there after exchange. The rent was £1,800 a month, which Kuldip says was a low rent because the property was in a poor state. The reason for the startlingly small deposit was that the intention was for Mr Doherty to buy for £100,000 two apartments currently being built by Kuldip and Manjinder, whose market value was, or would be when built, £145,000 each. That arrangement was undocumented and never went ahead.

7. The contract was varied three times, on 13th March 2012, on 24th July 2012 and 27th June 2013. On each occasion a further £100,000 deposit was paid and the completion date was extended by another year; the completion date under the third agreement was 14th May 2014. Each of the varied contracts provided that the deposit was paid to Mr Doherty for him to use as he wished (Mrs Doherty died in 2011). An attendance note written by the Gills' solicitor Mr Peter Mander on 25th June 2013, after a meeting with the Claimants, said:

> "Explained and said this is the maddest and most dangerous arrangements [sic] I have ever seen and advise they should get together with the vendor to resell. Both ladies speak good English and understood."

8. The Gill brothers met the Defendants around the end of 2012 or the beginning of 2013; they were introduced by their friend Mr Raj Banga, the Defendants' accountant. The Defendants were, as the First Defendant put it, real estate venture capitalists and developers, owning a portfolio of properties generating substantial rental income. Mr Banga knew that the Defendants were looking for investment opportunities of the kind that the Kuldip was in the business of finding. The Gills and the Defendants became business associates and friends. As the First Defendant put it, "From 2012 to 2014 … a level of trust had developed between the Defendants and the Gill family." They would meet often at each other's homes and got involved in a number of business ventures. The precise basis on which they did so is in dispute – the Gills say that these were joint ventures whereas the Defendants say they were not investing for themselves but were helping the Gills. The Defendants and members of the Gill family acquired substantial shareholdings in two companies, discussed below, and the Second Defendant made a secured a loan to one of those companies, so these were certainly ventures in which the Defendants as well as the Gill family had financial interests.

9. In late 2013 a warehouse site in Alcester was bought. Kuldip found the site, and reckoned it was very run-down and could be smartened up and let. The company that owned it, Sahara UK Properties Ltd ("Sahara"), was acquired and the First Defendant, the Second Defendant, Ishervir Gill (the son of Gurnam and Kuldip), and Mr Banga each took a 25% shareholding; Ishervir and the two Defendants were the directors. The Second Defendant lent £531,995.54 to Sahara, secured by a charge and a debenture. The plan was for the Gill brothers to get the site into good repair, find tenants, and manage the site while the Defendants took a less active role, although there is some dispute about just how involved the Defendants were.

10. Around the same time Ishervir, Manjinder and the First Defendant each acquired a 20% shareholding in Global Re-use and Recycling Ltd ("Global"), which was a recycling business. The other 40% of the shares were held by two persons unconnected with the parties to this action. Global bought used or returned appliances in bulk and either mended them for re-sale or sold the parts; Global occupied part of the Alcester warehouse, under a lease from Sahara. Kuldip and Manjinder worked in the business and it had at least one employee.

11. Other business ventures were contemplated, including an estate agency to be known as Kings Estates, or Kings Global Estates, in which Ishervir, Manjinder and the First Defendant as well as Mr Banga were going to be shareholders. But that never got off the ground; other possibilities were Envirocare, another recycling business, and Once A Child, a fostering agency contemplated by an individual known to the Gills. By the start of 2014 Global and Sahara were the ongoing concerns.

12. Meanwhile the completion date for the purchase of Barford Grange was approaching. If the Gills could not complete on 14th May 2014, and could not get another extension, they would lose their £300,050 deposit. At some point the Gills and the Defendants started talking about this, and there is considerable dispute as to how that conversation started and as to whether the initial idea was for the Defendants to lend money to the Gills or to buy the property. What is clear is that on 12 February 2014 the Shawbrook Bank made to the Defendants an indicative mortgage offer on Barford Grange of £598,840 (net of fees). There is dispute as to whether the Defendants were really contemplating a purchase at this point, or were intending to lend money to the Gill family so that the Claimants could complete.

13. On 17th February the two Claimants signed a handwritten note, which I call "the February acknowledgement". It read:

> "We Gurnam Kaur Gill and Daljeet Kaur Gill confirm and declare that the sum of £300,050 has been provided to us by Mr H Brar to pay the deposit on the purchase of Barford Grange"

14. The parties agree that this was not true. The Claimants, and Kuldip and Manjinder, all gave evidence that the note was produced to them by the First Defendant, that he asked them to sign it and that none of them read it. However, Mr Mander confirmed that he wrote it and must have had instructions to do so, and Kuldip agreed in cross-examination that he must have given those instructions, and that he told Mr Mander that the Defendants had provided the deposit of £300,050. Mr Mander said that his

diary shows that he had an appointment with one or both of the Claimants in the afternoon of 17th February. Mr Mander referred to the February acknowledgement in a letter of 19th February to Shergills, who were then acting for the Defendants, saying that he understood it would be required by the Shawbrook Bank as mortgagees, and he sent it to Shergills on 24th February.

