Neutral Citation Number: [2020] EWHC 2769 (Ch)

HC-2017-001227

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS & PROBATE LIST (ChD)

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

Date: 22/10/2020

Before :

DEPUTY MASTER LINWOOD

- -

Between :

MR JOHN TIBBS **Claimant**

- and –

(1) MR ROBERT TIBBS **Defendants**

(2) MS ANN LESLEY TIBBS

- -
- -

Mr Jeff Hardman (instructed by **Clarke Kiernan LLP**) for the Claimant
Mr Phillip Williams (instructed by **Sanders Witherspoon LLP**) for the Defendants

Hearing: 18th – 20th February and 6th & 7th July 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Deputy Master Linwood:

1. This is a claim, inquiry and account in respect of monies lent plus interest brought by Mr John Tibbs against his brother, Mr Robert Tibbs, and his sister-in-law, Ms Ann Tibbs, who counterclaim for having over paid interest on the loans. For convenience I will refer to them – and other members of the Tibbs family – by their first names with no disrespect intended, save that I refer to Robert and Ann collectively as "the Defendants". The parties and particularly the Defendants have made wide ranging and serious allegations against each other including fraud, misrepresentation, forgery, intimidation, threats and physical violence.

2. These proceedings have been unfortunately notable for the almost complete lack of agreement between counsel and solicitors no doubt on instructions of various matters which should be agreed, such as the chronology and case summary. Numbers in square brackets are paragraph numbers within this judgment unless the context indicates otherwise. Below I list the headings in this judgment and their paragraph numbers:

3. Another unfortunately notable feature of this litigation has been the volume of documentation it has generated, especially witness statements, in what should have been a relatively straightforward inquiry as to what was lent and repaid and when and whether interest was due and if so the rate(s) and periods. The animosity of the parties

has resulted in extreme allegations being made, substantial changes of position and a failure to identify and obtain evidence on a timely basis. This combined with numerous applications during these proceedings has substantially increased the time to determine this claim and accordingly the costs.

4. I have not recorded all the matters in dispute and allegations by the parties against each other but only those I need to determine this claim. The pleading and evidence of the claim and the defence and counterclaim has been imprecise and even chaotic, so I have concentrated on the key issues. To do otherwise and explore and determine every contested issue of law and fact would not be in accordance with the Overriding Objective nor would it be proportionate or necessary.

FACTUAL BACKGROUND

5. I set out below the factual background in some detail in the absence of an agreed chronology. I have referred to the documents in evidence where possible and indicated matters which are not agreed.

6. John describes their family background in detail in his 5th statement. He says many things that may appear strange to other families such as cash payments, both of them serving prison sentences, fictional people in documents and using London money lenders were normal to his "…old East End family". He states he is 74 and Robert 8 years his junior, and how close they were for many years; their relationship was one of trust. None of this is challenged by Robert.

7. In about 2010 Robert approached Tower Bridging Limited ("TBL") who as their name indicates provide bridging loans. He offered a property as security, paid £1,400 for a survey but TBL considered it inadequate and a lower offer was made. That offer was declined. Robert had been referred to TBL by one Bobby Reading who the parties agree was a money lender and a long-standing friend of John.

8. John says Robert asked him in about 2010 for a loan of £25,000, immediately increased to £50,000. John has produced a letter dated 19 April 2010 from his then solicitors, Crellins Carter which is headed "Family Loan Agreement". It states:

> "We had prepared a mortgage document for the borrowing by Robert Tibbs and Ann Tibbs from you and your wife…the note reads that you want £1,000 per month for one year as interest (equivalent to 24% per annum) the loan to be repaid at the end of the year…I have spoken at length to the solicitor for your brother and his wife and revised the from of Legal Charge to obtain security on the farm which is in Ann's sole name…I understand you wish to lend £25,000 initially and a further £25,000 towards the end of the month That really gives us a fortnight to get this paper work in place, but you are taking a risk in advancing the £25,000."

9. Only the first page of this letter is in evidence. Robert puts John to proof of this loan. John says he decided to lend £25,000 rather than £50,000 and has produced a cheque stub dated 18th June 2010 which states "Loan", "Ann Tibbs" and that amount. By letter to John dated 2nd November 2011 Crellins Carter state that the charge against

the property has been removed. The property is not identified. Robert and Ann say that if those monies were lent, they were repaid hence the removal of the charge.

10. John says over the period 2010/11 he lent a total of £77,000 (including the £25,000) to Robert and Ann, who say they have found no trace of these monies except for two instalments totalling £10,500. One cheque was made out to Ann dated 17th May 2011 for £7,500 which was paid into her bank account and is accepted by her.

11. There are also a series of 13 cheques in 2011. Most of these are made out "Cash Mick" or "Mick" and total £26,000. A few of the remainder are made out to "R.Tibbs" for some £14,000 and two are not made out to any named person but are blank at £2,000 each. With a cheque for £500 which John says he gave Robert dated 6th November 2006 they total £77,000. In addition to the admitted £7,500 one cheque for £3,000 for Robert dated 24th February 2011 has been found by his/Ann's expert, despite Robert denying all save as mentioned.

12. TBL by letter dated 9th August 2013 offered John and his late wife Maureen a loan of £35,000:

> "2…for the purpose of debt consolidation and shall be secured by a second charge on [their property] NB. THE LOAN MUST NOT BE USED OR OTHERWISE APPLIED FOR ANY PURPOSE WHATSOEVER OTHER THAN AS STATED ABOVE. IN THE EVENT OF IT COMING TO THE NOTICE/ATTENTIONOF THE LENDER THAT THE LOAN HAS BEEN WRONGLY APPLIED THE LENDER RESERVES THE RIGHT TO FORTHWITH WITHDRAW ALL FACILITIES AND TAKE WHATEVER STEPS IT CONSIDERS NECESSARY AND PRUDENT TO PRESERVE ITS POSITION." (sic)
>
> "3…for a minimum of 3 months and a maximum of 12 months…"
>
> "6.1 Interest shall be charged at 2% per month on the amount of the Loan outstanding"

13. On Tuesday 19th February 2020, the second day of trial, Mr Hardman made an application to adduce the third witness statement of Mr Ferrando with an exhibit including inter solicitor emails, the above offer letter from TBL and the executed legal charge (only an unsigned version was in evidence until then). In an ex tempore judgment that day (Neutral Citation Number 2020 EWHC 1853 (Ch)) I gave permission.

14. Within the documents produced by Mr Ferrando is TBL's copy of the above letter – the version John produced in the proceedings was blank and was challenged by the Defendants as they strongly disputed that John had a) borrowed from TBL and b) had signed a charge over his property. John and Maureen signed the end of the letter, and their signatures were witnessed by their solicitor, Mr Daniel Tozer.

15. Mr Ferrando also produced from his file email correspondence between his and John's solicitors and a signed copy of the charge, which was an all monies charge. John and Maureen's signatures were witnessed by their solicitor who dealt with the charge namely Mr Alexander Bak. The charge is undated but the email exchanges between the solicitors show that the loan was for £53,000, 3 months interest was deducted of £2,100 and that resultant amount transferred on the 15th August 2013. This all monies charge was the basis, John says, of all the monies he borrowed from TBL to lend on to the Defendants.

16. In March 2014 John says Robert and his son Robert Junior came to his house and requested a loan to fund a project they both and one Peter Darrent were involved in in Gibraltar – the acquisition of a car park by a bakery Robert owned so that he could build a hotel.

17. John says he called Bobby Reading in the presence of Robert and Robert Jnr who would only lend Robert £50,000 but said with a charge on his house John could borrow as much as he wanted. Bobby asked how much did he want and John says he said "two" but hand waving from Robert and his son led to another £100,000, a total of £300,000. Bobby said he would speak to Jason (Ferrando, manager of TBL). This loan, John says, was for six months and the interest at 2% per month was deducted in advance.

18. Ann said in oral evidence that during that discussion between Robert, her son and John, Robert telephoned her and said that John would lend them the money. He then passed the telephone to John so she then spoke to John and said how grateful she was to him for the loan. In her view, this was just an inter-family loan and certainly not borrowed from others. This telephone conversation was not mentioned in any of her three witness statements and its existence only came out during cross examination. Robert also says this was purely a family arrangement and there was no deadline for repayment bearing in mind the long term nature of the Gibraltar project.

19. Interest was not mentioned as, John says, Robert and Paul knew he was borrowing from Bobby Reading/TBL for them and they knew the rates that would be charged. The next day Jason called John and said the money would be transferred the following day. John asked for it to go into the account of his daughter Katie Tibbs as he had just shut his business account.

20. On 11th March 2014 Katie received £282,000 into her account. This is evidenced by a bank statement of TBL exhibited by Mr Ferrando to his second witness statement. On 13th March 2014 Katie transferred £260,000 to the Defendants, which they accept. John says he also gave Robert £4,000 in cash at the same time. John also says the same day Robert asked him why they had received just £260,000 rather than £300,000. John explained that six months interest had been deducted. Robert denies that this discussion took place.

21. Over the period September 2014 to July 2015 John says he lent further sums to the Defendants, who admit a further 12 separate loans totalling £63,000, making a total they accept having borrowed from John of £323,000, which they say is all they have to repay. John says that over this period he borrowed £605,000 from TBL of which £493,977 was borrowed for the Defendants

22. In about July 2015 the Defendants started paying back that capital at £10,000 per month, which John says was towards interest. These payments stopped in August 2016 and totalled £110,000.

23. On 21st September 2016 John's solicitors, Clarke Kiernan LLP ("CK") wrote to Ann demanding repayment. The letter states:

> "We are advised that the totality of the loans amount to £600,000 for which you have provided no security…these monies were loaned to our client who simultaneously advanced the monies to you and that you have met regularly the monthly interest payment that has been demanded of our client in the sum of £10,000 per month."

24. Full repayment with interest is demanded and a charge on Ann's property, Daniel's Farm, is requested, failing which proceedings for recovery/bankruptcy is threatened. CK wrote again on 30th September recording that Ann had acknowledged liability in the sum of £626,000 and confirmed it would be paid and she would be content with a charge registered against her property to secure that amount plus further interest. A legal charge in form CH1 is included and CK suggested Ann should take independent legal advice and that her signature should be witnessed by an independent third party, who could be the solicitor she took advice from.

25. Ann at first said she signed the CH1 which is dated 6th October 2016 but under duress. Her signature was supposedly witnessed by Dean Gary Smith who is the partner of John's daughter Katie. CK tendered an unsigned statement by Mr Smith dated 12th February 2020 in which he denies being a witness to Ann's signature nor signing the CH1 himself. The fact that he did not sign this is a rare matter upon which the parties agree.

26. More recently Ann denied she signed the CH1 but admits she signed Land Registry Form ID1 (being a certificate of identity for a private individual) which is dated 13th October 2016 which was sent to the Land Registry by CK with the CH1 on 9th November 2016, following what appears to have been difficulty in registering the CH1 following their first application dated 11th October 2016.

27. Then CK wrote to the Defendants' solicitors, Hallett & Co, ("Halletts") on 4th November 2016 to say a prior application to register a charge had been made by Mr Peter Darrent (see [16] above). Some ten days later CK wrote to Halletts to say if Mr Darrent's charge was not cancelled they had instructions to serve statutory demands. Halletts replied on 5th December 2016 following the statutory demands being received by post on 30th November. In disputing the demands they said that 1) the Defendants had only received £310,000, 2) repayment was due upon sale of the Gibraltar project, 3) there was no agreement as to interest and then at numbered paragraph 4:

> "In or around the beginning of 2015, your client said that our clients need to pay to him £10,000 per month to cover the interest that he had to pay to his own lender who had advanced sums to him to enable him to advance sums to our clients. Our clients agreed to this and payments of £10,000 per month were made…"

28. Then at paragraph 7 appears this which appears to contradict the reference to no interest in paragraph 3:

> "However, our clients now have reason to doubt that your client borrowed the sums he advanced to our clients from a lender at all, in which case the £10,000 per month payments should be treated as repayment of capital"

29. And then at paragraph 11:

> "Ann Tibbs signed the Charge under duress. She was subjected to a number of harassing and intimidating phone calls from your client and his family between 23rd September 2016 and the date she signed the Charge."

30. CK responded in detail on 12th December 2016. Nothing was heard in reply until Halletts by their letter of 24th January 2017 said they were no longer instructed. These proceeding were issued on 20th April 2017 and served some ten days later. In the Prayer to the Particulars of Claim, dated 26th April 2017 and signed not by John but his solicitor, Mr Gillan, John claims repayment of capital of £600,000 plus interest to date of £88,000 plus continuing interest at £11,000 per month.

31. There then followed a series of Without Prejudice letters from CK to the Defendants over May and June 2017 recording an agreement for the Defendants to pay £450,000 in settlement by payments on various dates, the terms to be concluded in a Tomlin Order.

32. As to the repayments, it was agreed that pursuant to the various agreements £300,000 was paid on 10th May 2017, followed by £50,000 on 23rd May 2017 and £35,000 on 9th June 2017. In their final letter of 16th June 2017 (which is marked "to be collected C/O Paul Tibbs") CK say the final payment of £65,000 was to be repaid:

> "…within six months, namely on or before 8 November. In addition, you have agreed to pay interest in the total sum of £6,500, making a total payment on the 8th November, if not before, of £71,500"

33. CK closed by stating John agreed to the above but, as before, should payment not be made as agreed he reserved the right to enter judgment for the full amount of his claim, together with costs. Nothing more was paid so default judgment was entered on 13th December 2017 and an interim charging order over Ann's property was obtained on 4th January 2018.

34. That default judgment was set aside by the order of Deputy Master Cousins dated 24th July 2018, whereby this trial was listed for an account and inquiry into the sums loaned, repaid and interest, and usual directions to trial given to include disclosure, witness statements and a single joint expert in the field of accountancy.

35. On 21st February 2019 the Defendants obtained a freezing injunction against John from Mr Justice Arnold. This was discharged by Ms Clare Ambrose sitting as a High

Court Judge on 18th June 2019 on the ground of non-disclosure by the Defendants. Permission to appeal was refused by the Court of Appeal on 28th February 2020.

36. The Defendants signed statements of truth in what is headed " draft Amended Defence and Counterclaim" on 11th May 2019, but there was no permission for them to serve this pleading. Due to the statements of truth signed by each of them I do consider it is of evidential value. They put John to proof that monies were borrowed from TBL by John for their benefit, and said if monies were so borrowed they were not aware of the terms. In particular they said interest was not discussed. They pleaded that Robert was "…barely literate and is not a "paperwork" person" and that Ann was "…of ill health and has had ongoing anxiety, physical and mental health issues for the last 30 years…[and she]…has been hospitalised with Mental Health Issues in the past…[and she]…deals with the post."

37. They admitted borrowing certain amounts from John (a total of £390,500) but said they had overpaid and so counterclaim for £149,500 to be repaid to them. I gave further directions as to the trial of the inquiry by my Order of 21st June 2019. In particular, by the third recital the parties agreed to provide to each other "…any transcript …within 3 days of receipt and indeed any other document which is disclosable."

38. My Order also provided that the report of an accountant instructed on behalf of John, Mr Narula, dated 3rd September 2018 was to be treated as an expert report for John. The Defendants had permission to adduce evidence in response. Oral evidence at trial was not permissible from the experts unless an application to adduce the same was made – which did not transpire.

39. The paragraph setting out exchange of witness statements included the provision that:

> "If, any to the extent (sic) that the Defendants wish to allege fraud in addition to that as set out in the Defence and Counterclaim, they must particularise that allegation and, where necessary, identify the document said to be a forgery and produce cogent evidence in support of the allegation. Any allegation which is not properly particularised within a witness statement shall not be permitted to be made to advance the Defendants' case at trial."

40. As I will come to, allegations of fraud were made by the Defendants against John. They had been wide ranging but narrowed down to one by the end of trial.

THE ISSUES

41. Deputy Master Cousins on 24th July 2018 ordered that there should be a trial of the following Issues:

> "1. A full and detailed analysis be undertaken by way of the taking of an account and inquiry into the sums loaned by the Claimant to the Defendants ("the Debt") and the sums repaid by the Defendants to the Claimant between 2010 and November 2017.

> 2. Whether or not the without prejudice correspondence between the parties resulted in a binding agreement requiring the Defendants to pay a reduced sum on the Debt ("June Agreement")? If so, whether the Defendants defaulted on their obligations under the June Agreement thereby permitting him to enter judgment for the totality of the issued claim?
>
> 3. Whether the June Agreement should be set aside as a consequence of any vitiating element?
>
> 4. What is the applicable interest rate payable on the Debt and for which period?
>
> 5. Whether the Interim Charging Order should be discharged, or made final, with or without modification?"

42. The above Issues were slightly amended and expanded by the parties; Issue 1 has been agreed to conclude:

> "In particular, the court is required to determine whether, as a consequence of any agreement between the parties, any sums remain outstanding to either party."

43. Issue 2 now is:

> "Whether or not the without prejudice correspondence between the parties resulted in a binding agreement (on or around May/June 2017) requiring the Defendants to pay a reduced sum?"

That agreement is not now defined as the "June Agreement" but I will assume it is.

44. Issue 4 has been agreed as: "Was interest payable on any loans? If so, what is the applicable interest rate payable on any debt due and for which periods, payments and dates?"