15. Following the February mortgage offer a valuation was obtained and on or before 2 April 2014 the mortgage offer was revised to £430,125 (I take the dates in this paragraph from solicitors' and brokers' correspondence). On or before 14th April 2014 the Defendants offered to lend the Gill family £300,000 towards the purchase, but they could not find the balance required; by 15th April a further offer of a loan of £350,000 was made but again the Gills could not proceed.

16. A letter from Mr Mander to Ms Talat Naveed, who was now the Defendants' solicitor, on 15th April mentions the loan of £350,000, but also appears to contemplate a sub-sale to the Defendants. An email sent from Ishervir's email account on 25th April, but written by Kuldip, still refers to funds to be lent by the Defendants to the Gills, now in the sum of £400,000 in return for a first charge on Barford. The First Defendant denied that they offered that loan.

17. An email from Mr Mander to Ishervir on 2nd May, copied to Ms Naveed, said that Mr Doherty had agreed to a sub-sale. So whatever the position earlier, the plan now was that the Defendants were going to purchase Barford Grange, raising funds by way of mortgage from the Shawbrook Bank. On 13th May 2014 the Claimants paid £100,000 to the Defendants, having borrowed it from Daljeet's brother in the USA. At some stage the Shawbrook Bank mortgage offer was revised to £474,786, as can be seen from a deposit questionnaire sent out by the bank on 23rd May 2014.

18. However, the Shawbrook Bank was still concerned about the source of the deposit. On 29th May at 14:25 their representative emailed Ms Naveed asking for evidence of the payment of the £300,050 by the Defendant and evidence of where it initially came from. At 15:51 that day Manjinder emailed the February acknowledgement to Ms Naveed – I surmise that the original, which Mr Mander sent to Shergills, had been mislaid when the First Defendants changed solicitors. At 17:45 on 29th May 2014 the First Defendant wrote to Ms Naveed. He said (unsurprisingly) that he had no money traces from himself to the Gill family for any of the £300,000, and adding "I have asked the Gill family to draw up a letter confirming money was given from us and that they no longer have a vested interest in this money". The First Defendant says that that referred to the February acknowledgement, but he had already received the February acknowledgement at 15:51 (I find it highly unlikely that he would not have opened Manjinder's email, as he claims).

19. On 30th May Manjinder drove the two Claimants to the Defendants' home in Hounslow. They waited for a while there and then were taken to Reemans solicitors in Hounslow where they signed an affidavit ("the May affidavit") which read as follows:

> "1. We have borrowed a sum of £300,000 from Mr Teja Singh Brar and Mr Harmit Singh Brar of [address].

> 2. This money was use to pay a deposit for the purchase of Barford Grange … which has already been transferred to the seller, Mr Doherty.
>
> 3. As we are no longer able to purchase the property … we hereby transfer ownership of this deposit to [the Defendants] as a repayment for money owed to them.
>
> 4. We affirm that we no longer have any vested interest in the deposit paid to Mr Doherty in relation to the deposit for the purchase of Barford Grange."

20. Like the February acknowledgement, this statement about the deposit was not true, and it is not in dispute that Defendants as well as the Gill family knew that it was not true. The First Defendant said that he had no knowledge of the contents of the document and that the Gills produced it and chose which solicitor to go to; that is plainly ridiculous, since there is no reason why they would travel to Hounslow to see a solicitor to swear unless the First Defendant asked them to do so. The wording is close to that in the First Defendant's email and I conclude that he drafted it and that, as the Claimants say, he went in to the solicitor's office with them. There is no record of the May affidavit being sent to the solicitor for Shawbrook Bank but it was clearly made in order to provide comfort for the bank.

21. Evidently the Shawbrook Bank required assurance that no-one else could claim a prior interest in the property by virtue of having paid the deposit. It is clear, and I find on the basis of the correspondence I have referred to, that the Gill family and the Defendants co-operated in deceiving the prospective mortgagee and indeed their own solicitors about the source of the mortgage.

22. On 2 and 3 June the Claimants paid sums amounting to a further £100,000 to the Defendants, having borrowed it from friends and family. By this time a contract of sub-sale had been drawn up between the Claimants and the Defendants. The email sent at 14:25 on 29th May 2014, to which I referred above (paragraph 18) included a further requirement that the contract between the Defendants and the Claimants should state "at the front page in the deposit section",

> "£300,050.00 receipt of which is hereby acknowledged (deposit paid by satisfaction of pre-existing outstanding loans from the Purchaser to the Seller totalling £300,050.00"

23. Those words (without the unclosed bracket) were indeed written by hand, by Mr Mander, on the part of the sub-sale contract signed by his clients, but it was not written on the other part. I refer to those handwritten words as "the contractual addendum". Mr Mander's evidence, which I accept, is that he wrote it at the request of Shawbrook's solicitors, after the Claimants had signed their part of the contract, and that he wrote it without instructions from the Gills because everyone knew it was true. But it was not true, and he says (and I accept) that the Claimants signed the contract before those words were written on it. They never saw it; they did not sign up to those words.