WITNESSES OF FACT

45. In the trial bundles the evidence for John consists of 17 statements by 6 deponents; that for the Defendants being 18 statements by 6 deponents. Where appropriate I refer to the witness statements by reference to the initials of the witness followed by the number of the statement and, where necessary, the paragraph number eg for the 12th paragraph in John Tibbs' 4th statement : JT/4/12. Below I list the witnesses who gave oral evidence and the view I reached as to their evidence.

John Tibbs

46. John Tibbs made 4 statements and swore one affidavit over the period March 2018 – February 2020. Due to an error by his solicitors the first was numbered as his second so to avoid confusion I adopt their numbering. He gave evidence over the course of two days, initially in a direct, straightforward manner, saying when he was unsure or did not know or else could not recall. However as cross examination continued he

seemed at times somewhat evasive and uncertain. I have to say his evidence did stretch over the first three days of trial which would be a strain for anyone, let alone a person with his health issues.

47. John was receiving medical treatment at the time (he had been at hospital for cancer treatment the day before the start of trial) and said he was of an age (73) when his memory was less than it was. Breaks in his evidence took place to try to make the process fair to him as was possible within the context of hard fought litigation which has spilled out in to direct family conflict including allegations of actual and threatened physical violence. At JT/5/8 John said he had done his best to recollect but that he had his "...head kicked in recently by the Defendant's son, Paul, not so long ago". He emphasised that his handwritten notes supported his claim which listed the cash lent to the Defendants, to which I will turn later.

48. One point of concern as to accuracy of the sums claimed came early in his cross examination. Mr Williams took John to exhibit Scot 2 to the report of his expert, Mr Sam Narula and loan numbered 1, for £35,000. He was asked if he remembered that loan agreement – which was described as "15/03/2013 No bank statement" and he said no. Then he was asked if he had "...decided not to pursue that or was it your expert? Do you know?" John's answer was "All I can say it's my expert. That's all I can say". That is an honest answer but it illustrates the problems of trying to recall events years ago, many loans and a legal team and expert endeavouring to reconstruct what went on with limited documentation.

49. Likewise, John was cross-examined at length as to how a Mr Dukes (who had received from John £76,023) had appeared in Mr Narula's report. John could not recall when Mr Dukes was first mentioned to Mr Narula. When it was put to him only he could have so instructed Mr Narula John disagreed and said

> "I've been under a lot of mental health issues. If I have said it, I've said it. If I've not I can only leave it to these people, but I employ the legal team, and I think they should answer it".

50. Loan 11 was put to him on the basis that it was originally said to be due from the Defendants, but later retracted. Again John said:

> "I don't know, I leave that to the legal team. That's why I never got involved in anything because I'm not good at figures."

51. The lending of large amounts of cash over a long period of time quite a few years ago is inherently difficult to recall without substantial contemporaneous documentation. At JT/5/13 John explains how Robert almost always preferred cash, accepting cheques when he wanted money to be seen going into his account by his wife "the Guv'nor".

52. At JT/5/23 John explains that the cheques made out to others some of which were, he says, loans in cash to Robert :

> "There is another payment for £10,000 for "Mick". How I got the name "Mick"....There was a Mick at the time who was doing tiles at my place. The tax man was Robert's worry as

> well as his wife, the Guv'nor. He just didn't want money paid into the joint account so that his missus would find out and also didn't want the money being kept on records in my name. Maybe he was just worried about me getting nicked and having all these records of money going to him. At the time as explained, I had a few quid. During this period, he would come round on a Friday. Mick the builder was there for three months doing the tiles so we just used his name. If there was a bloke sweeping the street, I would have called the payments to Mr Broom. The real Mick would not have had tens of thousands of pounds."

53. As to specific payments, a copy of a cheque stub of John's dated 10.10.2011 which is at exhibit SN/12.10 to Mr Narula's report was put to him. It states pay "Mick Builder £1,500". This was listed by Mr Narula (upon instructions) as being one of the loans and appears on a schedule "Cheques - Loans to R & A Tibbs" which was prepared by Dean Smith and is at SN/12.1.

54. Another cheque made out to "Mick Glazier" for £2,000 as "Builder" with the preceding cheque number of 000406 appears at SN/12.9. This also appears on the schedule at SN/12.1 as a loan to the Defendants, but John did confirm that Glazier was Mick's surname.

55. John was asked as to the cheque for £1,500 "You paid that to Mick Glazier, did you not?". He replied, "I don't know ...Nine years ago, no, I don't remember." John was then asked "...why have you put forward a positive case that that money went to my client when you cannot remember?" John replied "Because that's the only name we used...we never had no-one else...he was only getting £500, £800, £400, he wasn't getting £5,000 and £2,000."

56. It was put to John he was making this up and that was why he had not disclosed the cheque book stubs (in their entirety) to the experts. John explained he had them, and that Mr Gillan (his solicitor) "...took my cheque book stubs to wherever he went with them" and offered to produce them. Mr Williams explained that he and his solicitors had been asking for them for some time but they had never been produced and why was that? John replied that he didn't know why they had not been provided and that his solicitor should be asked about it. The original cheque book stubs were produced in court the next day. I have to say that could and should have been done far earlier.

57. John was asked if he had "...any explanation as to why the cheques have not cleared in my clients' bank account?". He replied "They never went in" and repeated that answer when pressed. He said he did remember passing the larger sums over but that no one else appeared "...in them cheque books...only my brother Robert", and that the real Mick Glazier received lesser sums, also in cash.

58. It was then put to John that if he could not "...remember on one cheque book stub on one date, you are not going to remember the second on the same date, are you?". John then tried to differentiate between those two cheques saying "There's certain things you remember, and certain things you don't remember". But he apparently instructed Mr Narula that – and I quote from Issue 1 of the Joint Report – that "References to

"Mick" are apparently the builder who dealt with works for RAT." [Robert and Ann Tibbs].

59. Overall, John's memory was not good, and I cannot wholly rely upon it save where contemporaneous documents exist which may themselves be subject to challenge. This is understandable in all the circumstances, namely the passage of time, his admitted physical and mental health issues, his problems with literacy (he said Robert was illiterate but he was "...not far behind him"), the sheer volume of loans, the variety of records, numerous high value cash transactions some of which (he says) were recorded as cheques and persons who existed only according to records to hide another person.

60. I am therefore cautious as to what evidence of his I accept and what I do not. I do think he tried to assist the court as that is in his interest – but the difficulties with the large number of loans going back many years of which he cannot recall the detail has meant that his family, lawyers and experts have had to take the lead and help him to assemble the whole account. That is understandable but also must result in me looking carefully at the evidence on the balance of probabilities. I found John to be in the main open and direct.

Mr Jason Ferrando

61. Mr Ferrando is the principal of TBL and has made 3 witness statements in these proceedings. He was introduced via a mutual friend, Bobby Reading, to John Tibbs, long before the loans the subject of this claim were made, and also to Robert Tibbs for whom a loan proposal was considered by him in November 2010. Mr Ferrando said that after a valuation the security offered was inadequate, so a lower offer was made which was declined. That was his only dealing with Robert.

62. I found Mr Ferrando to be a straightforward witness who gave detailed answers and explanations with excellent recall. He seemed to me to be experienced and knowledgeable in the business of bridging loans, of which he said in oral evidence he had made some 4,000. As Mr Williams put it, he was a credible witness.

Ms Katie Tibbs

63. Katie Tibbs is John's daughter. She said in her statement that she assisted her father by receiving in her bank account loan monies from TBL and forwarding them to the Defendants. She also would receive in that account interest payments by the Defendants and then pass them on to TBL. As to cash payments, she said that she would be telephoned by John when cash was needed for Robert. She would go to the bank in Orpington, withdraw the money and drive to her father's house where Robert would be.

64. I did find her explanation that she immediately deleted emails from TBL plus text messages and even her call logs due to being an organised person as unusual and a little surprising, but that did not detract from her evidence as to the transfer of monies to/from TBL and her obtaining cash as and when her father asked her to and then handing it to Robert.

65. Katie gave her evidence in a direct, clear and unequivocal manner and I accept all she said. For example, when Mr Williams questioned Katie as to why she would not be interviewed by an investigator appointed by the Defendants, she replied:

> "(1) I don't know him (2) I do not have to. Legally binded, (sic) I don't have to and (3) I knew today that I was going to be held in front of a judge, in front of a master to look in the eyes, to tell the truth and I will tell you that now, because I didn't have to and because what his son done to my little girl mainly"."

66. Katie's evidence was short – about 20 minutes – and concluded, on the third day of trial, the evidence for John, as quite some time was taken up over the three days with ancillary issues such as Mr Ferrando's late statement, the production of the cheque book stubs and submissions as to inadequacies of the particulars of claim, the directions and disclosure. Unfortunately, the trial had to be adjourned part-heard until July, when I heard over two days the evidence of the Defendants.

Mrs Ann Tibbs

67. Ann Tibbs has made 5 witness statements. As to her oral evidence, I appreciate that these proceedings are most stressful for the parties; the Defendants face the loss of their home. There has been substantial anger and extreme allegations have been made. Further, Ann's health is extremely poor, as she suffers from fibromyalgia, mental health issues, digestive problems and cataracts. She is 67 years old and says she is housebound. But even bearing all that in mind and endeavouring to make allowances I found Ann Tibbs to be a difficult witness. She was argumentative and very set in her views, questioning and constantly arguing with counsel.

68. The essence of her evidence in AT/1 dated 5th January 2018 is that

> "It is utterly impossible for me and my husband to owe this money. My (sic) John Tibbs lent us on total £388,000 by transfer and he also lent my husband £50,000 in cash. There was no agreement in relation to interest...It is beyond argument that [we] have paid back in total £385,000 by way of bank transfers. Furthermore, we have paid back interest at a further £70,000 by way of £10,000 per month....On top of that we have also paid him a further £80,000 in cash at £10,000 per month. That is a total of £535,000....We have been threatened, bullied and endured the most stressful times of our lives all for money which is not owed but we are being forced to pay under fear and duress".

69. Ann first alleged fraud by John in AT/2, which she signed on 5th April 2018. Also in that statement at paragraph 10 Ann accepted she was sent Form CH1 which was to charge her property. The amount appears in box 9 which states

> "The sum of £626,000 together with additional monthly interest instalments at the rate of £11,000 per month payable on the 9th

> October 2016 and the 9th of each subsequent month until the liability is discharged."

70. Ann's signature appears in box 10, immediately below. She says

> "I did sign the document under total duress without knowledge of what else I was doing but no-one else signed it. This document is a fraudulent one as it was not signed in front of anybody or witnessed by anybody." (emphasis as in the original).

The CH1 is dated 6th October 2016.

71. Then in paragraph 11 Ann said "I only signed it under duress and mistaken belief it was owed...". At paragraph 23 she said "It is an out and out lie that my husband and I requested the Claimant to take out loans on our behalf. That is a manifest untruth."

72. Form ID1 (a Land Registry form entitled "Certificate of Identity for a Private Individual") was shown to Ann during cross examination. She readily accepted she signed it and that her signature was witnessed and her identity confirmed by a solicitor at Halletts. It is dated 19th October 2016.

73. In her fifth statement dated 12th February 2020, just six days before the start of the trial, she diametrically changed her position; she said she did not sign the CH1. In her oral evidence she also vehemently denied signing the CH1 saying "It's not my signature on the charge. What else can I say?...I did not sign it...I did not sign it. It's not my signature. It's a fraud...I did not sign CH1 it's a forgery." This most substantial contradiction flew in the face of her admitting signing the CH1 in paragraphs 10 and 11 of AT/2. Ann added "Listen. It sounds puzzling. When I explain it will be absolutely clear. It's not my signature and I don't know Dean Smith."

74. Ann then tried to explain away this crucial change of her evidence by saying that when she referred to the CH1 in paras. 10 and 11 she meant the ID1. I do not accept that for these reasons:

(a) this substantial change occurred over three and a half years after the document was sent to her and almost two years after her second witness statement wherein she accepted signing it;

(b) there would be no reason whatsoever for Ann to go to the trouble of visiting her solicitor for her to sign and him to certify her identity on the ID1 (which specifically refers to it being completed where a charge is being registered) if she had not completed the CH1; it logically follows;

(c) There is a clear advantage to her now denying her signature in view of the recognition of interest being due as provided for in box 9 of the CH1;

(d) Ann could not mistake one document for the other especially as she refers to owing money in paragraph 11 – that is not possible on the ID1;

(e) her signing it is confirmed by Robert and

(f) it is inherently improbable she made that mistake in those circumstances at that time.

75. Ann did obtain a report from a handwriting expert, Ms Ruth Myers, dated 19th September 2019, which supported her account that the signature was not hers. A very late application by Ann to admit it in evidence was made on the first day of trial that I refer to below, together with my reasons why I do not take it into account. By letter dated 9th November 2016 CK sent the ID1 to the Land Registry but the CH1 was never registered due to a prior application by Mr Darrent (see [27] above).

76. Ann was also shown Halletts' letter to CK of 5th December 2016, which at numbered paragraph 4 states:

> "In or around the beginning of 2015 your client [John] said that our clients [the Defendants] needed to pay him £10,000 per month to cover the interest that he had to pay his own lender who had advanced sums to him to enable him to advance sums to our clients. Our clients agreed to this and payments of £10,000 per month were made to your client for 15 months..."

It was put to her that she and Robert gave instructions to their solicitors to state this and that they agreed interest at £10,000 per month. Ann strongly denied this.

77. Again I do not accept her evidence for these reasons:

(a) paragraph 4 is fact specific and could not be the result of poor drafting or misunderstanding on the part of Halletts;

(b) payments of £10,000 per month were made at the time in question and

(c) she contradicts herself in that at AT/1/12 she refers to interest payments totalling "...£70,000 by way of £10,000 per month."

78. Ann has a good memory but I found her evidence unreliable and contradictory. I cannot place much if any reliance upon it unless it is supported by contemporaneous documents. She would say in evidence whatever she thought would advance her defence.

Mr Robert Tibbs

79. Robert has made 4 witness statements over the period January 2018 – February 2020. In RT/1 Robert confirms the truth of Ann's first statement, as he does in his subsequent statements for each of hers. At paragraph 4(iii) he says

> "As a family of course monies have been borrowed over the years to my brother's benefit, but my brother is no shrinking violet, if he was owed monies he would request it back full force always with interest....my brother is a cash man."

80. Robert also says that he and Ann had no idea that monies were borrowed by John from TBL and that in his view the documentation evidencing that borrowing was "...a complete fabrication." At paragraph 8 he says

> "Finally, it is also right that my wife was forced to sign a CH1 form. However, she would not agree to the final part of registration as the figures were wrong, she had been threatened and was under heavy medication."

81. In his final statement dated 12th February 2020 Robert again alleges that the claim is based on

> "...fraudulent documents...somebody else's cheques (which is a lie)...loans we never knew about from Tower Bridging (which is a lie that we knew)...I honestly thought my brother was helping me and my family. Little did I know it was a conspiracy to gain monies we did not owe...[based on]...bare dishonest evidence."

82. Mr Hardman at the outset of his cross examination asked if Robert accepted that in this claim without many documents the central issue was what was said by him and John at their meeting in March 2014. Robert agreed. It was then put to him that whilst in his statements he made general allegations of fraud and conspiracy he had not set out his recollection of that important meeting. Robert replied "If it is not in there it's not there". Asked again he said "I can't remember what I did last week."

83. Robert was referred to his first statement at paragraph 4(iv) where he stated "I met Tower Bridging in 2010 (or thereabouts) and they took £1,400 for a loan but didn't process it." Robert said "I never met Tower Bridging". When asked further about the contradiction he replied "I don't care what I've said he [John] called Bobby Reading on my behalf and said he'd send someone down." The latter version may be correct but it demonstrates that Robert was not concerned to ensure matters were accurate in his evidence.

84. Another contradiction in his evidence was put to him concerning his statement – see [79] above- that John expected interest on any money lent and Ann's evidence at AT/4/2 "I do not accept that interest was payable by myself or the second Defendant" and Robert confirming the truth of her statements.

85. Robert then said that when John offered him the loan of £260,000 he, John, "..wanted to be in on the deal.." meaning the Gibraltar property development. He was asked why that was not in any of his statements it only being mentioned in court for the first time in two and half years to which he replied "we never had a chance". I do not accept that in view of all of the evidence served over several years plus numerous hearings.

86. In summary Robert tried to listen to the questions and assist the court but was vague, somewhat suggestible and contradicted himself and Ann at times. His memory was poor and a lot of his evidence consisted of unsupported far-fetched allegations against his brother of fraud and conspiracy. On the crucial issue of what was agreed between him and John, he had little to say. His evidence did not go to the heart of this claim.

87. To conclude my summary of the factual witnesses, overall I found John to be a more reliable and certain historian than Robert or Ann and where their evidence conflicts I prefer that of John. His evidence was more detailed, consistent and corroborated in

places by contemporaneous documents. It was also at times inherently more probable. Having said that, I have considered afresh every factual conflict where I have made findings.

THE EXPERT EVIDENCE

88. In Deputy Master Cousins' Order of 24th July 2018, as I have referred to above, an account and inquiry into the sums lent and repaid was ordered. Paragraphs 8-11 of that order provide for a single joint expert in the field of forensic accounting to be appointed by the Claimant providing a list of three experts and the Defendants choosing one. The expert was to provide their report by 1st November 2018. That, unsurprisingly in the context of the long running disagreements in this claim, did not happen.