24. The contractual addendum is the culmination of the parties' attempt to deceive the mortgagee; pointlessly, as it turned out, because the purchase was funded not by

Shawbrook Bank but by a bridging company known as KSEYE Ltd. A revised completion statement dated 4th June 2014 shows the advance from KYSEYE of £110,000. On the basis of the figures in that statement I find, if it is in dispute, that the extra £100,000 paid by the Claimants on 2nd and 3rd June was required by the Defendants because of the change of lender, although it appears that the Gill family was unaware of that at the time.

25. By this time Mr Doherty had served notice to complete which had expired, and on 4 June he exercised his right to terminate the contract. Manjinder went to see him and persuaded him to complete on the basis of a revised purchase price of £927,000. Completion of the sale and sub-sale took place on 4 June 2014. On top of the purchase price the Defendants paid the vendor just over £28,000, which was provided for in the contract with the Claimants to compensate him for being kept out of his money, and they also paid stamp duty. Later £22,498 was returned to the Gills, hence their claim of £477,552.

26. After completion the Gill family stayed on at Barford Grange, again as tenants under an assured shorthold tenancy granted by the Defendants. The rent was £3,500 a month. The Gill brothers and the Defendants endeavoured to find alternative mortgage finance but without success; the basis on which they did so is not agreed, and I return to that later. Relations between the two families soured in the early part of 2015. The Defendants took possession proceedings pursuant to the assured shorthold tenancy and obtained an order for possession on 17th June 2015.

27. It will be recalled that the Second Defendant held a charge over the Alcester site (paragraph 9 above), and in March 2015 he brought an action for possession of the property pursuant to that charge. In August 2016 Ishervir brought an unfair prejudice petition against Global and his fellow directors, the two Defendants (Mr Banga by then no longer held shares in Global). That action was compromised and his shareholding was bought out.

The parties' cases

28. The Claimants' case is that their contribution to the purchase price was a loan to the Defendants and should be repaid.

29. In the light of their evidence it is perhaps surprising that the Claimants do not claim a beneficial interest in the property pursuant to a resulting trust in proportion to their contribution to the purchase price. Indeed, in the possession proceedings brought by the Defendants they did so, and in the claim form in this action they sought a declaration that they have a beneficial interest in Barford Grange. But in their Particulars of Claim they say that their contribution to the purchase price was a loan, although they plead an entitlement to restitution in the alternative. There is also a plea of proprietary estoppel in the Particulars of Claim; neither that nor the claim in restitution was pursued at the trial.

30. The Defendants' case is that prior to completion they agreed with the Gill brothers that the payments made towards the property by the Gill family would be set off against money owed by them to the Defendants. In their amended defence (but not in the defence originally filed in 2017) they set out debts amounting to £371,464.84. They say that it was agreed that the Gill family's contribution would wipe out that indebtedness.

31. The case turns therefore on a simple conflict of evidence. The Claimants say they made a loan. The Defendants say the Gill family settled its debts. In the absence of a written agreement to support either party's case I have to decide whose account is more plausible. The findings of fact that I made above derive from the documentation, but as I turn to the heart of the dispute I have to consider the credibility of the witnesses who gave oral evidence.

The evidence

32. I heard evidence from the two Claimants, Kuldip, Manjinder, Ishervir, Mr Banga and Mr Mander, and I heard evidence from the two Defendants.

33. The Claimants each made witness statements to the effect that the Defendants were lying when they said the Gill family owed them money, but they candidly accepted that they knew that because Kuldip and Manjinder told them so. They had no involvement in the negotiations about Barford Grange. They signed documents because their husbands and the First Defendant, whom they trusted, told them to. Each said that the First Defendant produced the February acknowledgement for them to sign, and I find that that is not true since the document derived from Mr Mander on Kuldip's instructions. Each said that the First Defendant went in to the solicitor with them when the May affidavit was signed, and I have accepted that evidence on the basis of the correspondence between the First Defendant and his solicitor which shows that it was he who organised the affidavit. Aside from the signing of the February acknowledgement and the May affidavit, the Claimants' evidence is hearsay and I can attach very little weight to it.

34. Kuldip Gill was the primary witness for the Claimants. His evidence was marred by attempts to distance himself from parts of the transaction with which he felt uncomfortable, in particular the initial deal with the Dohertys and, more importantly, the acknowledgement of 17th February and the affidavit of 30th May 2014; he was forced to agree in cross-examination that the acknowledgement of 17th February was written by his solicitor and must have been written on his instructions. He lied to his solicitor about the source of the deposit. In cross-examination he was confused and imprecise at times. So I approach his evidence with caution.

35. Manjinder made it clear that he had less knowledge of the detail of the transaction than his brother had, and had less close relations with the Defendants than had Kuldip. He was involved, but he described himself as "the spare wheel". He was clearer in giving evidence than was Kuldip; like Kuldip he sought to disclaim involvement at least in the February acknowledgement, but I had the impression that he may have had genuine difficulty in remembering the details, bearing in mind his more peripheral role in the negotiations. I regard his evidence as generally reliable, but I bear in mind that the prime mover in the family's financial affairs was Kuldip. The same goes for Ishervir, who was 19 in 2014 but already taking an active role in business.

36. Mr Banga is the Defendants' accountant and a friend of the Gills, particularly Kuldip. He has no financial interest in these proceedings and some loyalty to both sides. His evidence was unscathed by cross-examination and did not feature the contradictions or implausibilities that were pervasive in the Defendants' evidence and to a much lesser extent present in Kuldip's. I regard Mr Banga as a truthful witness and I accept his evidence. Mr Mander was the Gill family's solicitor in the purchase of Barford Grange.

He gave straightforward evidence about the conveyancing process. His clients lied to him about the source of the deposit, but as to everything he was aware of I regard him as a truthful witness and I accept his evidence.

37. The First Defendant gave extensive evidence about the Defendants' case, and was the only witness to the crucial part of the defence namely the set-off agreement. I do not regard him as a reliable witness, first because of the manifest implausibility of much of his evidence (see below) and second because of the inconsistency of the Defendants' case with the pleadings and sworn evidence in previous proceedings, which again I discuss below.

38. The Second Defendant made a witness statement relating to his handwritten rental records, and to his handwritten note of sums lent to Kuldip, which he says was a series of contemporaneous notes of each debt. He said that the debts listed there are all still owing, which of course is inconsistent with the Defendants' case. He said that he remembered nothing about the negotiations about Barford Grange, which I do not believe. He also said both that the First Defendant had made, and that the First Defendant had tried to make, "an adjustment" for the debts, which I take it is a reference to the claimed set-off agreement. I can place little or no reliance on the Second Defendant's evidence in the light of his repeated denial of any recollection of events of which he must have been well aware.

39. Accordingly although I treat Kuldip's evidence with caution I have more confidence in his credibility than in that of the First or the Second Defendant.

The debts said to be owed by the Gill family to the Defendants

40. I begin with the debts. It is argued for the Claimants that if nothing was owed by the Gill family to the Defendants, or if the total owed was appreciably less than the Defendants say it was, then their case, based on an agreement to set off debts, is implausible and the Claimants must succeed. But it is not quite as simple as that; it may be that the Gill family felt responsible for debts that were not legally theirs. So I look carefully at the debts with a view to considering what might have been the Gill family's attitude to them.

41. I set out below, numbered for ease of reference, the amounts said by the Defendants to have been set off, in the same order as that in which they are set out in the Amended Defence, paragraphs 6.26.2 (items 1 to 11 below) and 6.26. 2 to 6.26.7 (items 12 to 16 below):

1	£74,000	16 May 2013	Cash
2	£1,180	1 September 2013	Natwest Bank a/c 30491444
3	£6,000	16 October 2013	Natwest Bank a/c 604009
4	£1,500	1 November 2013	Natwest Bank a/c 86132164
5	£24,000	11 December 2013	Cash

6	£5,000	12 December 2013	cash
7	£12,000	12 December 2013	cash
8	£7,625	3 January 2014	Halifax a/c 00381813
9	£6,250	7 January 2014	Handle Bank a/c 89398703
10	£5,000	31 January 2014	Barclays Bank a/c 73224406
11	£20,000	20 February 2014	cash
12	£7,000`	20 November 2013	To Appt Managements Services Ltd
13	£2,500	11 December 2013	Cash to Reclaimed Appliances Ltd
14	£40,931.50	20 December 2013 to 4 June 2014	Rates owed for the Alcester Warehouse
15	£25,479.45	January 2014 to 4 June 2014	Rent owed for the Alcester Warehouse
16	£132,998.89		The Gill family's share of a debt owed by Sahara Properties to the Second Defendant

42. The total is therefore £371,464.84. This is not an action in debt and I do not need to make findings of fact about each amount, but I have to ascertain whether all or some of these amounts are ones for which the Gill family either were liable or might have been willing to take personal responsibility. To that end I place them in three groups.

43. The first group is items 13 to 16. Item 16 relates to the secured loan made by the Second Defendant to Sahara. What is said in the Amended Defence is that that charge was due to be redeemed by December 2014. "The Gill family – through Kuldip Gill's son – were 25% shareholders in the business, representing £132,998.89 of that debt." Ishervir, as a shareholder in Sahara, was not liable for that debt.