89. By letter dated 8th August 2018 CK unilaterally instructed Mr Sam Narula, although they say that a forensic accountant is to be instructed and that "The purpose of these instructions is to be ahead of the game and to have you look at John's documentation in order to prepare a report to support his claim." The enclosed documents include "Copy notes prepared by Dean Smith (son in law of John Tibbs)" which is a manuscript schedule to which I will turn later ("the DS Notes").

90. Mr Narula produced a report dated 3rd September 2018, which John exhibited to his 3rd witness statement also dated 3rd September 2018. There are several points of evidential importance which I set out now in view of their impact upon the report of Mr Narula ("SN1") and the accuracy of the Particulars of Claim.

91. John introduces into the evidence 22 pages of handwritten notes he says he made to record monies he lent to John ("the Notes"), which also on their face set out interest paid to "Jason" (Ferrando) and "Ray" (Dukes) plus other matters such as "Lisa car payed for " (sic), "Dean owes 300" and "Dean & Katie OWE 12,000" which appears on a page in different handwriting.

92. John also states:

> "...that all of the financial transactions save …. in paragraph 4 above were conducted through my daughter's bank account...Katie Tibbs..." whose "...only involvement in this matter was to receive funds from Tower Bridging, make the necessary transfers to Robert and Ann Tibbs, to receive payments from Robert and Ann Tibbs and thereafter to pay those monies to Tower Bridging."

93. Further, he refers to having requested copies of his bank statements which he says he may file in due course. John concludes by saying that Dean Smith did not sign the CH1 although he does not set out the source of his knowledge, but as it is a rare matter upon which the parties agree I will leave it there.

94. In my Order of 21st June 2019 paragraph 5 provides that SN1 is to be treated as the expert evidence for the Claimant. Paragraphs 6 and 7 give permission to the Defendants to serve a report in reply and for a joint report and written questions.

95. Ms Maria McKenna produced a report for the Defendants dated 25th October 2019 ("MM1") and Mr Narula then produced a further report dated 13th November 2019 ("SN2") for which there does not appear to have been permission, but no point has been taken as to that. Their joint report which includes a Scott Schedule is dated 24th January 2020, just a few weeks before the start of trial ("the Joint Report").

96. There is also in the trial bundles a report of the handwriting expert, Ms Ruth Myers, dated 19th September 2019 that I have mentioned above. This was purportedly served, but without permission of the court. Ms Myers opines that the purported signature of Ann Tibbs appearing on the CH1 is not her signature.

97. At the outset of the trial on 18th February 2020 Mr Williams made his application to admit the report. He estimated it as a 15-minute hearing. As ever in these proceedings it took far, far longer. At the conclusion of submissions I said to counsel there were three possible outcomes; first I could refuse permission but that would mean a considerable amount of time would have to be spent on removing all traces from it in the trial bundles; the waste of another valuable hour or more.

98. The second was that I could grant the permission Mr Williams sought. The third possibility was that the report could stay in the bundles and treated as a document produced in the claim but not an expert's report. Both counsel agreed to adopt the latter. Accordingly I did not give an ex-tempore judgment and I said I would attribute to it such weight as I considered fair and appropriate.

99. Ms Myers did not have access to the original documents and so her methodology must be in question, but I appreciate that it has been said that the Claimant did not hand over the original. In any event, that limitation combined with the fact it was obtained unilaterally and on the basis that Ms Myers was instructed Ann denied that it was her signature means I attribute little weight to it, especially as this evidence has not been subject to the usual questions whether in writing pursuant to CPR Part 35 or cross examination.

100. Finally, even if I did attach substantial weight to it, it would not alter my findings of fact as to what was borrowed, when and in what circumstances. This issue was another diversion from the key issue namely the inquiry and taking of the account.

SN1 and SN2

101. I now briefly set out my views as to Mr Narula's reports. In the usual course of an inquiry necessitating forensic accountancy evidence I would expect a high degree of certainty on the part of the expert. That is not present in SN1 or 2 due to the data from which he has had to work and the vagueness and uncertainties in the PoC and the evidence and documents presented to him in what appears to be a piecemeal fashion, and without full disclosure in the usual manner.

102. In short, his instructions are deficient (due to a mixture of the substantial passage of time, fading memories and lack of contemporary documents) and accordingly his reports lack the precision and certainty I would otherwise expect. Mr Narula has endeavoured to do his best but has quite correctly been cautious in various respects. I mention a few examples below.

103. In SN1 at [16(b)] he states that he has not been given sufficient details to comment on the suggestion at paragraph 13 of the Particulars of Claim that some £200,000 had been lent by cheque and cash payments.

104. Then at [16(d)] he refers to an extra payment of £25,000 claimed in the Particulars of Claim at [17] for which he has no information other than his instructions. He also at [16(c)] queries whether a cheque from an account of Katie "...is connected in any way to the claim. It may be the date shown in the Particulars of Claim as 15th August 2013 should read 23rd March 2015?".

105. At SN1 [17] he refers to the sum of £605,000 "...which seems to have been shown as £600,000 being claimed in the [PoC]", but that his staff have identified additional cheques not listed in the PoC but are in Dean Smith's Notes and amount to £34,500.

106. Further at SN1 [43] he states "I am instructed JT has never charged interest himself on the loans he made personally to RT & AT".

107. In his Conclusion at [57] he refers to his "...summary of my calculations as to the balance of monies which it seems to me, may be due on the basis of my instructions" (my emphasis). That, rightly in view of the difficulties he has set out, cautiously expresses a view but one that does not definitively and without qualification support the sums as set out in the Particulars of Claim.

MM1

108. Ms McKenna faced some of the same difficulties as Mr Narula, save she had the benefit of considering SN1 and the Particulars of Claim. I especially note at [2.19] she states:

> "SN has sought to investigate the transactions between the Claimant and the Defendants as a whole and not just those noted on the particulars of Claim. As a result, he has concluded that the amounts due from RT and AT are £692,350, including interest of £294,800."

109. Both experts struggled with the Particulars of Claim. Ms McKenna at [5.13.1] says

> "In paragraph 13 it is stated a further £200,000 was loaned, no date is provided for this transaction and neither my investigations or the investigation carried out by SN identified this transaction."

110. A like criticism is made by her at [5.13.2]:

> "In paragraphs 14 and 17, further requested loan amounts of £50,000 and £30,000 respectively are detailed, however it is not clear from the wording used whether these amounts were ever alleged to have been paid to RT and AT or if they were taken out to offset against perceived interest due. I have not identified any payments and neither has the investigation carried out by SN."

111. Ms McKenna at [6.8.1] says it was not possible to identify that the copy stubs were from John's cheque book and so the evidence was unreliable. Then at [6.8.2] she says "SN appears to have included a number of cheques in his summary which were not in included in the Particulars of Claim."

112. She then at [6.8.2.1] notes that all but two of those additional cheques:

> "...are written to "Mick" totalling £26,500. I am unaware of whom Mick is, however, I do not consider that a cheque book stub written to someone other than the Defendants is adequate evidence that JT loaned monies to RT or AT. It is notable that the Claimant has also chosen to exclude these from his original claim."

113. Ms McKenna also criticises at [7.8.1] the way interest was pleaded in the Particulars of Claim at:

> "...£88,000 plus £11,000 per month. The detail of how this value has been calculated has been omitted from the claim...".

In her next subparagraph she opines that SN suggests in his report that

> "...interest is £294,800 up to 21 November 2016. I consider this figure to be unsatisfactory, given it is based on loans that aren't even discussed within the claim."

114. At [8.22] she says:

> "To summarise, I consider that in parts, there are serious flaws in the evidence provided as part of SN's report." At [8.26]: "There are far too many assumptions made with very little explanation. I have yet to see enough evidence to agree that most of these loans existed and as such, I disagree with the loan calculations."

SN2

115. Mr Narula was then provided with further documents including in particular bank statements of the Defendants and produced this short addendum report. I do not need to consider it further in this part of my judgment.

The Joint Report

116. I have been assisted by the Joint Report but regrettably not to the extent that would usually be expected in a claim and counterclaim for monies lent and repaid plus interest due to the limitations as to evidence and instructions provided. I attach the first five pages, being the narrative, as Annex 1 as it sets out the accounting elements or issues in a helpful way together with, subject to my decisions on the Issues, part of what I must determine.

THE ISSUES

117. Mr Hardman submits that Issue 2 and logically then Issue 3 should be determined first as that should determine Issue 1, his primary case being that the compromise agreement should be upheld and so judgment entered for the outstanding balance on the Claim From less payments made plus interest. I agree as to the order in which I should approach the Issues as it is logical and could save time and costs but do not accept that I just must have regard to the Claim Form should I find for John.

Issue 2: Whether or not the without prejudice correspondence between the parties resulted in a binding agreement (on or around May/June 2017) requiring the Defendants to pay a reduced sum?

118. At [31-33] above I have set out the essence of what is called the June Agreement. Mr Williams submits that was not put to either of the Defendants in oral evidence and in addition John's reliance is misplaced as the June Agreement is bad on the facts and in law. His starting point is that the monies have been paid back and, if so, there is at best a common mistake.

119. Secondly Mr Williams submits that the terms were never accepted by the Defendants, there was no Tomlin Order – which he submits was the first condition precedent nor was CK's letter acknowledged – the second condition precedent. In summary, Mr Williams submits the terms were never accepted and if I find there were he submits – Issue 3 – that he has several arguments on the law, namely:

i) mistake,

ii) restitution and unjust enrichment,

iii) agent or undisclosed principal,

iv) illegality and

v) fraud;

any one of which would amount to a vitiating element requiring the June Agreement to be set aside.

120. First I will set out what appears in the contemporaneous documents, all of which are letters from John's solicitors to the Defendants. Under cover of a letter dated 28th April 2017 CK served the proceedings by post on the Defendants at Daniel's Farm. They then wrote on 9th May 2017:

> "We have today spoken with our client who informs us that, following meetings and discussions between you, an agreement has been reached as to the resolution of these proceedings. We are informed that you have agreed to pay our client the sum of £540,000, in settlement of this claim as follows:
>
> An immediate payment of £250,000.
>
> A further payment of £200,000 within six months of today's date...

> The said £200,000 to be secured by way of Charge over your property...Daniels Farm...
>
> We can inform you that we will be preparing a form of Tomlin Order to record this proposal which our client is prepared to accept, subject to the following provision that, if you fail to make any of the payments referred to in paragraph 1 and 2 above on the due dates, then our client will be able to enter judgment for the full amount of his claim, together with interest and costs, such costs to be assessed if not agreed.
>
> We ask that you kindly acknowledge receipt of this letter and confirm that you agree to the proposals in principle, so that the consent order can be drafted."

121. No reply in writing or otherwise was received by CK. On 16th May 2017, just one week later, CK wrote again, confirming no response and saying:

> "We can inform you that we recently met with our client and he informs us that on 10 May you varied the initial terms of the agreement in that you confirmed that:
>
> On 11 May the sum of £300,000 would be transferred to our client's account. We understand that that payment has been made.
>
> That you agreed to pay within 14 days of 10 May, namely by 24 May, the sum of £50,000.
>
> You further agreed to pay the balance of £100,000 within 2 months of 10 May, namely by 9 July, and in addition, agreed to reimburse our client's outlay in interest to Tower Bridging at the rate of £2,000 per month. Therefore a payment of £104,000 is to be paid on 9 July."

122. That letter concludes as the one of 9th May 2107 warning default will mean judgment being entered for the full amount "...as set out in the claim form and particulars." A further reference to preparation of a Tomlin Order is made plus conformation of receipt and that "...the above proposals are agreed."

123. No response was received but the next letter from CK dated 6th June 2017 states:

> "We have today spoken with our client who informs us that you have again varied the terms of the agreement with regard to settlement of these proceedings. We understand the position to be as follows:
>
> That you have paid the sum of £300,000 on 11 May as agreed.
>
> That you have paid the sum of £50,000 on or before 24 May as agreed.

> That you have now agreed to pay the balance of £102,000 on or before 9 June 2017."

124. As with the preceding letters of 9th and 16th May it concludes by stating failure to make the payment will mean John can enter judgment for the full amount as pleaded. The last letter in this sequence from CK is dated 16th June 2017. Unlike the other three, it is headed "**To be collected** C/o Paul Tibbs" (a son of the Defendants) and then "Mr and Mrs R and AL Tibbs Daniel's Farm...".

125. It states:

> "We understand that you have requested a further variation to the terms of settlement. We are advised that you wish to defer the final payment of £65,000, you having paid £35,000 of the £100,000 balance. You wish to repay the £65,000 within six months, namely on or before 8 November. In addition, you have agreed to pay interest in the total sum of £6,500, making a total payment on the 8 November, if not before, of £71,500.
>
> We can inform you our client is prepared to accede to this request. However, as before, should payment not be made as agreed, then our client reserves the right to enter judgment for the full amount of his claim, together with costs."

126. CK's next letter, date 21st December 2017 records that the Defendants were in default and so judgment in default had been obtained by Order of Deputy Master Hansen of 8th December 2017 which was enclosed, and that a disposal hearing would take place on 22nd January 2018. That Order provides for judgement in the sum of £301,000.

127. Next I turn to the evidence of the parties. Before I do so, I briefly set out my approach in law as to the witness of fact evidence for this and all other matters. I have in mind in particular the approach set out by Mr Justice Leggatt (as he then was) in *Gestmin SGPS S.A. v Credit Suisse and Anr* [2013] EWHC 3560 (Comm) at [15-21] and especially the basing of findings of fact on inferences drawn from the documentary evidence – see [22].

128. Mr Hardman also referred me to the guidance of Lord Justice Males in *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ at [48-49], and the approach taken where a general lack of documentary records heightens the importance of those that are before the court; Mr Tom Leech QC sitting as a Judge of the High Court in *Sidhu v Rathor and Anr* [2020] EWHC 1916 (Ch) at [19].

129. John in his first statement explains in some detail how Robert called him after service of the claim and asked to meet to agree a reduced sum in settlement. On a date John cannot recall Robert attended at his home with his two sons, who acted in a threatening manner. John's wife was there, but ill and John said he did not wish there to be any trouble, so he agreed to accept the reduced amount by instalments. He then says that he wished to speak to his solicitor first. Either way, the offer of Robert was accepted as recorded in the correspondence.

130. John then says after Robert received the letter of 9th May 2017, Robert contacted him and the terms were varied by agreement, as recorded in CK's letter of 16th May 2017. The same happened twice more as recorded in the letters of 6th and 9th June 2017, always conditional on the agreement being complied with otherwise default judgment would be entered, which he instructed CK to do when the final payment was not met by 9th November 2017.

131. Mr Hardman submits that Mr Gillan supports this in his statement of 27th February 2109. I am not so sure as Mr Gillan recites John's evidence and his firm's letters but does not say what of this he was told by John. That does not assist the Defendants however as that statement was made in opposition to an application by the Defendants for a freezing injunction and I have no reason to doubt in all the circumstances that the letters did record what John told Mr Gillan.

132. Curiously Robert did not address the June Agreement in his first statement of 19th January 2018. In his second dated 24th January 2019 he merely adopts his wife's evidence in her fourth statement and confirms it – which does not mention the June Agreement. Also he does not mention it in his fourth statement. I find this an extraordinary failure to deal with an important part of the claim and the reason for judgment in default being entered.

133. Ann in her first statement fails to mention the June Agreement but in her second dated 24th January 2019 accepts receiving letters from CK between May and November 2017. Then at [15-16] she says they engaged with John and that Robert was talking to him and trying to settle the monies owed at the time, and that there were many meetings.

134. Importantly, at [17] she said

> "It is right that the Claimant agreed to accept the amount as set out on 9th May 2017. It was thrashed out at £450,000 as that was what my husband had been (dishonestly) told what was owed."

She does not mention the three variations nor refer to the payments they made to John. Ann does not mention the June Agreement in either her third or fourth statements.

135. But in her fifth statement some six days before trial at [15] she rejects the claim "...was compromised...It is utterly outrageous to consider that it can be right....In any event the purported compromise is fraudulent and dishonest..."

136. Ann continues by saying she did not countersign CK's letter and that no Tomlin Order was received or signed. There is a glaring lacuna in her and Robert's evidence; the payments made pursuant to the June Agreement.

137. In oral evidence Ann changed her position again – she said she had nothing to do with the June Agreement and (as appears correct) "I wasn't at no meetings – meeting actually."

138. Paragraph 17 of her second witness statement ([134] above) was put to Ann. She was asked if she accepted what she had been told namely there was an agreement to repay £450,000. Ann merely corrected the figure to £438,000. Then Ann said the agreement "...was just said verbally". She was told it could still be an agreement. She then reverted to her original position that they had entered into the June Agreement and she left the matter of repayment to Robert.

139. John was not challenged on his evidence as to the June Agreement in cross-examination. Mr Williams is, as appears above, mistaken in saying the June Agreement was not put to Ann. But Robert put forward no alternative factual case; he merely adopted Ann's statement and she was not at the original meeting as she rightly accepted. In summary, Robert and Ann initially accepted they agreed to compromise but as time went by increasingly sought to distance themselves from that, albeit that finally in her oral evidence Ann did say there was an agreement to accept £438,000.

140. I find that John did agree with Robert to accept £450,000 to be paid in instalments in settlement of his claim, at a meeting at which Robert went to John's house, accompanied by his two sons. I accept John's account of that meeting and the subsequent variations as to payments and instalments as set out by CK.