44. Items 14 and 15 were rent and rates on the Alcester site which was let to Global; it is now admitted by the Defendants that even if rent and rates were due (the Gills say that no rates were due in the period up to 4th June 2014) the sums due were far less, by some tens of thousands, than set out in the schedule. They are said by the First Defendant to have been the responsibility of the Gill family who were occupying the site on behalf of Global, which (the Defence says) was a family business. But the First Defendant held shares in Global as did the Gill family (Ishervir and Manjinder each had 20%, as did the First Defendant), and 40% was held by others, so it was not a Gill family business and these were, again, corporate liabilities and not debts of any member of the Gill family personally.

45. Might the Gill family nevertheless have felt responsible for the rent or rates on the warehouse occupied by Global, or even for one quarter of the Sahara debt on the basis of Ishervir's 25% shareholding in Sahara? People do muddle company and individual liabilities, but I doubt if the Gill family did so. Kuldip and Manjinder, as experienced businessmen, would have had a keen awareness of the difference between a company's debt and an individual's liability. Kuldip was made bankrupt in 2013 and so could be

expected to be well aware of the distinction. The Amended Defence says "Pursuant to an oral agreement Kuldip Gill and the Gill family agreed to be liable for rent, debts and liabilities arising out of their occupation of Alcester Warehouse on behalf of [Global]." No evidence is given as to when this oral agreement was made or why, and the Defendants were unable to add any detail in cross-examination. I find as a fact that there was no such agreement. As to the Sahara debt, it is implausible that the Gill family would have regarded Ishervir as personally liable for 25% of that loan; it is even more unlikely that the Gill family would have set off that amount against their investment in Barford Grange when on the Defendants' own case it was not even due yet.

46. I find that the same is true of item 13. This was a cash payment for Dyson hoovers, bought as stock for Global. Global was a business in which the Defendants had a financial interest, as did the Gill family; the machines were purchased for Global and even if this was intended to be a loan (as to which there is no evidence other than the Defendants' word, on which as I have said I cannot rely) it would not have been regarded by the Gill family as a loan to them or to any of them personally.

47. Items 1 – 12 all feature in a handwritten list produced by the Second Defendant, on which he says he noted each item on the date it was paid. The original was produced at the trial, and it has been written with more than one pen. Item 2 is dated 1st September 2013 when the customer receipt from Natwest Bank is dated 10th October 2013, so the list cannot have been entirely contemporaneous – and it seems that some items are duplicated (see paragraph 52 below). The items paid into bank accounts are all evidenced by customer receipts. I mention the list now because it is relevant to items in the second and third groups.

48. The second group, items 2, 3, 4, 8, 9, 10 and 12 are payments into bank accounts, for which customer receipts have been produced. So payments were made, but their status is disputed. The Gills' position is that none of these payments were loans, but that they were all investments made by the Defendants in the various business concerns and opportunities that were going on in 2013 and early 2014.

49. The First Defendant said in his witness statement that items 2, 3 and 4 were paid at Kuldip's direction and at his request as loans. Kuldip in cross-examination denied any knowledge of these payments. The sort code for item 4 is for Envirocare's account. The First Defendant disclaimed any involvement in Envirocare, but he was in correspondence with a potential supplier in China in connection with some recycling equipment, and I find that he was interested in the business and trying to help to get it off the ground. Item 3 is a sum of £6,000, and in the Defendants' Defence to the unfair prejudice petition they said at paragraph 10 that they agreed to purchase 33% of the shares in Envirocare, that they paid £6,000 on 16 October 2013 for that purpose into an account specified by Kuldip, and that they paid another £7625 on 3rd January. That would account for item 8 as well, and I find that items 3, 4 and 8 were investments by the Defendants in Envirocare.

50. Nothing is said in the Amended Defence about items 9 or 10. Item 9 was a payment to the Handle Bank; Kuldip's evidence was that this was a payment for showers and other items for Global. Item 10 features in a note handwritten (I take it by the Second Defendant) recording a payment of £5,000 to Global, not to Kuldip, and Kuldip

confirmed that that was the case. In the absence of any other evidence about item 9, and in view of the Defendants' own record of item 10, I find that items 9 and 10 fall into the same category as items 13 to 16; they are payments to and for Global, and it is unlikely that the Gill family would have regarded them as debts for which they were personally liable.

51. The Amended Defence says that item 12 was paid to Appt Management Services on behalf of the Gill family so that the Gills could acquire an interest in property, but that instead it was used by the Gills personally. In his witness statement the First Defendant adds that this was intended as an investment in a new estate agency, King's Estates, to be created and merged with an estate agency called Let It Be, run by Atul Patak. Kuldip's evidence is that the Gills and the Defendants put money into this new venture and that the payment was made to Atul Patak as the proprietor of Appt Management Services, who was going to share the initial set-up costs. He says that the new business never got off the ground because the Defendants made unreasonable demands and tried to divert good property opportunities for their benefit.

52. It appears that item 6, being £5,000 in cash, along with a cheque for £2,000 listed in the Second Defendant's handwritten list said to be paid to "Naman Pathak" but not among the debts set out in the Defence, are the same as item 12 (for which there is no customer receipt). The two payments of £5,000 cash and a £2,000 cheque to Naman Pathak are described in the Defence to the Unfair Prejudice Petition as having been made for a new estate agency venture and I find that they duplicate item 12. The Defence to the unfair prejudice petition acknowledges that this was an investment being made by the Defendants and so I find that item 12 was not a loan and that item 6 duplicates it.

53. In the absence of information about item 2 and in view of the fact that all the other payments in this group were investments by the Defendants and not loans to the Gills, it is likely that the same is true of item 2.

54. That leaves the third group, the cash payments, items 1, 5, 7 and 11 (6 having been eliminated above). The Gills say simply that they were never paid. I approach that with caution because the other items in the Second Defendant's list are not pure fiction. Payments to bank accounts were made but not, I have found, as loans to the Gills. So the existence of the list may lend some support to cash having been handed over for some reason. Moreover, Mr Banga – whose evidence I regard as reliable – said that during 2012 and 2013 some loans were made, but not for more than £10,000 altogether.

55. The Defendants' evidence is that item 1 was specifically requested in cash, and that they drove up to Barford Grange to hand it over. They took no security and no receipt. They had known the Gills for a few months, and had met them only a few times. The Defendants' case is that they had already made a loan of £140,000 in December 2013, which was repaid, but I find that that was not a loan but a payment in anticipation of the Defendants' acquiring an interest in the Alcester site, on the basis of Mr Banga's evidence (given in cross-examination), and then returned to them. As to the £74,000, Kuldip and Manjinder's evidence was that no such payment was made. Both Defendants are experienced businessmen and whatever the level of trust and friendliness between the two families at this stage I find it unlikely that they would have made an unsecured and undocumented cash loan in that sum at that time. The same goes for item 5, the sum of £24,000, said to have been paid on 11 December 2013, which the First Defendant says in his witness statement was again taken to the Gills'

home in cash. The witness statement also mentions "further sums" which Kuldip and his wife collected from them in London "in the next day or so" which may refer to item 7 in view of the dates. In his witness statement the First Defendant says that item 11, £20,000, was lent after the time when Kuldip wanted to borrow £100,000 to get an extension on the Barford Grange contract, and was for a family wedding.

56. In the light of Mr Banga's evidence I take the view that undocumented cash loans in small sums were made. And at a time when the two families were very friendly a contribution may have been made towards a wedding, although there is insufficient evidence for me to find as a fact that that payment was a loan. But that brings us nowhere near to a situation where the Gill family might have paid £477,552 to the Defendants in order to clear their debts.

57. Accordingly, scrutiny of the debts leads me to find that there was no set-off agreement.

The negotiations prior to the purchase

58. I reach the same conclusion when I consider, separately (in case I am wrong about the debts) whether there was a set-off agreement made prior to the purchase of Barford Grange.

59. The Claimants and the Gill family say there was none. I note the points made by Ms Eilledge about the Gill family's track record here. Kuldip has been known to make unconventional deals about deposits, as he seems to have contemplated doing with the Dohertys in connection with Barford Grange. The family had already made bad decisions about the property, by persisting in contractual arrangements with Mr Doherty that were, in Mr Mander's words in cross-examination, "barking". The family was desperate to salvage the Barford Grange deal in the early months of 2014 and they all say they were panicking about it; so they might well have made a further unwise deal, in the light of the trust that then subsisted between the two families.

60. Despite all that, and treating the Gill family's evidence with all due caution, it is the Defendants' own evidence and actions that convince me that no such agreement was made. I look in turn at the First Defendant's evidence about the agreement itself; the First Defendant's use of the February acknowledgement, the affidavit of 30th May and the contractual addendum; the dealings between the parties after the purchase of Barford Grange; and finally the Defendants' position in the litigation between the parties in 2015 and 2016.

(1) The First Defendant's evidence about the agreement

61. I referred in paragraph 15 above to the early conversations about Barford Grange between Kuldip and the Defendants. There is considerable dispute as to who suggested what first and I do not need to resolve exactly what happened, especially as some of the dispute may arise from misunderstandings and from genuinely different memories about a very fluid situation, and one in which the Gills were in a state of considerable anxiety.

62. Kuldip and Manjinder both gave evidence that once it was agreed that the Defendants would be the purchasers they asked the Second Defendant for a first charge on the property. Both say that he was offended by the suggestion, saying that they were all

baptised Sikhs and must trust each other; but both understood that he was promising to keep their money safe for them. Once they realised that the property was going to be mortgaged to the Shawbrook Bank they decided not to pursue their request. I accept that they made that request and that they understood that the money would remain theirs.