141. I find that for these reasons:

i) John's account was not challenged in cross-examination, and no alternative case was put to him;

ii) it is inherently probable that the CK letters record what was agreed and I place substantial weight on four contemporaneous, detailed and carefully written letters from a solicitor who acted at all material times for John in this matter;

iii) the oral evidence of Ann confirms there was such an agreement, albeit she was not at any of the meetings;

iv) that conclusion is supported by the payments made pursuant to the June agreement as also recorded by CK in those letters, some of which Ann admits to receiving;

v) neither John nor Ann ever disputed those payments, by them, pursuant to the June Agreement, and both experts find those sums were paid on the dates concerned;

vi) the existence of the June agreement is logical, probable and supported by all the contemporaneous documents – both solicitors' letters and bank transfers and

vii) the Defendants had many months in which to dispute the June Agreement during which time they were legally represented. Robert's failure to do so appears to have been a deliberate decision.

142. There are some additional arguments submitted by Mr Williams that I will briefly address. I see no need to set out the law as the principles are well known. First, the so-called conditions precedent; Mr Williams echoes Ann in saying no Tomlin Order was

ever provided setting out the terms, which is correct. But in no sense was this a condition; there was a statement by CK that the terms would be set out in one, which comes nowhere near being a condition precedent nor could it be on the simple language of the CK letters. The like applies for the same reasons to the further reference to a Tomlin Order.

143. Next Mr Williams submits that another condition precedent was that the CK letter of 9th May had to be acknowledged but it was not. Again that could not be a condition precedent on the simple language of that and the other letters. The CK letters recorded the oral agreement as varied by John and Robert. Those letters must on the balance of probabilities have been received; indeed Ann admits to receiving an unspecified number.

144. Mr Williams also submits that the terms had to be accepted by the Defendants, and they were not. Again I cannot accept his submission as:

i) this factual position was never positively put forward by Robert who was at the initial meeting (the existence of which he did not even deny);

ii) the CK letters record the variations which all are logical, inherently probable, clear and certain and importantly

iii) the Defendants made payments pursuant to the terms as recorded by CK.

145. In my judgment, a series of binding compromises were agreed by John and Robert as recorded in the CK letters. Those letters were on their face not entitled to the "Without Prejudice" privilege as they were not written in a genuine attempt to settle an action either pending or in being as the letters recorded what had been agreed; they did not make offers and counter-offers.

146. If I am wrong as to that and these letters were properly described then as I have found there was a binding compromise it is trite law that the protection of the privilege falls away and these letters are to be regarded as written on an open basis. The Defendants did not pay the final instalment of £65,000 by 6th November 2017. Accordingly, default judgment was entered for the whole amount due as pleaded in the PoC.

Decision: Issue 2

147. My answer to Issue 2 therefore is that the June Agreement was a binding one, but that it did not arise from letters wrongly described as being "Without Prejudice"; it arose from a meeting between John and Robert which was subsequently varied by oral discussions between them either face to face or on the telephone, by which a reduced sum was to be paid and in default, as happened, John was entitled to enter judgment for (as appears in two of CK's letters) "...the full amount ...as set out in the claim form and particulars."

148. Mr Hardman submits twice in his written closing submissions that the Order of Deputy Master Cousins setting aside the default judgment should itself be set aside, and judgment entered for "...the outstanding balance on the Claim Form...less [repayments] plus compound interest at 2% per month." As appears below I do not accept that and so now turn to Issue 3.

Issue 3: Whether the June Agreement should be set aside as a consequence of any vitiating element?

149. First, I am unsure as to whether Mr Hardman does mean judgment should be entered on the basis of the Claim Form alone, which merely pleads "Repayment of moneys loaned to the Defendants by the Claimant" and under "Value" states "£688,000 together with interest accruing at £11,000 per month" , thereby ignoring the PoC.

150. Here, I do not consider that is possible in view of the substantial deficiencies, omissions and inaccuracies in the PoC; it would amount to a substantial injustice to allow judgment to be entered in these circumstances. The PoC, which were not drafted by Mr Harman, lack specific detail as to dates, interest rates and especially the terms of the various loans. It fails to give credit for the substantial repayments of just over £500,000.

151. Examples of these inadequacies include:

i) CK's letter to Mr Narula of 8th August 2018 (16 months after the issue of the claim) states "...there may be one or two slight errors with the dates of the loans...";

ii) the lack of precision in [11] which pleads "The Claimant...paid to the Defendants £260,000 or thereabouts.";

iii) the unevidenced claim in [13] that "...this further lending amounted to £200,000." Mr Narula in his first report at [16(b)] said he had "...not been provided with sufficient details to...comment...upon this aspect.";

iv) the further concerns Mr Narula has as I have set out at [99-105] above;

v) the like criticisms by Ms McKenna which I set out at [106-112] above and

vi) most importantly, the wholesale failure of the PoC to acknowledge substantial repayments had been made and give credit accordingly.

152. These inaccuracies go to the heart of the claim and are due to the substantial passage of time, fading memories and lack of contemporaneous documents. Indeed, Mr Hardman accepts that the Particulars of Claim is especially poor as in response to my criticisms during his opening he emphasised that I was hearing an account and inquiry as provided in the Order of Deputy Master Cousins, before the Defence had been served on the basis of witness statements limited to the identified issues, and not a Part 7 claim with the Particulars of Claim as the starting point.

153. Further, in his closing submissions at [15] commenting on the pleaded matters not having progressed from the original position Mr Hardman said that it would not "...be proper to tie the Claimant to his pleaded case." Mr Hardman criticises at some length the Defendants for having strayed into error by focusing on the pleadings, saying that this is a text-book example of why accounts/inquiries should not be ordered where there are serious factual disagreements, so much so that this "mission creep" has resulted in it becoming a Part 7 claim by the back door.

154. Mr Williams, likewise and at length, sets out why he considers the PoC bear no resemblance to the Claimant's case as currently advanced. In his cross-examination of John he did expose numerous errors in the PoC as pleaded, which, he submits, mean John's claim ends there. Mr Hardman also submits in his closing submissions at [18] that if he fails on Issue 2 or Issue 3 the matter should be remitted back to a case management conference with further directions, to include pleadings, but later seeks determinations of factual matters as to capital and interest which he submits is due.

155. There is some force in what both Mr Hardman and Mr Williams say. However, notwithstanding the difficulties in hearing this hybrid account, inquiry and Part 7 trial, I will not accede to the courses of action they suggest for these reasons. First, no action by way of an application to say vary the Order of Deputy Master Cousins or to otherwise provide a more efficient resolution of this dispute has been taken by either side over the very long course of these proceedings, in which there have been numerous hearings.

156. Secondly, it would not be in accordance with the Overriding Objective nor proportionate to refer this claim back for further directions/trial, as it would require yet more time and resources of this court and the parties- especially as to costs. Thirdly, it would not be proportionate in view of the size of the claim and the issues in dispute, as the parties have had the opportunity to give over the course of five days their evidence.

157. Fourthly, I am satisfied that I have heard the witnesses fully on all the Issues and likewise counsel so that there is no risk of injustice due to the form and nature of the hearing. Fifthly I am satisfied that the documentary evidence is not lacking in any important area which could affect my determination (or not) of the Issues. Sixthly, I am also satisfied that the experts have done as much as is possible in difficult circumstances and neither party took advantage of the opportunity to cross examine the opposing expert.

158. Counsel have made extensive closing submissions (approximately 100 pages each) and I have full transcripts of the trial. The claim and counterclaim have been fully heard but on a somewhat fluid basis.

159. The claim is not premised on, as Mr Williams submits "...complete and utter accountancy chaos." In summary, the PoC are deficient for the reasons I have set out above but in all the circumstances I consider a fair hearing has taken place and it is neither necessary nor proportionate to hive off any or all of the matters before me, save precise calculations of interest on the numerous loans which I will come to.

Decision: Issue 3

160. I do not need to determine whether the June Agreement should be set aside as a consequence of any vitiating element, as for the reasons I have given, the PoC are so deficient that it would be unjust and wrong to permit a default judgment to be entered based as a consequence of breach by the Defendants of the June Agreement. For the avoidance of doubt, the like applies to the Claim Form. I therefore turn to the remaining issues.

Issue 1: The monies loaned by the Claimant to the Defendants between 2010 and November 2017 and the sums re-paid by the Defendants to the Claimant. In particular, the court is required to determine whether, as a consequence of any agreement between the parties, any sums remain outstanding to either party?

161. My starting point for this Issue is the Joint Report, and I will address and determine the issues noted as "Court to Decide" in the final column and set out the payments that have been agreed. I have also found some 12 pages of loans and repayments which are entitled "Claimant's Amended Schedule of Loans and Repayments" ("the Schedule") prepared by Mr Hardman to be of assistance which is attached to this judgment as Annex 2, to be read with the Joint Report.

162. I make my findings with my above assessment of the witnesses and the difficulties that the experts laboured under very much in mind. The former meant that I cannot place much if any reliance upon the memories of each of John, Ann and Robert save where I have indicated otherwise especially as the figures put forward by Mr Narula frequently are based on instructions from John's legal team as became clear in his oral evidence, when he referred to them on questions of detail for many factual matters concerning loans and repayments. I do not mention it in each single instance below but the burden of proof is upon John to prove each loan on the balance of probabilities.

163. **Issue 1 - Cheque payments**. These are claimed as a total of £77,000 lent over the period 6th November 2006 to 30th September 2011 in 16 separate amounts which are listed in the Schedule. The first cheque is for £500 for "R.Tibbs" which Robert denies. There is no other evidence of this, which is unsurprising in view of the fact it was allegedly lent over 19 years ago. In the circumstances I cannot find that this sum was lent.

164. Next is a loan to Ann dated 18th June 2010 recorded in a paying in book in the sum of £25,000. John says this was to erect stables at their farm. Robert initially said it had been repaid and he had not heard about it in years. Subsequently this was included in the blanket denial by the Defendants. There is some documentary evidence namely the first (of two or more pages) of a letter to John from his solicitors, Crellins, dated 19th April 2010 as I set out in some detail in [8&9] above.

165. However by letter dated 2nd November 2011 Crellins state the charge over the (unidentified) property has been removed. John says this was because Robert's son asked him to remove it as it was hampering some other transaction. The Defendants say if those monies were lent the removal of the charge shows they were repaid. Again I find John has failed on the balance of probabilities to prove these monies remain outstanding as the evidence is uncertain and inconclusive.

166. Item 3 on the Schedule is a cheque to Ann dated 17th May 2011 for £7,500 which John says he provided to help the Defendants pay their household bills. This has been found by Ms McKenna as having been paid into an account belonging to Ann and so I find this sum was provided to her then. I also accept John's evidence that this was a loan.

167. Items 4, 7, 8 and 12-16 inclusive are all noted as "Cash Mick" or "Mick" over the period June-November 2011 and total £26,000. The Defendants deny receipt of these

amounts. As I have stated the lending of large amounts of cash quite a few years ago unsupported by contemporaneous documents is inherently difficult to prove. I have set out in some detail at [52-58] above John's evidence, which in summary was that he could not recall the individual payments.

168. Further, as I have explained, Mr Narula based his summary on a schedule prepared by Dean Smith, who did not give evidence. Even if he had done so, I do not think it would have assisted unless it went directly to him handing the cash to Robert. In view of my findings as to the fallibilities of John's memory I do not find that these sums made out to "Mick" and paid in cash actually went to Robert.

169. Item 5 is a cheque for £2,000 with no payee dated 18th July 2011. Robert denies receiving this sum. Again for the above reasons there is insufficient evidence to establish that this amount went to Robert. Item 9 is noted in a paying in book as £5,000 to "R.Tibbs" on 13th February 2011. John says he lent Robert this money to pay for expenses Robert had on Daniels Farm. Robert denies this. I again find that the evidence is again insufficient to prove this amount was advanced by John to Robert and as a loan.

170. Item 10 is a loan John says he made in the sum of £2,000 on 13th February 2011 to Robert so he could buy a truck (according to the Schedule) or for a holiday for Robert's daughter Laney (according to the PoC, paragraph 5). Again the evidence is insufficient and John has failed to prove this amount was advanced to Robert.

171. Item 11 is a payment recorded in a paying book for £3,000 dated 24th February 2011 made out to "R.Tibbs." In the Particulars of Claim this is said to be a loan for the purchase of a truck requested by Robert in January 2011 and paid one month earlier on 24th January 2011. This has been denied by Robert but Ms McKenna found that a cheque for £3,000 cleared on 27th April 2011 into an account held by Ann. She opines that is inconclusive without third party evidence namely the cheque itself to evidence it being cashed and the identity of the account and its holder.

172. In the draft Defence and Counterclaim at [6] this amount is admitted as received on 1st March 2012 but it is neither confirmed or denied that this sum came from John. I find that notwithstanding the passage of time John did advance this sum to Robert; it is inherently likely on the balance of probabilities.

173. In summary, as to issue 1 on the Scott Schedule, I find that of the total of £77,000 allegedly due John has proven that he lent the Defendants £7,500 and £3,000, a total of £10,500.

174. **Issue 2 – Bank Transfers Katie Tibbs to Robert Tibbs.** These are agreed by the experts in the sum of £63,000. Ms McKenna says under her heading "Smaller Transactions" that all of them were identified by her and agree with those listed in SN1. At [5.8] she states that of the £29,000 alleged to have been lent as set out in paragraph 16 of the PoC, there is evidence that £24,000 was lent, but that the remaining £5,000 could not be identified. She then states at [5.9] a further £39,000 of payments from John to Ann were identified which were not in the PoC. That totals £63,000.

175. This series of payments however is said by John to be monies advanced by TBL to John at his request which he then on-lent to Robert at his request via Katie's bank account. In view of the ramifications as to interest, I refer further to this below.

176. I should mention for clarity that the individual payments that amount to £63,000 appear Annex 2 in the Schedule in the Second Phase (1) as loans for £5,000 and £4,000 dated 15th September 2015 and 21st October 2015 respectively, plus under Second Phase (2) a total of £54,000 in 10 payments over the period 11th November 2013 – 29th April 2015.

177. John at JT/2/14 dated 28th March 2018 says: "The Defendants often did not have the funds to meet the interest payments. They would then ask that I obtain further loans from Tower Bridging in order to meet the interest payable on previous loans. It is for that reason that there is a discrepancy in the amount received from Tower Bridging and the amount transferred or paid to the Defendants. I will attempt, prior to the hearing, to produce a schedule of the transactions in order to explain the operation of the account."

178. This quotation also demonstrates how the Particulars of Claim could not have been accurate as in this statement some eleven months after the Particulars of Claim the figures were still uncertain. Further, even by 10th December 2018 at the hearing before Master Bowles the claim was far from clear. Master Bowles was shown the report of Mr Narula and its schedules, but he emphasised the need to comply with the procedure ordered by Deputy Master Cousins as otherwise "...it will be the purest chaos because nobody will know what the heck the court has to decide". That, and the weight Master Bowles placed upon the need for simplicity, led to John's fourth statement of 3rd January 2019 to which he exhibited an early version of what is now Annex 2 to this judgment.

179. As the constituent parts of the total £63,000 were advanced after the main loan of £260,000, I set out my findings of fact at the end of what the experts call issue 3 in [197] below.

180. **Issue 3 - Payment to Defendants of £260,000.** It is agreed that this amount was paid over to Robert from Katie's account. Whilst this advance is admitted, it is the most contentious matter between the parties. I therefore need to make findings of fact in relation to the borrowing, disbursement and in due course interest in relation to this sum.

181. John only sets out his full case as to this – and many other matters – in his fifth statement which he made on 12th February 2020, just 3 clear days before trial – together with statements of Katie, one Ledy Walton (who was not called) and Jason Ferrando. For completeness, each of Robert and Ann made statements that day as well, as did one Stephen Ridley (also not called).

182. John's fifth statement is his longest – at 15 pages – and sets out a level of detail that does not appear elsewhere in his evidence. It also verges on a stream of consciousness as it is his thoughts on a series of factual matters in contention. It does appear, in the main, to be in his own words, which is commendable compliance with CPR PD32.18. This contrasts with his fourth statement dated 3rd January 2019 which is clearly drafted by a lawyer to exhibit and produce to the court SN1, in very different

language, clearly not that of John, for example referring to payments "...made pursuant to the discussions I had with the first defendant which are documented in letter from...".

183. John explains at JT/5/26 onwards how Robert had had for some 20 years a bakery in Gibraltar. John says Robert turned up at his house on a day in March 2014 unannounced with his son Paul. The three of them went into the front room. No-one else was in there with them. A car park was for sale which Robert said he needed to purchase so he could build a hotel. Robert explained he would only need a loan for 6 months as once he owned the car park he could borrow £1 million to build the hotel. Robert reminded John how TBL had refused him a loan in the past, so as John put it "...the basis for the conversation was that Bobby [Reading] had refused him money and was coming to me."

184. John says this at [30]:

> "I remember saying something like this to my Maureen. "Get me the phone book Maureen and phone bobby reading." I put Bobby on speaker phone and I said something like this. "I've got my brother Robert and his son Paul – do me a favour and end them that money that they want." Bobby said they are in conflict with the council. I said do me a favour and he said he can't. He then said something like "I do them a favour to you but can only lend them £50,000." As Bobby was saying Paul and Robert are waiving at me saying it is no good. Bobby then said to me that he could lend against my house. He asked me how much I wanted. I said "two". Robert and Paul were waiving their hands saying no, and I put a hundred grand on it and that's how we worked it out. Bobby then said he would speak to Jason and get it sorted. I said when can it be ready, and he said Jason will phone you. When Bobby was on the phone, they knew how much it was going to be (i.e. the interest) because they already know, I am getting the loan on their behalf and they are going to pay me back everything owed to Bobby and Tower Bridging. They had tried to get a loan from them anyway and knew the rates."