63. The First Defendant's evidence was not consistent in terms of what happened when. In his witness statement he said that the Gill family asked the Claimants for a loan of £100,000 in the last week in January, which was rejected. The Defendants then offered loans of £300,000 and £350,000. Then it is said that the Claimants proposed that the Defendants should buy the property for £600,000 and that the deposit of £300,050 should be off-set against the sums owed to the Defendants; that proposal was rejected. It is said that the Gill family then repeated their proposal for off-setting and said they would pay an additional sum of £100,000, which again the Defendants rejected. Finally, it is said that the Defendants repeated that proposal and offered, in addition to the £300,050 and the £100,000, to pay all the associated costs of purchase, and that the Defendants accepted that.

64. However, in cross examination the First Defendant said that the off-setting proposal came before the £300,000 loan offer. It came out of the blue from Kuldip in January 2014. He says there was a meeting where Kuldip made that offer. That is not in his witness statement and so it was not put to Kuldip. The First Defendant said that the off-setting proposal was dropped after the January meeting and that thereafter proposals were made of loans of £300,000 and of £350,000. Then the next two proposals by the Gills, of which the second was accepted, were made at the same meeting. He accepted that that agreement must have been made by the time the Gills paid the Defendants £100,000 on 14th May 2014. His evidence was that at no point was there a specific discussion of the actual debts that were to be off-set.

65. What was put to Kuldip by Ms Eilledge in cross-examination was that the two families sat down and worked out the total of the debts due by the Gills to the Defendants and agreed a set-off. But that position was abandoned by the First Defendant in cross-examination and he insisted that there had been no formal reckoning and no sums mentioned. He was asked if it was the case that the Gills did not know how much they owed but knew it was a lot of money, and he said that it was.

66. Leaving aside the utter implausibility of Kuldip or Manjinder offering or agreeing to give up the deposit to off-set unspecified debts, let alone to then throw in another £200,000 on the same basis, it is equally implausible that the Defendants would have made an agreement of the kind they allege without listing the debts concerned. The Second Defendant keeps a handwritten schedule of what is owed to him; he would not accept an unspecific set-off agreement, in case the Gills later claimed to have off-set debts which he did not regard as off-set. The First Defendant is computer literate and would be even less likely to do so. His evidence is that the agreement was going to wipe the slate clean; but since on his account some of that slate consisted of apportioned liabilities for rent and rates he too would have needed to be absolutely clear what was covered and for what period.

67. Accordingly, whatever the beginnings of the conversation, whoever spoke first, I find that there was no offer of a set-off agreement by Kuldip in January, or at all, because the First Defendant's eventual position as to what was and was not said is implausible.

(2) The Defendants' use of the acknowledgement, the May affidavit and the contractual addendum.

68. The First Defendant's evidence was that the February acknowledgement recorded the Gills' offer of a set-off agreement; yet it is clear from the terms of the acknowledgement that its factual premise was untrue, and it makes no reference to debts other than the deposit itself. Moreover, the First Defendant insisted that the May affidavit was produced at his request, again to record the set-off agreement. He said that he did not see the wording and had no part in its production, but that he felt that provided he had an affidavit his position was protected. Yet the affidavit cannot be construed as supportive of anything other than the fiction that the Defendants provided the deposit of £300,050, that the Claimants had passed it on to the seller, and that they therefore claimed no interest in it; there is no reference to a set-off of any other debts. It is beyond belief that if the First Defendant had made a set-off agreement and wanted to record it he would be comfortable with a document that he had not seen. The correspondence makes it clear that he obtained the affidavit to satisfy the Shawbrook Bank in response to the solicitor's request of 29th May 2014 and his own email in response on that date.

69. Finally Ms Eilledge asked to me to regard the contractual addendum as evidential support for there having been outstanding debts. But it derives from a request from the representative of the Shawbrook Bank; it was not seen by the Claimants, they did not sign it, nor is there any evidence that the Defendants knew anything about it at the time. It does not record an agreement between the Claimants and the Defendants; it is comfort for the bank. For that purpose the wording is inelegant, but the reference to outstanding debts is clearly to the provision of the deposit, as to which the Bank had already had assurances. Obviously if the bank thought that the outstanding debts were some *other* indebtedness, so that the deposit really had been provided by the Gills, then it would not have been reassured at all. Far from being content with this wording it would have required evidence that debts really had been set-off. It would have wanted to know what they were, even if as the First Defendant claims he and the Gills had seen no need to list them.

70. All this is abundantly obvious from the wording of the acknowledgement, the affidavit and the wording on the contract. The Defendants' use of these items to support the case they now put forward does them no credit and exposes the weakness of their case. It may be that the handwritten wording on the contract may have given the Defendants the idea of constructing, long after the event, a set-off agreement that was not in fact made.