185. John says Robert and Paul then left. The day after, Jason Ferrando called him, they discussed the figures, including that TBL would in accordance with its usual practice deduct the first 3 months interest of 2% per month. John was told the money would be in Katie's account (as John had shut his business account) the following day. On 11th March 2014 £282,000 was paid by TBL into Katie's account. Then on 13th March 2014 Katie transferred £260,000 to the joint account of the Defendants.

186. John says next Robert called him and asked why he had only received £260,000. John told him that TBL had deducted 6 months interest, not saying that he had added 3 months interest as security for himself. In cross examination John said

> "And the £6,000 was TBL stock three months, I stock three months, because he said he wants it for six months and it come

> to £264 grand, I gave him four grand in readies and £260,000 I've passed over."

187. John was cross examined at length as to the borrowing from TBL and his payment of interest at 2% per month, but maintained his account despite the substantial pressure applied by Mr Williams – who, I should add, was cognisant of John's health and balanced putting his case with sufficient force with that concern. John was clear that the agreement he had with Robert was repayment in six months and that Robert had to reimburse him the interest he had agreed to pay TBL. At one point John explained:

> "... because I was told it was going to be paid back in six months. It was two and a half years… who lends £300,000 for nothing? Who lends £300,000…He had to pay something. He had to pay me back something so I could pay them."

188. John's account of what happened at the meeting in March 2014 at his house was not challenged in cross examination. Robert makes no mention of it in any of his four witness statements, although I do appreciate that the above detailed account only came out immediately before trial in the circumstances I have set out above. Some considerable time was spent on this meeting during Robert's cross examination.

189. This exchange took place:

> "Q Well, let me ask a more specific question. In this statement you don't refer to the agreement -- you don't talk about the agreement that took place in March 2014, do you? You don't say anything about that here, do you?"
>
> A No. If it's not in there, I don't, what you're telling me.
>
> Q And you don't mention the words that were used. That's correct, is it? You don't discuss the conversation that you had with your brother in March 2014 in this witness statement, do you?
>
> A If it's not in there, it's not in there.
>
> Q And you don't mention that your son was also in attendance in March 2014. You don't say that in this witness statement?
>
> A Say that again and talk a bit slower, please, Mr Hardman.
>
> Q Sorry, I have that horrible habit of speaking too fast. I am conscious of time. You don't say in this statement that your brother -- sorry, your son was in attendance in March 2014, with you, do you? When I say March 20----
>
> A Attended with me?
>
> Q Yes. With John----

A When I went to his house?

Q Correct. You don't mention that, do you?

A I don't -- all right, yeah, I didn't.

Q And you don't even mention that you went to John's house here, do you?

A If it's not in the statement.

Q And you certainly don't mention any -- the fact that your wife was in attendance on the telephone and spoke to the claimant in March 2014. You don't mention that, do you, in this statement?

A If it's not in the statement, if you say so."

190. Robert did accept the transfer of £260,000, but not that interest was deducted:

"Q So what this shows is that on 11th March 2014 a sum of £282,000 was paid from Tower Bridging into Katie Tibbs' account. You can see that, can't you?"

A Correct, yeah.

Q And you accept, do you not, that you received £260,000. That's correct, isn't it?

A Yes.

Q From Katie Tibbs?

A I believe so.

Q And do you accept that the money -- the difference between the 282 and the 260 was retained by the claimant for interest payments?

A No.

Q That's correct, isn't it?

A No, I don't accept that at all."

191. The key differences which emerged were twofold; first Ann said she was telephoned by Robert when he was at John's house. In her oral evidence she said:

"His brother John said to him, "I've heard that you're in a bit of trouble financially, I'm going to help yous out". Right? So then Robert phoned me up and he went "Hello Ann", he says,

> "I'm with John". He said, "I'd like to have a word with you". I went, "All right". John got on the phone, he said, "Hello Ann", I said, "Hello John", and then he said to me, "I've just been saying to Robert I've heard yous are in a bit of trouble financially and I'm going to help yous out". I said, "Oh thanks, John", I said, "I can't thank you enough, that's really kind of you", and he said, "That's all right, I'll put you back on the phone to Robert". Then Robert got on the phone and he said, "That's good of John". I said, "Yeah, it is really good of him". I said, "I just couldn't thank him enough". And that was it. And the money was received the following day.
>
> Q You are saying that you spoke to John
>
> A Yes.
>
> Q on 12 March 2014?
>
> A Yes, yes, I did.
>
> Q You do not mention that anywhere within any of your four or five witness statements?
>
> A Well, I did.
>
> Q But it is correct that you do not mention that anywhere. That is the first time anywhere in these whole proceedings that you have said that you spoke to John on 12 March 2014; that is correct, is it not?
>
> A Yes, I did. Yes, I did.
>
> Q It is correct that that is the first
>
> A That is correct. I'm under oath. I'm sorry it's not in my you know, in my bank witness statements, the last three years and nine months, I've had quite a (inaudible), you know. I'll leave that for my defence."

192. But later Ann changed her account that the monies were provided as a family help-out by John to Robert. First she said John called her from the meeting whereas, as emphasised in the quotation above, she initially said it was Robert. However I do think that was a minor variation in her account. What came out in her oral evidence bore at certain times little resemblance to her fourth witness statement where at [6] she merely said that she and Robert accepted "...only £260,000 was received with regard to 13 March 2014".

193. A more substantial change took place later when Ann denied having any dealings with John; which was her original evidence namely that she had no involvement in the meeting regarding the March 2014 loan, which I accept.

194. The second difference was that Robert in his oral evidence said that John wanted to be in on the deal, meaning the property development in Gibraltar. This exchange took place:

> "ROBERT TIBBS: Yes, yes, he wanted to be in on the deal. "
>
> MR HARDMAN: (To the witness) And, Mr Tibbs, you don't say that anywhere in your four witness statements, do you?
>
> A Sorry. Sorry if I ain't said it.
>
> Q And that's the first time you've mentioned it in over two and a half years of litigation. That's correct, isn't it?
>
> A Well, we never had a chance. You've held it up for nearly 10 years, messing us around."

195. And then:

> "Q About the -- your money that you received, the £260,000. There was obviously a discussion about it, wasn't there?
>
> A No, there wasn't -- it wasn't done like that. He -- he -- he made the phone call -- he said: "I'll throw a few quid in with that with ya". Right? And he made a phone call to Ann, and said: "I'm going to help yous out". The next day we received £260,000. We didn't know how much he was going to throw in at the time."

196. I prefer John's account of the March meeting and the surrounding circumstances for these reasons:

i) he is consistent both in his statements and in his oral evidence;

ii) it is corroborated by the contemporaneous documents such as, in part, Halletts' (then solicitors for the Defendants) account in their letter of 5th December 2016 - see [27] above, and also the documentation from TBL as to the disbursement of the loan;

iii) it is inherently probable in the above circumstances – especially as to John saying he would borrow £300,000 for Robert but Robert would have to in effect indemnify John against the interest John had to pay to TBL – see [182] above;

iv) the failure of Robert to deal with this loan from the very outset;

v) Ann's change of position to suit what she saw as her interests and

vi) the clear attempts by both Ann and Robert to give whatever explanations they thought would help them especially as to the payment of interest.

197. I therefore make the following findings of fact:

i) at a meeting at John's house in March 2014 Robert accompanied by his son Paul asked John to obtain a loan from TBL for £300,000 for six months to fund Robert's Gibraltar property development;

ii) John did not ask to participate in the development by lending money at risk for a share of profit;

iii) Ann was not involved and nor was she telephoned by anyone on that day;

iv) Robert knew that TBL charged 2% per month on advances made by them (from past experience – see [7-8] above) and that he would have to pay interest at this rate specifically here for the six month loan so as to cover his brother's exposure to TBL;

v) TBL were willing to advance the monies to John (but not Robert) as he had a good repayment record with them and they already had an all-monies charge in place on his property;

vi) Six months' interest was deducted in advance – three months by TBL and three by John, but he said to Robert that TBL had deducted all six months;

vii) so the Defendants received, on 13th March 2014, the sum of £260,000 by bank transfer from Katie to them and Robert received on or about the same day £4,000 in cash from John (as six months interest on £300,000 at 2% per month is £36,000 but £40,000 was deducted from the transfer);

viii) the sum that Robert was due to pay John on 13th September 2014 was £300,000 and

ix) John was to pay TBL £318,000 as just three months interest had been deducted by TBL.

198. As to Issue 2 and the agreed transfers of £63,000 I accept John's evidence (1) set out at [177] above that as Robert and Ann did not have the funds after six months to repay the capital nor to meet the interest due they asked John to borrow more money from TBL to pay that interest and (2) further expanded upon by John in his fifth statement as appears at [202] below for these reasons:

i) it was unchallenged;

ii) it is inherently probable in circumstances where it is clear (and admitted) that the Defendants were not making the interest payments when due;

iii) it is supported by the contemporaneous documents namely those of TBL and

iv) it logically continues John's approach of keeping his personal finances separate from his lending to the Defendants all of which was conducted through Katie's accounts.

199. I therefore find:

a) the Defendants failed to repay the capital of £300,000 due on 11th September 2014;

b) they – I think Robert alone - asked John to borrow further monies from TBL on their behalf to fund missed interest payments which John did;

c) those advances went through Katie's bank account(s) and

d) the transfers of £63,000 were sums advanced in this way.

200. **Issue 4 – Payments of more than £1,000 cash assumed to be loaned to the Defendants.** In the Joint Report Mr Narula says "Exhibit SN/13 lists £107,550 ...as per my instructions only." Ms McKenna says she disagrees with this sum entirely. I therefore need to consider the evidence relating to this series of cash withdrawals.

201. In Annex 2 these cash advances appear under Second Phase (III) and consist of 30 cash withdrawals from a NatWest account ending 439 in the name of Katie from 10th March 2014 to 21st November 2016, for a minimum of £1,000 and a maximum of £5,500, totalling £98,500. In addition, there are three further withdrawals from a different NatWest account ending 112 in June, September and December 2014 for a total of £9,050 making a grand total from both accounts of £107,550. Only cash withdrawals of over £1,000 are said to have been given to Robert.

202. At JT/5/36 made on 12th February 2020 John says

> "The next time he [Robert] came to see me in respect of the development was about six months later. I was still paying him cash periodically between then but on other things. I phoned him up a week before the £260k was going to be due. I told him that the money has got to be paid back. He said he would come and see me..[and]...told me he had hit one or two problems and needed more money to pay the bills in Gibraltar...I knew I had to see it out. A penny for a pound. If I didn't keep supporting him for additional funds and paying off his interest in the meantime, then he would go down and I would never get the money back. All the money from then was borrowed from Tower Bridging was either to provide a further loan to Robert or pay off the interest of £6,000 per month that he initially owed me, save for one loan. I think the expert has called this loan 11."

203. Ann at AT/4/5 dated 24th January 2019 said this:

> "However, we are unable to be any more specific about cash payments received other than to agree that we received £50,000 in cash payments between 2013 to 2015. We cannot assist any further as to the breakdown provide by the Claimant with regard to what he says were cash payments paid."

Robert supports this at RT/2/2.

204. Ann at AT/5/11 accepts on her and Robert's behalf:

> "…that at the time cash flow wise and financially we were all over the place. We did not have a proper book-keeping system, we wish we had. The whole project in Gibraltar was under resourced and under financed."

205. John also in his 5th statement made on 12th February 2020 at [39] said Paul and Robert came to his house at some time after August 2016 and:

> "I said to Robert he had leant me cash (sic). At this point Paul said you to his father (sic) something like "you ain't borrowed no fucking cash from him have you dad." This was Paul being the Guv'nor here. Robert said, yes, I have. I've borrowed £50k and I said it's a lot more than that...this is where the £50,000 figure has come from. My brother has just plucked this figure from the top of his head... He hasn't kept any records...Every cash withdrawal over £1,000 was done on the demand of Robert."

206. Katie in her statement said she agrees with her father's statements and those of Jason Ferrando. She confirms how she assisted John in receiving loan monies from TBL and forwarding these to the Defendants and receiving from them interest payments which she would pass to TBL.

207. At [4] she says:

> "In respect of the cash payments, Dad would call up in the morning when cash was need for Robert. This started around March 2013. Robert would either get on the phone or at his [corrected in cross examination to "my"] parents' house and he would give me the figure I needed to withdraw. I would have an hour to get it or so."

208. Then at [5]:

> "I wouldn't have to withdraw the money unless I received a phone call from my Dad. The phone call was always done by my dad. I would always go to the bank that day. Robert wouldn't wait around. I only live 5 minutes from my father, so it was never a problem for me. I would travel to Orpington NatWest and withdraw cash and then would drive to my fathers' house and would always see Robert there."

209. In cross examination her statement at [4] was put to her but only the correction at [200] above. Mr Williams concentrated on [3]. Then in re-examination Mr Hardman asked Katie to explain what she meant in [4]. She said, after re-reading it:

> "To me, that's got nothing to do with Jason Ferrando as far as I am aware...So dad would say to me, for example, "Kate, Robert's here, get five grand out. Get it round here now please" and I would obviously do the whole moaning situation, "You can't just do this, I'm at home." I'd eventually get it within like

> an hour or so and I would take it round. 95 per cent of the time if I didn't give it to Robert himself I gave it to my dad's hands, but I can 100 per cent clarify Robert was always present in the front room and Robert alone with nobody else."

210. The latter point emphasised the end of [5] where Katie, having described the process of travelling to the bank said:

> "There was no one ever else there because presumably Robert didn't want anyone to know that he was getting cash from the family. Paul was never there and neither was Ann. I don't think they really knew about the cash payments."

211. In her oral evidence Ann said John had told Robert that £50,000 had been borrowed in cash but accepted that the dealings were just between John and Robert. Ann's evidence is no more than hearsay, as she has repeated what Robert has told her. I do not think it takes the matter any further. Robert does not put forward any evidence as to how he arrived at this figure. His oral evidence did not assist. What does appear to be agreed is that cash payments were handed over to Robert and the only other persons present were John and Katie.

212. The experts in the Joint Report under Issue 4 are not able to assist. Mr Narula refers to his exhibit SN/13 which "lists £107,550 covered under this category and are per my instructions only". Ms McKenna says she

> "...disagrees with the inclusion of this value entirely. There is insufficient evidence to show how these items were loaned to RAT and they have been included entirely on the basis that cash of over £1,000 has been withdrawn from the bank of the Claimants. No further evidence has been provided to link the cash withdrawals to the Defendants."

213. The Joint Report is dated 24th January 2020. It would not be assuming too much to view the statements of John and Katie dated 12th February 2020 as being prepared, at least in this respect, to cover a gaping hole in John's evidence, especially as, unsurprisingly, this does not appear in the discredited PoC.

214. Covering that evidential gap is clearly essential for John to prove his claim. Further, here there is the unchallenged documentary evidence of Katie debiting her bank account for numerous amounts of cash, as collated in SN/13, which is also set out in Second Phase (III) and (IV) of Annex 2.

215. I have approached Katie's evidence cautiously for these reasons:

i) she is far from independent especially in view of the enmity between her and Robert's family;

ii) she (and Dean Smith) owed money to John which appears in his manuscript notes both for loans and rent so both were under an obligation to him;

iii) she cannot depose to each or any individual cash payments made to Robert and

iv) claiming that all payments over £1,000 were for Robert was not her evidence.

216. However, as I stated in my summary of her evidence I found her to be truthful and direct in her oral evidence. She was quick to accept it and apologise if she made an error. Her memory was not impaired by age or infirmity. She did not need to say that a factual matter was not known to her and that her lawyers/expert should be asked (as John often did) nor when questioned as to matters which happened but she had not set out retort that if it is not in the statement then it is not there (as Robert frequently did).

217. Her bank statements as they appear in the evidence do cause me some concern. A total of 37 pages from two of her bank accounts are exhibited to John's second statement dated 28th March 2018. At [14] John says he attaches

> "...copies of my daughter's bank accounts into which the loans from Tower Bridging were paid and subsequently transferred to the Defendants. In addition, these statements also record the monies paid by the defendants by way of repayment of interest, which was then passed on to Tower Bridging. The Defendants often did not have the funds to meet the interest payments. They would then ask that I obtain further loans from Tower Bridging in order to meet the interest payable on previous loans. It is for that reason there is often a discrepancy in the amount received from Tower Bridging and the amount transferred or paid to the Defendants."

218. CK's letter of instruction to Mr Narula is dated 8th August 2018. The enclosures include at item 2 "Copy Witness Statements". CK state:

> "...any monies leant (sic) to Robert and Ann in the from of cash came from monies paid out of [Katie's account...] [she] has two accounts [with NatWest ending 439 and 112.] It was from account ending...112 from which the cash payments were made. Any large sums being withdrawn from the account in the from of cash were given to Robert and Ann"

(my emphasis - there is no mention of £1,000 or any other sum).

219. I acknowledge that CK's letter is not in itself evidence but it is a letter of instruction which directly led to the expert evidence of Mr Narula. My concerns here are two-fold; first there is no reference to sums over £1,000 or any other figure and secondly the account the monies came from – CK say it was that ending 112 from which the cash payments were made but that is incorrect; only £9,050 came from that account and the balance of £98,500 from account 439.