(3) Negotiations after completion

71. Following the purchase the Gills and the Defendants were both involved in trying to re-finance the property, and also to extend the bridging loan from KSEYE. Kuldip and Ishervir were in correspondence with Shawbrook Bank and others trying to agree a loan to finance the purchase of the property by either the Defendants or the Gills, not for anything near £900,000 but for a sum that would take into account what the Gills had already paid. Mr Banga's evidence was that the Defendants at one stage wanted to sell to the Gills for £520,000. An email of 14th January 2015 from a broker to Kuldip relays an offer of £530,030 net from the Lancashire Mortgage Corporation, which it is agreed was an offer made to Kuldip's niece. The First Defendant said that the Gills were involved in all this so as to keep in with the Defendants but that is implausible; if the

Gills no longer had an interest in the property they would not have been trying to find the finance for themselves or anyone else to purchase it.

72. A member of Ms Naveed's firm wrote an email on 26 March 2015 setting out the Defendants' offer to sell the property to them for £607,500, and a draft sale contract was drawn up for a purchase by Manjinder for that sum. The First Defendant said that the solicitor conveyed that offer without his authority and that he telephoned her to "put a stop to it", but there is no letter from Ms Naveed withdrawing the offer. On the contrary the offer must have been made, and the contract drafted, on the First Defendant's instructions. Importantly it takes into account what the Gills had already paid.

73. I accept Kuldip's evidence that they were trying to buy out the Defendants and that the price demanded by the Defendants was too high. This is borne out by the First Defendant's email to Kuldip, Ishervir and Mr Banga on 12th February 2015 setting out his position, stating that the interest on the bridging loan was to have been paid by Kuldip (I note that the interest on the bridging loan was £3,505 per month and the rent was £3,500) and stating that stamp duty was to be paid by Kuldip, and complaining that neither had been paid – yet his expectation of those payments is inconsistent with the Gills having no further interest in the property. The email then says that he wanted a 36% margin on the property, which supports the Gills' evidence that the intention was for them to buy the Defendants out.

74. Finally Mr Banga's evidence, which I accept, was that in March 2015 at a time when the eviction of the Gills from Barford Grange was imminent the parties met to try to sort everything out. A list was made of outstanding debts, which at that date amounted to no more than £45,000 which he described as "odds and sods". The Defendants denied that that meeting took place or that any list was made at that stage, but I accept Mr Banga's evidence.

75. Everything that took place after the purchase of Barford Grange until the possession proceedings were brought points to the Defendants' continued understanding that the Gill family had money invested in the property and were hoping to buy the Defendants out for a price that took that contribution into account. Had there been a set-off agreement so that that contribution did not count, one would have expected there to have been references to that by the Defendants in correspondence. But there are none.

(4) The Defendants' position in litigation after the purchase

76. I have mentioned that in 2015 the Second Defendant took possession proceedings against Sahara pursuant to his mortgage. His Particulars of Claim state that the debt of £531,995.54 remained unpaid.

77. Moreover in the unfair prejudice petition, to which both Defendants as well as Sahara itself were Respondents, the Defence stated that the £531,995.54 remained unpaid, that rates remained outstanding, and that no rent had been paid. Either there was no set-off agreement or the Defendants did not abide by it.

78. When asked to account for this behaviour the First Defendant gave two different explanations. His cross-examination began towards the end of the afternoon of 8th November, and at that time he said that the intention was for his father to recover the whole sum in the possession proceedings and then pay one quarter of it to Ishervir. He said that it was agreed, before 4 June 2014, that that would happen. There was no opportunity to put this to Ishervir or to any of the Gills because it does not appear in the First Defendant's witness statement. But in any event, not only is it implausible, it is also inconsistent with the rest of the First Defendant's evidence because he was very clear that no specific sums had been reckoned up when the set-off agreement was made.

79. The First Defendant's evidence then changed. First thing in the morning of Friday 9th[h] November he said that he had been tired and de-hydrated on the previous day and had got things wrong. He now said that the set-off agreement was not about the debt from Sahara but about the price of Ishervir's shares. Ishervir, he said, had paid nothing for his shares in Sahara and by contributing a quarter of the debt to the Defendants as part of the set-off agreement he got to keep his shares. So item 16 in the list of debts is now portrayed not as a debt that was set off, but as a payment made by Ishervir for his shares in Sahara. The First Defendant says there was an oral agreement to that effect. The suspicion obviously arises that having appreciated that the arrangement he had recounted at the end of Thursday was not going to be convincing, he then produced a completely different account on the Friday. I do not believe either account and I take the implausibility of both as further evidence that the set-off agreement is a fiction.

80. Both Defendants conducted litigation on the basis that items 14, 15 and 16 in their list were still due from the relevant companies after 2014. They swore statements of truth to that effect. It is therefore impossible to believe their story about a set-off agreement now.

Conclusion

81. The Claimants' case was they made a contribution to the purchase price by way of loan to the Defendants, whereas the Defendants say that the Claimants in making that contribution were settling the family's debts. I have rejected the Defendants' case. Accordingly I find that the Gills' contribution to the purchase of Barford Grange, in the sum of £477,552, was an unsecured loan and they are entitled to its return.