220. I also have concerns over the 37 pages of statements for accounts 439 and 112 exhibited by John as I refer to at [217] above. First, there are many missing pages. For account 439 there are 20 pages for the period 11.02.14 to 21.11.16, of which 15 have been produced. For account 112 for the period 01.01.12 to 21.11.16 there are 152 pages of which 21 pages have been produced.

221. Secondly, there are on every single page substantial redactions with no explanation from Katie or John (as he was using her accounts) as to why. Those redactions remove most entries. For example on sheet 10 for account 439 for the period 08.12.14 there are 24 entries. One debit was included but then redacted.

222. What is left is one payment from Ann of £5,000, receipt of £25,000 from TBL and a withdrawal of £2,000, albeit very difficult to read. The latter does appear in the schedule of these cash loans as item 18 on 17.12.14 on page 8 of Annex 2. The balance starts on 08.12.14 at £26,280.55 and by 10.12.14, by 9 transactions, has reduced to £4,030.55. The balance on every one of the following 10 pages has been redacted. Account 112 is similar, save the balance on every single page has been redacted.

223. These are very busy accounts. For example, over the ten day period 01.07.14 to 10.07.14 there were 38 transactions. The listing of cash withdrawals "on instruction" combined with the redactions and missing pages does not engender confidence, albeit that Mr Williams has not raised such concerns with the witnesses or otherwise. They became apparent to me on my examination of these important parts of John's evidence.

224. It does appear that full statements were provided to Mr Narula, and not just those as exhibited to John's statement. However, the instruction that cash sums of £1,000 and over were monies lent to Robert appears to have come later, but before Mr Narula produced his first report. It did not appear in the PoC in any sense. It first appeared as John's evidence as "Every cash withdrawal over £1,000 was done on the demand of Robert" in his statement made just a few days before trial.

225. John was not asked about this in his oral evidence. However not every point has or can be put to a witness. John has made his lack of memory and reliance on his lawyers and accountant absolutely clear. But I am troubled by this part of his evidence as there is no reason nor explanation for the adoption of the figure of £1,000, save Katie's evidence at [5] namely that she does not carry cash: "I'm not a cash person. I don't carry a fiver usually. I wouldn't have to withdraw the money unless I received a phone call from my dad."

226. It is not possible to say whether in the context of all the statements sums what sums are to be regarded as large – the description CK give to those payments – as context in the statements namely all surrounding transactions has been redacted.

227. There is however another point of concern as to these bank statements. As I have explained above the redacted versions were first exhibited to John's statement dated 28th March 2018. Mr Narula received the full statements as he refers to them in his list of documents received in his exhibit SN/2. In his exhibit SN13 he lists all cash payments under £1,000 debited to Katie's accounts. Not a single one of those 17 payments appear on the redacted pages John exhibits – in fact 7 must be on the missing pages.

228. Robert's evidence is that he received £50,000 in cash only. John says this is a figure plucked out of thin air. There certainly is no other evidence to support it. John also says in his fifth statement made just before trial at [38] that Robert at some point after July 2015:

> "...come down my house with £70,000 and turned round to me and said Paul and Adrian and sacked him (sic) and this was the last bit of money he had. I would use this money to pay interest of £10,000 for a few months. He came back three months later. I gave him £34,000 back. It should have been £40,000 but told him I had taken £6,000 for me."

229. I am narrowly persuaded on the balance of probabilities notwithstanding my concerns as to the way this evidence has emerged especially late in these proceedings when this missing link was no doubt appreciated by John's lawyers and expert to find that John did advance via Katie's account the total of £107,550 in cash and that Robert repaid him £70,000 in cash leaving a balance of £37,550 due as at 31st August 2015 (being in the absence of evidence as to the precise date, doing the best I can, I estimate it to have been paid) as Robert came to see John some point after July 2015. John says he handed back £34,000 three months later so I have taken that as happening on 30th November 2015. That sum is not included in the repayments on Annex 2. The date is relevant as to interest which I turn to below.

Issue 4; Was interest payable on any loans? If so, what is the applicable interest rate payable on any debt due and for which periods, payments and dates?

230. This issue is rather wider in that I do not, contrary to the calculation advanced by Mr Narula at one point in the Joint Report (interest at 2% compounded up to the date of trial) accept that there is a start and end date at one rate on one amount. I will address each sum listed by the experts in their issues, then the principle of interest, next the rate or rates of agreed or applicable and finally the sum or sums upon which those rates are due, but first to demonstrate the difficulties with Issue 4 I turn to the Joint Report.

231. The experts are far apart on interest as can be seen by their respective positions on "(I) Loan of £260,000" on page 2 of Annex 1 and sub-paragraphs (a) to (c) inclusive.

232. In essence Mr Narula initially calculates interest on his instructions at 2% per month. In his report at [31] he says he has "...prepared a schedule of the interest due on the loans and produce this as my exhibit SN/7. This has been prepared from the spreadsheet produced by TBL...I have been advised that the interest rate is the same for all the loans, namely a rate of 2% per month on the amount of the loan outstanding. I presume this means there is no interest on any late interest payments...".

233. There are some serious errors in SN/7, which Mr Hardman explained in his oral submissions. First, Loan 1 for £35,000 should not be included as it pre-dates the £300,000 I have found was borrowed in March 2014. Secondly, Loan 4 and £11,000 of Loan 5 have been conceded as loans to Mr Dukes and repaid by him, which reduces the capital claimed of £605,000 by a total of £111,023.

234. Ms McKenna has stated it is not certain that interest should be applied at all in the absence of an interest agreement. For my assistance she has at Appendix J to her report calculated interest at 2%. In summary in her report at [8.26] she says:

> "The interest payments calculated for the TBL loans are, in short, inadequate. There is not sufficient explanation as to when

> loans have been taken out to cover interest payments and where payments have come from. There are far too many assumptions made with very little explanation. I have yet to see enough evidence to agree that most of these loans existed and as such, I disagree with the loan calculations."

235. This division between the experts continue in the next item, namely "(ii) Additional Loans taken by JT to support lending to RT". Mr Narula confirms Loan 11 is eliminated as it is not to the Defendants and then states: "My instructions are that the various loans were taken by JT in order to fund interest on the £260,000 loan to RAT and any additional payments made to RAT or other uses (non RAT). (my emphasis).

236. That mixing of funds is of substantial concern to me, as is also what Mr Narula says next: "In order to assist the court and my fellow expert, I produce Scot 2 which reproduces SN/8 and below each loan shows how the funds were applied...Scot 2 totals applied amount to £601,719 which more or less shows how the funds have been allocated as follows..." (again my emphasis).

237. Ms McKenna says she "...notes that this explanation and corresponding document has been provided after the meeting of experts." Insertion of a new document and explanation in a joint report following the without prejudice meeting of experts should not happen save with agreement of the other expert, which appears did not happen here. Again, John's expert and legal team try their best to reconstruct and explain what went on. That in itself is understandable in these difficult circumstances where there is nothing in writing between the lender and borrower and there are multiple loans and repayments over quite a few years, but it does mean the experts are trying to deal with a moving target which makes their task even more difficult and does not aid confidence in their findings.

The £10,500

238. As to the cheque payments which I have found £10,500 was borrowed by the Defendants from John, Mr Hardman in opening confirmed that these monies were not borrowed from TBL, and that interest was not being claimed on them. Mr Hardman repeated that on the second day of trial. As John has not charged interest on these amounts then no interest is due on the £10,500 lent but I find the capital must be repaid.

The £300,000

239. I have set out in [12] above TBL's standard terms. Their offer letter of 9th August 2013 states "Interest shall be charged at 2% per month on the amount of the loan outstanding". John says, and I accept, that this rate was already known to him. The advance of £300,000 was made to and accepted by John on that basis, for Robert, as I have found above.

240. I also found at [192] that Robert wanted a loan for six months, knew TBL charged 2% per month and that he would have to pay that rate to cover John's liability to TBL. Further, he knew he had to pay John £300,000 on 13th September 2014, as John had

told him six months interest had been deducted. Robert failed to meet this repayment and so, as I have found at [ ] above, at his request John borrowed further monies from TBL for him.

241. Robert knew that interest was accruing on the monies he borrowed and at 2% per month for these reasons:

a) Robert had approached TBL for a loan in 2010 as I set out at [7]. He must have known of the interest required and the rate;

b) Ann signed the CH1 which referred to interest payments of £11,000 per month;

c) Halletts in their letter of 5th December 2016 to CK at [4] say John told their clients they had to pay him £10,000 per month to cover the interest he had to pay his own lender to which they agreed and at [6] say their clients understand John has to pay his lender "... £2,000 interest per month on every £100,000 borrowed.";

d) Robert had in his first statement said that John would if he lent money require "...it back full force with interest" and

e) Robert admitted it in cross examination; he was asked "...everybody knows that Bobby [TBL] lends money at 2 per cent – that is correct isn't it?" to which he replied "correct".

242. The change of position by Robert and Ann that this was a family arrangement, or that it was a joint speculative venture, and that no interest was intended is improbable, unbelievable and not supported by any of the contemporaneous documentation. Ann was not involved in the agreement by John to borrow and on lend in any event.

243. I now turn to the basis on which interest is to be charged; simple or compound? Mr Narula has in his first report provided for simple interest at 2% per month. He references at SN/15 a letter from TBL to John which under the heading "Statement of Loan Payments and Dates" sets out the monthly interest on 11 loans totalling £12,560 per month, and I have quoted at [232] how he calculated at [31] of his report simple interest and that he assumed there was no interest on late interest.

244. There was a major change of position some 16 months later by Mr Narula to 2% compound per month for his part of the Joint Report. Mr Narula's report at [31] was put to Mr Ferrando and he was asked whether the presumption that there was no interest on late payment was correct. Mr Ferrando said:

> "No, no, you do pay interest on the interest. Because, as it quite rightly says on the offer, you pay interest on the amount outstanding. So, if you have a £100,000 loan at 2 per cent a month and you missed the first payment...you're then paying 2 per cent on £102,000...and if you don't pay another month, you're paying interest on £104,000 and so on and so on."

245. Mr Hardman submitted during Mr Ferrando's evidence that whilst Mr Narula had been provided with TBL's own calculations for each of the 11 loans, exhibited at SN/10 to his report, he had made his calculation on the basis of simple interest when

the evidence provided was that compound interest had been applied. Accordingly Mr Hardman in effect reserved John's position in that, as he submitted, if Mr Ferrando pitched up and says it is compound, then it is going to be compound.

246. Some other points came out in Mr Ferrando's evidence. First after agreeing John was almost at all times up to date he said he was "...a really good borrower." As a result, if payments were only one or two months in arrears he let John make the same monthly repayment so interest on interest was not charged or compounded, but he would if/when the arrears period lengthened.

247. Secondly, the repayments made were often wrong. Mr Ferrando referred to how Katie on many occasions sent them the wrong amount and "At the end of the month [John] used to get very confused and, in actual fact, had a lot of trouble adding the said amounts up" and that Katie and John "...had trouble keeping track of the amounts."

Simple or compound interest?

248. I now turn to the basis of the interest which Robert and Ann must pay John at the agreed rate I have found of 2% per month. In my judgment, interest should be calculated on a simple basis for these reasons:

a) this was what Robert knew he had to pay as was confirmed when John explained when Robert called him upon receipt of the £260,000 that six months interest had been deducted plus £4,000 for him (John);

b) there was no agreement or guarantee by Robert to indemnify John on a hold harmless basis here; John told Robert he was to pay interest at 2% per month. The discussions did not extend beyond that simple point;

c) this is shown by the fact that Mr Narula took simple interest as the basis for his report which no doubt was as many other matters were based on his instructions from John;

d) Robert was not privy to the statements that John received from TBL (and which it seems John did not appreciate meant interest on interest on late payments);

e) John himself understood that to be the position and

f) accordingly confirmed same when he exhibited Mr Narula's report to his third witness statement and at [5] said it was based on his instructions.

249. I add that on a practical level it would be difficult to calculate compound interest in circumstances which emerged in the oral evidence where a) Mr Ferrando confirmed it would not always be applied if the default was only a couple of months and b) the running of the loans by John and Katie was confused and somewhat out of control.

250. I therefore find simple interest will run at 2% per month on the sums borrowed by John from TBL and paid over to the Defendants. For the first loan of £300,000 it will run from 11th September 2014 until repayment of the TBL loans, which I will turn to later.

On £63,000

251. I have found that John borrowed these monies (amongst others) from TBL to on lend to the Defendants. Simple interest will therefore run at 2% per month from the date of each transfer was received in Ann's account until repayment of the TBL loans.

On £107,550

252. As I have found John advanced £107,550 in cash of which Robert repaid £70,000 in cash but then received a further advance of £34,000 in cash. I am not persuaded that these cash payments came from loans advanced by TBL to John as I find the position in this respect uncertain and difficult to reconcile, such that it is not possible to find on the balance of probabilities where these monies originated from.

253. I find that for these reasons:

a) the mixing of monies in Katie's two accounts combined with the lack of transparency with the heavily redacted pages exhibited which are in themselves not full statements for the time periods concerned (I appreciate Mr Narula appears to have received full copies);

b) the confusion at John's end of what was due and when, the wrong payments and return of monies as is clear from the evidence of Mr Ferrando;

c) John in his last statement discloses for the first time the receipt of £70,000 from Robert which does not appear in the experts' reports, (it cannot as the statement was made a few weeks after the Joint Report) together with him paying three months interest to TBL in cash and returning £34,000 in cash to Robert and

d) one of the cash payments was made on 10th March 2014, and several others before the main loan of £300,000 was due in September 2014 which does not make sense both as to time and need as far as repayment was concerned.

254. Interest will however run on the cash advances from the date they were made to date. The rate is to be the rate Katie was receiving on these accounts from her bank, which appears on her statements but has been redacted.

Repayments

255. To be set against the running totals above are the repayments which are agreed by the experts and are listed in Annex 2, to be set off against interest and then capital. In addition, John says he received £70,000 in cash. This should also be credited against interest due on the TBL loans as John could have paid the whole amount over to reduce the interest charges but he apparently chose not to. He is unspecific as to date so doing the best I can it should be treated as being paid on 31st August 2015 and credited against interest due then.

256. John's return of £34,000 to Robert I find was a further loan. As again no specific date is stated by John the sum of £34,000 should be treated as lent to Robert three months after receipt of the £70,000 so interest will run from 30th November 2015 at the rate Katie was entitled to on her accounts at that time.

Interest Periods

257. I have set out the start dates above. As to the end date for the TBL borrowings it must run to the repayment or refinancing of the TBL loans. John swore an affidavit on 13th March 2019. This was pursuant to the Order of Mr Justice Arnold of 21st February 2019 by which a without notice freezing injunction had been made on the application of the Defendants alleging that John was going to dissipate his assets. That Order was discharged later as I have set out at [35].

258. No submissions were made by either counsel as to until when interest should run. As I have said Mr Narula calculated interest at 2% compound up to the date of trial which I do not accept. I have before me evidence of how the borrowings from TBL were repaid and what replaced them, albeit to satisfy this court that the freezing injunction should be discharged. There seems no reason why I should not continue to consider this as it is part of Issue 4 and to await submissions would only cause delay and increase costs.

259. John explained at [15] how the interest payments of approximately £10,000 per month concerned him so he collected some personal debts and

> "I received £212K on the 02.11.18 and £67,950 on the 19.11.18. I instructed my solicitors in December 2018 to pay to TBL the sum of £200,000 to reduce the liability."

260. Mr Ferrando also made an affidavit in the freezing injunction application. He confirmed £200,000 was paid by CK to TBL on John's behalf on 17th December 2018. Then on 18th February 2019 £300,000 was received. TBL removed its charge and said it would not charge any further interest on the balance John owed – then about £35,000.

261. John had refinanced with a Canada Life Lifetime Mortgage, whereby the interest rate set out in the agreement he exhibits is fixed at 6.59% per annum. The end date for interest at 2% per month is 19th November 2018 as it appears on John's evidence he could have repaid £200,000 then if any sum up to £200,000 is due and 18th February 2019 if a further sum between £200,001 and £500,000 was due. Thereafter, the Defendants should pay interest at 6.59% per annum to date.

262. All the above interest and capital calculations should be made by the experts jointly or else by whoever the parties can agree upon.

Issue 5: Should the Interim Charging Order be discharged, or made final, with or without modification?

263. Until the final position as to capital and interest is determined the ICO should remain in place, without modification.

OTHER MATTERS

264. There are various other points submitted by the Defendants which I address below. I have been referred to a substantial number of doctrines and authorities but do not need to address them all in detail for two reasons. First, some such as Mistake fall away as I did not need to consider the alleged vitiating elements in Issue 3. Secondly, I have

not found a basis in fact for certain submissions so there is nothing I can apply the law to.

Other repayments

265. The Defendants say an additional £50,000 was repaid on 12th December 2014 (£5,000) and 9th June 2017 (£45,000), as appears at the end of Annex 2, final column. This was put to John in cross examination on the first day of trial. He was asked how often he received cash and he replied four or five times at £10,000 a time. It was then put to John that he had not just received £495,000 as agreed and found by the experts but a further £50,000. John then said it may have been £40,000 or £50,000 but he maintained throughout that the sum he received was paid straight to TBL.

266. Then two days later, on 20th February, John was asked about the £50,000 paid to him. He said "He has never paid me £50,000 back." It was put to him he had admitted it already and John's reply was "The £50,000. Whatever money he gave me, went to TBL. Whatever money he gave me, I paid that to TBL every month." These exchanges went on for all three days of his evidence. Then on Mr Hardman's intervention paragraph [38] of John's fifth statement was put to him. John said the figure of £70,000 there could be wrong and it may actually have been £50,000.

267. I have accepted John's evidence at JT/5/38 that £70,000 was paid back in cash. I have had to make an assumption as to the date or dates. All this lengthy exchange shows is the fallibility of John's memory which has led to the contradictions which emerged in oral evidence. By finding as I have there is no detriment to the Defendants, indeed the reverse, both as to the amount and dates of repayment. I therefore do not need to consider it further, other than to say there was no evidence before me to prove the dates of the payments alleged by the Defendants.

Undisclosed Principal

268. Mr Williams submits that here Mr Ferrando and the Defendants did not know about each other. Mr Ferrando's evidence, when asked about John lending TBL's money on to Robert, said "We were never made aware of it". I have found that the Defendants did know John was borrowing from TBL to lend to them. Mr William submits that John cannot act as an agent and therefore cannot pass on any contractual terms. He referred me to *Siu Yin Kwan and anr v Eastern Insurance Co. Ltd* [1994] 2 WLR 370 and *Magellan Spirit v Vitol* [2016] EWHC 454 at [16-20] which provide the state of mind of the agent is not relevant let alone decisive, and so the key question is whether the supposed agent had communicated to the supposed principal an intention to contract on his behalf.

269. Mr Williams submits that in these circumstances John cannot act as an agent and therefore cannot pass on any contractual terms. This submission does not appear to have been addressed by Mr Hardman in his closing submissions. I do not accept Mr Williams' submission for two reasons; first there was on the facts I have found no intention by John to contract on behalf of TBL. He borrowed from TBL to keep what he saw as his loan to help his brother out on a short-term basis separate from his personal monies.

270. If I am wrong as to that, secondly, the position here can be distinguished on the facts.

271. John's evidence which I accept especially in the absence of any witness statement evidence by Robert is that, as he sets out at JT/5/30, Robert turned up at his house with his son Paul and John called Bobby Reading on their behalf in their presence on his speaker phone. He would not lend the sum sought to Robert but would to John and as John puts it "I am getting the loan on their behalf and they are going to pay me back everything owed to Bobby and Tower Bridging. They had tried to get a loan from them anyway and knew the rates."

272. John was not challenged on his statement that everyone in his family knew Bobby Reading as a money lender, and that Robert had previously tried to get a loan from him, and that everyone knew he lent at 2% per month. On the third day of his evidence John was asked about his discussions with Bobby Reading and he said "I spoke to Mr Reading about the £300,000, because I wanted to feel him out and not waste my time speaking to Jason because I didn't know him and I knew Bobby Reading, I wanted to know if he could give us a loan."

273. On the second day of John's evidence he was asked by Mr Williams: "Is Mr Bobby Reading the boss of Tower Bridging; yes or no? "John said "I would say yes". Therefore, Mr Bobby Reading, who was closely connected with TBL and knew the Tibbs family for years, so much so that he referred applicants to them, was aware of the on lending, and asked Mr Ferrando to contact John and arrange the loan, which he did the next day. Accordingly, there was no undisclosed principal here on the facts I have found.

274. I have set out this legal submission in some detail as I do not think it is confined only to the question as to whether the June agreement was vitiated i.e. Issue 3, which the matters I turn to next are.

Mistake and Unjust Enrichment

275. Mr Williams submits that these matters of law are vitiating elements which mean the June agreement should be set aside. I have found that I do not need to determine that Issue and so I need not consider them further.

Fraud

276. A constant theme throughout the evidence of the Defendants is that a fraud has been perpetrated on them by, variously, John and/or TBL, or that John's actions amount to a fraud, or that documents were fraudulently made. These allegations are not pleaded or set out in the witness statements (as required by paragraph 9 of my Order of 21st June 2019) in the detail or particularity expected for such serious allegations. In the last sentence of [9] I ordered "Any allegation which is not properly particularised within a witness statement shall not be permitted to be made to advance the Defendants' case at trial."

277. In the absence of such particularisation I could dismiss them without further consideration but will set them out and my findings so as to avoid any satellite litigation. The first matter concerns the loan agreement dated 9th August 2013 between John and TBL whereby £35,000 was advanced to John for "debt consolidation" (see [12-15] above). This resulted in the all monies charge that TBL

had on John's property, by which all the later advances by TBL were made, which was only removed with the Canada Life refinancing in February 2019.

278. Mr Williams relies on what he calls admissions of fraud and deceit, as John in cross examination admitted that the loan was not for debt consolidation. Mr Williams accused John that he "...drew down a loan fraudulently". John answered "yes". This is not in my judgment admission of fraud. It came as a result of John trusting Mr Williams' use of a legal term, as shown by an exchange a minute when John replied to accusations of perpetrating a double fraud by saying "If you are telling me it is a fraud what else can I do?" I therefore find it more suggestion than evidence, which also came at the end of three days of heavy cross examination.

279. Mr Williams also submits that as Mr Ferrando's evidence was that if he knew that a borrower gave a reason for borrowing a certain amount but he knew the reason was untrue he would not lend, John had deceived the Court and TBL, had told lies and therefore ([135] of his closing submissions) "This Fraud has been proven."

280. I reject that. First, Mr Ferrando was very clear in his evidence that often borrowers would ask "...for a home improvement loan and buy their wife a Range Rover...whether it starts off one way it can sometimes end up being something quite different." Later Mr Ferrando was asked by Mr Williams if he "...was borrowing money from you and then lending it out to other people and [if] you knew, you would not be best pleased, would you?" Mr Ferrando said it depended "...on the security, the nature of the borrower, if they had experience...a number of things really."

281. Mr Ferrando's main concern as to loans taken for one purpose but used for another was security, which he referred to several times. As he put it, "Ultimately, in bridging, we are looking at the security". That, if I may say so, is the common-sense approach to be expected from any commercial lender in these circumstances.

282. Mr Williams then submits that the loan for £35,000 "...is tainted with illegality". That in my judgment is simply wrong in law. I can see no evidential basis for that submission. He then states there was a triple deceit starting with this loan agreement. Again I can see no basis in law and dismiss these submissions.

283. I would add in this respect that the failure of John's lawyers to only produce the signed copy of this loan agreement on the second day of trial probably explains in part why this claim which has engendered such strong emotions and extreme allegations of fraud. There was a failure to give proper disclosure (as the document was always available to John and thereby his solicitors as it was within his power to obtain it from his previous lawyers), or, as Mr Ferrando rightly pointed out, by paying a fee to the Land Registry to obtain the official office copy. That failure may go to costs in due course.

284. Next Mr Williams submits that the document CH1 is fraudulent as Dean Smith did not witness it – as is agreed – and Ann's signature was forged as found by the handwriting expert Ms Myers. He adds that "The fraud is made worse by the Claimant's admission he made a "mistake"...[by saying] the CH1..was witnessed by a person "unknown " to him when it was Dean Smith...".

285. The question as to who pretended to be Dean Smith and wrote his name on the CH1 remains unanswered. But in my judgment it does not affect anything as I found a) Ann did sign the CH1 as Ms Myer's evidence was not accepted in the circumstances I set out above but b) in any event whether or not she signed it is not determinative of any Issue before me. This submission is therefore rejected.

286. Mr Williams then submits that the claim of a £200,000 loan is fraudulently misrepresented. This concerns the pleading of [13] of the PoC. As I have set out above I have not relied on the PoC for the reasons given and therefore need not consider this submission further.

287. Mr Williams submits that the handwritten notes that were made supposedly by Dean Smith were in fact made by John. These were notes provided to Mr Narula and listed by him in his instructions and documents received. Mr Williams submitted that they were to be tested by an expert but that never happened, and further that the originals were never produced, so I should draw an adverse inference. Whilst I did not hear evidence from Dean Smith (I accept Katie' reasons why he would not give evidence) this again is not determinative of any point before me with regard to the expert evidence and the findings I made and could not be even if my approach had been different.

288. Mr Williams also submits that there is much for John to answer with regard to his cheque book stubs which were also only produced during trial despite, he says, numerous requests to produce. My immediate reaction in the hearing was that a party whose proper requests for disclosure/inspection are refused should make an application at the time and not during trial. Mr Williams did submit that he may make an application to strike out after consideration of them but nothing transpired. I do not think anything turns on these stubs save, possibly by reason of late production, costs.

289. Adverse inferences by failure to call certain witnesses. Mr Williams submits that none of Mr Bobby Reading, Mr Dean Smith and Mr Peter Darrent were called by John, and that "They were essential witnesses to the true business dealings and fraudulent documentation/handwritten notes." Mr William cited the well known test in *Wisneiewski v Central Manchester Health Authority* [1998] EWCA Civ 596. Mr Hardman referred me to the comments of Mrs Justice Cockerill DBE in *Magdeev v Tsvetkov* [2020] EWHC 887 (Comm) at [152-153].

290. Using my discretion as especially referred to in [152] would result in not needing to hear from Mr Smith. He had what according to his partner Katie was a well-found fear of another physical assault by a member of the opposing part of the Tibbs family. Having said that, I cannot see what his evidence would go to which could possibly affect or change my findings of fact. I find the like as to Mr Reading and as Mr Hardman submits Mr Darrent was peripheral and could have been called by the Defendants; he was Robert's business partner.

291. Mr Williams also submitted that John's handwritten notes – a very rough ledger – were manufactured by him for the purpose of this litigation. There is no evidence to support this allegation so I reject it. Further, and in any event, yet again, this is not a document which I rely upon in any of my findings of fact.

292. In summary, none of the wide-ranging allegations of fraud made by or submitted on behalf of the Defendants have any basis on the facts as found by me and I reject them all.

Consumer Credit Act 1974 ("the Act")/Moneylending

293. Mr Williams submitted that the lending by John to the Defendants was regulated by the Act and so ss. 55, 60, 61 and 140 bite. Mr Hardman submits that the lending in this claim is split across a significant time period and therefore a division must be made between pre and post April 2014 loans. For the former, a licence is required by s.21 of the Act. But the loans were in my judgment made on a family basis with no profit to John, and not in the course of a business carried on by John – therefore they were non-commercial agreements as defined by s.189(1).

294. Further, if I am wrong as to that and John was lending as a business, s.189(2) of the Act provides that "A person is not to be treated as carrying on a particular type of business merely because occasionally he enters into transactions belonging to a business of that type."

295. As these were non-commercial loans they are in effect not regulated and are exempt from Part V of the Act namely the extensive procedural requirements and consequences for default. As to post April 2014 the Regulated Activities Order and s.22(1) of the Financial Service and Markets Act 2000 applies, which again requires "...activity of a specified kind which is carried on by way of business" for the statute to apply.

296. I have no doubt in finding that on the facts these were not loans made by way of business, as shown in that they were a) informal, b) at different times for different amounts, c) not made for a profit d) without formal documentation and e) between close members of the same family.

297. Likewise, the informal lending by John in my judgment does not mean he is a moneylender in the ordinary meaning of that word on the basis of the facts in [296] and especially the absence of profit.

Partiality of Mr Narula

298. Mr. Williams submits that Mr Narula's independence has been compromised by the actions of John/his lawyers. I agree with Mr Williams that a useful test of independence is whether the expert would express the same opinion if given the same instructions by another party. I do not agree with him when he submits that here Mr Narula has set out a factual opinion on John's instructions which simply cannot be correct.

299. Mr Narula has had an especially difficult task in view of John's poor recollection, the absence of any loan agreement(s), the large number of cash transactions over quite a few years and the chaotic way in which repayments were made by him and Katie. He also has had to work very closely with John and his lawyers to try to reconstruct what went on, which led to him being, as Mr Williams submitted, a constant presence through the first half of the trial.

300. I have set out my criticisms above as to his reports which are based on the difficulties he had with the material he was given and in particular the instructions he received, which appeared in some respects to be an ever-changing target. However, he is an expert of considerable experience and where the evidence before him was pure accounting data such as bank statements and cheques there was little between him and Ms McKenna.

301. The differences between arose when his opinion was based on his instructions, which he made very clear in his reports. CK's original letter of instruction, written when there was an order for a Single Joint Expert (but not to him as one) was for him to help John "be ahead of the game...and to prepare a report to support his claim" and is clearly partial. But I do not think this has led Mr Narula to compromise his independence and to ignore his responsibilities under CPR 35 as can be seen in the Joint Report, so I do not accept this criticism.

Illegality

302. Mr Williams also submits that as to illegality two points have been clearly established: "1) the Defendants did not enter into the agreement as alleged and 2) the loan from TBL was drawn down fraudulently and/or with deceit." I have found that neither is correct.

303. Then Mr Williams cites *Patel v Mirza* [2016] UKSC 42 but distinguishes the position here saying the illegal loan agreement between John and TBL has had full effect. But I have not found it is an illegal loan agreement. Arguably, at the suit of TBL, John may be in breach of contract. But that civil claim is far removed from illegality and does not involve the parties here. I therefore reject the submission of illegality.

Summary of Capital and interest due/to be calculated

304. As to capital I find that the Defendants owe John:

a) £10,500 in respect of the advances by two cheques - [173],

b) £300,000 (the bank transfer of £260,000 to include 6 months interest) - [197],

c) £63,000 by bank transfers - [198],

d) in cash, £107,550 plus a further £34,000 - [229]

305. The Defendants have repaid the below amounts which are to be credited against interest first on the £300,000 and £63,000 loans and then capital (if sufficient):

a) £495,000 on various dates as agreed by the experts and

b) £70,000 on 31st August 2015.

306. Simple interest on [304 b) and c)] is to run at 2% per month until repayment or 6.95% per annum if capital is outstanding after the Canada Life loan incepted.

307. Interest on [304 d)] is to run at the rate Katie was receiving on her accounts from the date of the advances until repayment or to date. There is no interest on [304 a)].

Next Steps

308. The calculation of interest and capital necessitates a further remote hearing if it cannot be agreed. On the remote hand down of this judgment I will hear counsel as to timings and consequential matters, excluding costs, which must await the final determination of capital and interest.

Deputy Master Linwood 22nd October 2020.

ANNEX 1

Experts: Sam Narula ('SN')

Maria McKenna ('MM')

24th January 2020

For the Court's ease, we have based this Scot Schedule on Appendix K of MM's report.

	Issue	SN Comments	MM Comments	Actions
1	Cheque Payments	Exhibit SN/12(2) provides a hand written summary and supporting cheque stubs refer per SN's instructions. References to "Mick" are apparently the builder who dealt with works for RAT.	Appendix G and chapter 6 of MM's report refers. MM does not believe cheque book stubs provided and SN/12(2) are sufficient evidentially in isolation without evidence of monies clearing or obtaining copy cheques from the bank. No further evidence has been presented in relation to cheques made out to 'Mick' rather than the Defendants (which makes up £26,500 of the value), MM would expect to see copies of invoices or at least a statement of explanation within the proceedings to consider including these in the claim. For 8 of the cheques, no evidence was provided to link these cheques back to the payee bank account as the copy provided did not show bank details and no confirmation that they cleared in the Claimants bank account has been provided let alone the Defendants bank. In terms of seeing cheques clearing in the Defendants bank, MM can agree with one cheque of £7,500 only and potentially another of £3,000 although the time to clear is lengthy. In total MM only agrees that potentially £10,500 in relation to cheque payments can potentially be agreed on the basis of the value and the timing of the clearing amount in the Defendant's bank account.	Court to Decide
2	Bank Transfers KT to RAT	£63,000 Agreed	£63,000 Agreed	Agreed
3	A Payment to Defendants of £260,000	A £260,000 loan is agreed to have been paid to RAT. (£23 relates to bank transfer charges). (See item 6(ii) later in this Scot Schedule).	A £260,000 receipt is agreed to have been paid to RAT from KT.	Agreed
4	Payments of > £1,000 cash assumed to be loaned to RAT	Exhibit SN/13 lists £107,550 covered under this category and are per my instructions only.	Paragraph 8 of MM's report refers. MM disagrees with the inclusion of this value entirely. There is insufficient evidence to show how these items were loaned to RAT and they have been included entirely on the basis that cash of over £1,000 has been withdrawn from the bank of the Claimants. No further evidence has been provided to link the cash withdrawals to the Defendants.	Court to Decide

	Issue	SN Comments	MM Comments	Actions
5	Actual Repayments identified from RAT to JT	Exhibit SN/3 (£110,000) and a further £385,000 (Total = £495,000) are accepted as having been repaid by RAT to JT (per Scot 2).	£495,000 agreed as having been repaid by RAT to JT (per appendix I).	Agreed
6	Interest Calculations (i) Loan of £260,000 (item 3 above).	SN notes the calculation at 2% of £260,000 principle loan calculated constantly throughout the period 13/3/14 - May/June 2017. (a) Appendix G understates interest by £5,000 (per Appendix I) (b) The interest calculated makes no allowance for the interest added to the account and thus a rising loan balance is shown on Appendix J of MM's schedule. "Compound interest" is taken into account which increases the interest due. SN has recalculated on this basis and produces schedule Scot 1 which shows interest on this basis of £261,157.64 and a balance at 1st June 2017 of £26,157.64. But see Scot Schedule item 6(ii) below. (c) SN instructions are that interest should be applied at 2% per month, which is not inconsistent with a typical bridging finance company. SN instructions are that TBL terms were 2% compound and so the Scot 1 schedule attached has been prepared on that basis. MM's Appendix J and Scot schedules 1, 2 and 3 are provided for the court's ease of consideration regarding the interest charges issues arising.	Appendix J shows MM's calculation of interest on this particular loan of £260,000 as being £197,652. Details of calculation and assuptions are included in paragraphs 7.9-7.15 of MM's report. (a) Per paragraph 7.9.7.1 in MM's report, a receipt of £5,000 prior to the receipt of £260,000 from the Claimant to the Defendant has been agreed and thus the repayment of £5,000 has been applied as a repayment to the first receipt. (b) MM does not believe that if the interest is to be applied, it should be compounded. The interest is calculated in accordance with the unsigned Tower Bridging Loan agreement provided in SN's report (SN/11). The agreement does not make reference to compounding interest for late or defaulted payments, but rather suggests repayment in full would be required which according to schedule SN/8 of SN's report, was not the case. (c) MM concludes that it is not certain that interest should be applied at all. No signed loan agreement has been provided from Tower Bridging and no loan agreement exists between the parties to confirm that repayment with interest is required. There is a transaction of £260,000 from Katie Tibbs to the Defendants of a similar value and period to one of the loans allegedly taken out by the Claimants, however, that aside, there is no evidence of an interest agreement, let alone a rate of 2% per month. MM believes this is a decision for the judge and has provided appendix J for assistance only.	Court to Decide Court to Decide Court to Decide

	Issue	SN Comments	MM Comments	Actions
	(ii) Additional Loans taken by JT to support lending to RAT. (Loans 1-10 per SN/8).	(a) SN Exhibit SN/8 shows loans 1-11 taken by JT. Loan 11 per my instructions does not relate to RAT and so is eliminated from the calculation. All other loans including £260,000 [(within loan 3) - Earlier item 3 of this Scot Schedule] total some £605,000. My instructions are that the various loans were taken by JT in order to fund interest on the £260,000 loan to RAT and any additional payments made to RAT or other uses (non RAT). In order to assist the court and my fellow expert, I produce Scot 2 which reproduces SN/8 and below each loan shows how the funds were applied (cross referenced to the banking analysis provided in my Exhibits SN/3 & SN/4 respectively). Schedule Scot 2 totals applied amount to £601,719 which more or less shows how the funds have been allocated as follows (colour coded for your ease). £ Payments to AT 323,023 Payments to TBL 202,673 Payments to R Dukes 76,023 601,719 SN instructed that payments to R Dukes do not relate to RAT loans	(a) MM notes that this explanation and corresponding document has been provided after the meeting of experts. MM does not follow the schedule provided and does not agree that it provides explanation as to why interest on 9 separate loans (with no agreements) has been suggested as a basis for the Claim. The schedule does confirm that loan 4 was not allocated to RAT which accounts for £32,500 of the £294,800 interest calculated by SN. MM disagrees that there is any evidence that the loans were taken out on behalf of RAT with the exception of £260,000 of the £282,000 taken out as loan 3 which is evidenced only by timing and value of the transaction in the absence of a loan agreement.	Court to Decide
		(b) My original statement dated 3/9/18 at paragraph's 40 & 55 show £605,000 (Scot 2). For clarification my instructions are that the interest on the original loan of £260,000 had to be physically funded by repayments by JT and it was agreed with RAT that he would obtain additional loans from TBL to fund the interest payments. For this reason he had to part seek the additional loans listed on Scot 2. These themselves then would have incurred interest as well as being applied as shown on Scot 2 - summary at the bottom.	(b) MM has not been provided with adequate evidence to confirm that the additional loans taken out by Katie Tibbs were on behalf of RAT. The schedule fails to show repayment of interest made by further loans and how it corresponds with the witness statements provided. For example, (excluding loan 4 which it is established was not for the benefit of RAT) Loan 5 is the first loan taken out after the original loan of £305,000 and was for £50,000. It is suggested that £40,000 was paid to Tower Bridging as interest in 2014, however, the interest on loan 3 has not been reduced accordingly in SN's calculations. Furthermore, there is no evidence to confirm that loan 1 (which predates loan 3) was ever received, of which interest of £25,200 (SN/7) has been applied by SN.	Court to Decide
		(c) Any further interest can be calculated on any agreed balances once the court has ruled on the principle balances, which if my instructions are accepted, amounts to some £12,100 (excluding loan 11) per month based on TBL confirmation of loan/interest per month in Exhibit SN/15.	(c) MM agrees that any further interest on outstanding balances determined by the Court can be calculated accordingly. As detailed above, MM does not agree with the calculations provided by SN.	Court to Decide

	Issue	SN Comments	MM Comments	Actions
7	Cash received/paid	SN has insufficient information to add any further details as based upon our instructions. The net effect overall was £5,000 outstanding loan. However this has not been included in the overview/summary below.	Per SN/16 of SN's report, cash of £50,000 was received by JT (from various payments from 2013 to 2015) and cash of £45,000 was paid to JT (narrative illegible). The figures are unreferenced and as such MM cannot confirm whether she agrees with them as no further explanation has been provided.	Court to Decide
8	Overview/Summary	To Summarise therefore, my instructions and overview are: Total Monies to RAT Exhibit / Comment / £ SN/12.2 Cheque payments 77,000.00 Scot 2 Payments for TBL loan 323,023.00 SN/13 Payments > £1,000 cash (if accepted) 107,550.00 Scot 1 Loan Interest 261,157.64 768,730.64 Less repaid (both experts agree) (495,000.00) **£273,730.64** SN notes MM's comments that if interest were applied as MM suggests monies due to JT would be £31,152 at 1st July 2017. If however interest were to be accepted as compound (per Schedule Scot 1) this outstanding balance figures at that date would rise to £99,657.64 per MM's calculations [(£261,157.64 minus £192,652) plus £31,152]. Either balance (SN or MM) would then have interest accruing from 1st July 2017 at say 2% per calendar month compound to 1st February 2020 (subject to court ruling) and so Schedule Scot 3 shows the final figures on that basis at 1st February 2020 on MM's basis of calculation to be between **£59,881.35 and £191,565.05.**	To Summarise therefore, my view remains unchanged from my overview per appendix K as follow: Exhibit / Comment / £ Cheque payments 10,500.00 Receipts for TBL loan 260,000 Other cash receipts 63,000 Payments >£1,000 cash nil 333,500 Less repaid (both experts agree) (495,000.00) Due to RAT (**£161,500)** overpayment If interest to be applied: (192,652) Due to JT **£31,152** due	Court to Decide Court to Decide Court to Decide

	Issue	**SN Comments**	**MM Comments**	**Actions**
		Notes: (1) Plus any interest due from July 2017 onwards depending upon court's view.	Notes: (1) Plus any interest due on loan of £260,000 onwards depending upon court's view.	
		(2) Plus any interest on TBL loans JT may have taken out to pay loan interest on the original £260,000 loan by way of servicing costs pending repayment. The court will have to decide if this is allocated or otherwise but Exhibit SN/15 provides monthly interest costs by loan number if required.	(2) Plus any interest due from July 2017 onwards depending upon court's view.	

ANNEX 2

SCHEDULE OF LOANS AND REPAYMENTS

FIRST PHASE

	Account/Description	**Ref.***	**Date**	**Repayments received from the Defendants**	**Monies loaned to the Defendants****	**Defendants accept or deny**
1	Loan from NatWest (Acc. No. 50694553) Paying in book (000064)	SN/12,	6/11/06		£500.00 "R.Tibbs"	**Deny**
2	Loan from NatWest (Acc. No. 50694553) Paying in book (000291)	SN/12, PoC, *para 3*	18/6/10		£25,000.00 "Ann Tibbs" Claimant loaned the money for the Defendant to erect stables at the farm.	**Deny** Although the Defendants now deny the sum of £25,000, in the first witness statement of D1, it was suggested that the money was repaid and that *"he hadn't heard about it (i.e. the money) for years."*
3	Loan from NatWest (Acc. No. 50694553) Paying in book (000356)	SN/12, PoC, *para. 7,*	17/5/11		£7,500.00 "Ann Tibbs" The Claimant loaned the sum to assist the Defendants pay their mortgage and bills.	**Admit** This payment has been found by the Defendants' expert (clause 6.8.4.1). Schedule 1 confirms that paid into account ending 901.

4	Loan from NatWest (Acc. No. 50694553) Paying in book (000358)	SN/12	23/6/11		£10,000.00 "Cash Mick"	**Deny**
5	Loan from NatWest (Acc. No. 50694553) Paying in book (000361)	SN/12	18/7/11		£2,000.00	**Deny**
6	Loan from NatWest (Acc. No. 50694553) Paying in book (082220)	SN/12	10/1/11		£6,000.00 "R. Tibbs"	**Deny**
7	Loan from NatWest (Acc. No. 50694553) Paying in book (000406)	SN/12	10/10/11		£2,000.00 "Mick"	**Deny**
8	Loan from NatWest (Acc. No. 50694553) Paying in book (000407)	SN/12,	10/10/11		£1,500.00 "Mick"	**Deny**
9	Loan from NatWest (Acc. No. 50694553) Paying in book (000411)	SN/12, [xx] PoC, *para. 4,*	13/2/11		£5,000.00 "R.Tibbs" The Claimant loaned the money to the Defendants to pay for expenses on the farm.	**Deny**
10	Loan from NatWest (Acc. No. 50694553) Paying in book (00412)	SN/12, PoC, *para. 6,*	16/2/11		£2,000.00 The Claimant loaned the money to buy a truck for the farm.	**Deny**
11	Loan from NatWest (Acc. No. 50694553) Paying in book (000413)	SN/12	24/2/11		£3,000.00 "R. Tibbs"	**Deny** However, this payment has been found by the Defendants' expert (clause 6.8.4.1) and referenced in the draft defence (para. 6).

12	Loan from NatWest (Acc. No. 50694553) Paying in book (000376)	SN/12	9/6/11		£2,500.00 "Cash Mick"	**Deny**
13	Payment from NatWest (Acc. No. 50694553) Paying in book (000377)	SN/12	10/6/11		£2,500.00 "Cash Mick"	**Deny**
14	Loan from NatWest (Acc. No. 50694553) Paying in book (000378)	SN/12	16/6/11		£2,500.00 "Cash Mick"	**Deny**
15	Loan from NatWest (Acc. No. 50694553) Paying in book (000380)	SN/12	17/6/11		£2,500.00 "Cash Mick"	**Deny**
16	Loan from NatWest (Acc. No. 50694553) Paying in book (000384)	SN/12	30/9/11		£2,500.00 "Cash Mick"	**Deny**
	Total (sub)				**£77,000.00**	**£10,500**

SECOND PHASE (I)

	Account/Description	Ref.*	Date	Repayments received from the Defendants	Monies loaned to the Defendants**	Defendants accept or deny
1	Loan from NatWest (Acc. No. 7378343)	SN/3	13/3/14		£260,023.00	**Accept (save for £23)** Schedule 1 & 4th w/s (para. 4). Clause 5.10 of Defendants' expert report
2	Loan from NatWest (Acc. No. 7378343)	SN/3	15/9/15		£5,000.00	**Accept** Schedule 1 & 4th w/s (para. 6). Clauses 5.8, 5.9 & 5.21 of Defendants' expert report.
3	Loan from NatWest (Acc. No. 7378343)	SN/3	21/10/15		£4,000.00	**Accept** Schedule 1 (para. 6). Clauses 5.8, 5.9 & 5.21 of Defendants' expert report.
	Total (sub)				**£269,023**	**£269,000**

SECOND PHASE (II)

1	Loan from NatWest (Acc. No. 73661112)	SN/4	11/11/13		£5,000.00	**Accept** Schedule 1 & 4th w/s (para. 6) Clauses 5.8, 5.9 & 5.21 of Defendants' expert report.
2	Loan from NatWest (Acc. No. 73661112)	SN/4	7/10/14		£5,000.00	**Accept** Schedule 1 & 4th w/s (para. 6). Clauses 5.8, 5.9 & 5.21 of Defendants' expert report.
3	Loan from NatWest (Acc. No. 73661112)	SN/4	20/10/14		£5,000.00	**Accept** Schedule 1 & 4th w/s (para. 6) Clauses 5.8, 5.9 & 5.21 of Defendants' expert report.
4	Loan from NatWest (Acc. No. 73661112)	SN/4	1/12/14		£5,000.00	**Accept** Schedule 1 & 4th w/s (para. 6) Clauses 5.8, 5.9 & 5.21 of Defendants' expert report.
5	Loan from NatWest (Acc. No. 73661112)	SN/4	22/12/14		£12,000.00	**Accept** Schedule 1 & 4th w/s (para. 6) Clauses 5.8, 5.9 & 5.21 of Defendants'

						expert report.
6	Loan from NatWest (Acc. No. 73661112)	SN/4	28/1/15		£500.00	**Accept** Schedule 1 & 4th w/s (para. 6) Clauses 5.8, 5.9 & 5.21 of Defendants' expert report.
7	Loan from NatWest (Acc. No. 73661112)	SN/4	28/1/15		£3,500.00	**Accept** Schedule 1 & 4th w/s (para. 6). Clauses 5.8, 5.9 & 5.21 of Defendants' expert report.
8	Loan from NatWest (Acc. No. 73661112)	SN/4	23/3/15		£8,000.00	**Accept** Schedule 1 & 4th w/s (para. 7) Clauses 5.8, 5.9 & 5.21 of Defendants' expert report.
9	Loan from NatWest (Acc. No. 73661112)	SN/4	9/4/15		£5,000.00	**Accept** Schedule 1 & 4th w/s (para. 7) Clauses 5.8, 5.9 & 5.21 of Defendants' expert report.
10	Loan from NatWest (Acc. No. 73661112)	SN/4	29/4/15		£5,000.00	**Accept** Schedule 1 & 4th w/s (para. 7) Clauses 5.8, 5.9 & 5.21 of Defendants'

						expert report.
	Total (sub)				**£54,000**	**£54,000**
SECOND PHASE (III)						
1	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	10/3/14		£1,000.00	
2	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	24/6/14		£1,000.00	
3	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	1/7/14		£3,500.00	
4	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	29/7/14		£5,000.00	
5	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	31/7/14		£5,000.00	
6	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	5/8/14		£5,000.00	
7	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	2/9/14		£1,000.00	
8	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	5/9/14		£5,000.00	
9	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	17/9/14		£5,500.00	
10	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	25/9/14		£4,500.00	
11	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	1/10/14		£2,000.00	
12	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	9/10/14		£6,000.00	
13	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	16/10/14		£5,000.00	

14	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	24/10/14		£5,000.00	
15	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	14/11/14		£5,000.00	
16	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	4/12/14		£5,000.00	
17	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	10/12/14		£10,000.00	
18	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	17/12/14		£2,000.00	
19	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	23/12/14		£1,000.00	
20	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	6/2/15		£3,000.00	
21	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	2/3/15		£2,000.00	
22	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	1/5/15		£3,000.00	
23	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	8/5/15		£1,000.00	
24	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	17/6/15		£1,500.00	
25	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	26/6/15		£1,000.00	
26	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	5/5/16		£1,000.00	
27	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	28/6/16		£2,500.00	
28	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	4/7/16		£1,500.00	
29	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	10/10/16		£1,000.00	
30	Cash loan withdrawn from NatWest (Acc. No. 73783439)	SN/13	21/11/16		£3,500.00	
	Total (sub)				**£98,500.00**	Accept only

						£50,000 was loaned via cash payments. Schedule 1 & 4th w/s (para. 8)
SECOND PHASE (IV)						
	Cash loan withdrawn from NatWest (Acc. No. 7361112)	SN/13	4/6/14		£1,050.00	Deny. 4th w/s (para. 5)
	Cash loan withdrawn from NatWest (Acc. No. 7361112)	SN/13	9/9/14		£6,000.00	Deny. 4th w/s (para. 5)
	Cash loan withdrawn from NatWest (Acc. No. 7361112)	SN/13	1/12/14		£2,000.00	Deny. 4th w/s (para. 5)
	Total (sub)				**£9,050.00**	
SECOND PHASE (I - IV) TOTAL					**£430,000.00**	
TOTAL (FIRST AND SECOND PHASE)					**£507,550.00**	**£390,500**

REPAYMENTS

	Payment received into NatWest (Acc. No. 73783439)	SN/3	12/12/14	£5,000.00		Admit. Schedule 2 & 4th w/s (para. 10). Clause 5.17 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/3	25/6/15	£1,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.17 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/3	8/7/15	£9,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.17 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/3	7/8/15	10,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.17 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/3	7/9/15	£10,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.17 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/3	5/11/15	£10,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.17 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/3	8/12/15	£10,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.17

						of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/3	8/1/16	£10,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.17 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/3	7/3/16	£10,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.17 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/3	4/5/16	£10,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.17 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/3	1/6/16	£10,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.17 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/3	4/7/16	£10,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.17 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/3	5/8/16	£5,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.17 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/9	10/5/17	£300,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.19 of Defendants'

						report.
	Payment received into NatWest (Acc. No. 73783439)	SN/9	23/5/17	£50,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.19 of Defendants' report.
	Payment received into NatWest (Acc. No. 73783439)	SN/9	9/6/17	£35,000.00		Admit. Schedule 2& 4th w/s (para. 10). Clause 5.19 of Defendants' report.
	Total receipts			**£495,000.00**		**£540,000** The Defendants state that an additional £50,000 was repaid on 12/12/14 (£5,000) & 9/6/17 (£45,000)