Neutral Citation Number: [2025] EWHC 286 (Ch)

Case No: BL-2022-002055

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

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

Date: 26/02/2025

Before :

MASTER MCQUAIL

- -

Between :

PETER SAVVA	**Claimant**
- and -	
(1) CUCKOO HILL LIMITED **(2) MARIOS STYLIANIDES**	**Defendant**

- -
- -

Daniel Kessler (instructed by **Pandya Arbitration Global**) for the **Claimant**
Sharaz Ahmed (instructed by **No, 12 Chambers**) for the **Defendants**

Hearing dates: 5 and 6 November 2024

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Approved Judgment

This judgment was handed down remotely at 2:00pm on 26 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Background

1. Prior to the events with which these proceedings are concerned Peter Savva, the claimant, and Marios Stylianides, the second defendant, were friends. The claimant lived at Greenwoods, Cuckoo Hill, Pinner, Middlesex, HA5 2AJ (**the Property**). The second defendant and his wife (**Mrs Stylianides**) lived not far away in Rickmansworth.

2. The second defendant was in the business of property development. The claimant was a lecturer in criminal law until he retired in August 2002.

3. By early 2014 the claimant had decided he wanted to sell the Property and relocate permanently to Cyprus. The claimant and the second defendant discussed the possibility of the second defendant purchasing the Property, developing it and the claimant being paid the purchase money from the development proceeds.

4. On 10 June 2014 Cuckoo Hill Limited, the first defendant, was incorporated. The second defendant was its sole director and shareholder.

5. By an agreement in writing dated 20 June 2014, the claimant agreed to sell the Property to the first defendant for £600,000 (**the Sale Agreement**). The contractual completion date was 20 June 2014. Clause 6 provided that the seller's solicitor should not be required to deliver up title deeds and a transfer of the property until all monies payable under the terms of the agreement had been paid in full. However, special condition 1 provided that the purchase price would not be payable on completion but on the sale of the second of the two dwellinghouses to be constructed at the Property by the buyer pursuant to planning permission reference: P/0230/14. Special condition 2 provided that pending payment of the purchase money no interest would be payable by the buyer.

6. By a second agreement in writing dated 20 June 2014, which referred to the Sale Agreement having been entered into, the claimant and the second defendant agreed that, in consideration of the sale to the first defendant, the second defendant would make payments to the claimant as follows:

(i) during the period 1 July 2014 to 30 June 2015 £1,000 per month on the first of each month; and

(ii) during the period 1 July 2015 to 30 June 2017 £3,500 per month on the first of each month.

(**the Interest Agreement**).

7. It appears that completion took place on 20 June 2014 and the Property was transferred to the first defendant, notwithstanding clause 6 of the Sale Agreement. On the following day the claimant moved permanently to Cyprus. He has returned to this country for short visits on a number of occasions since.

8. The defendants constructed two houses at the Property. The first was sold on 28 August 2015 for £795,000 and the second on 7 December 2015 for £823,000. Thus a grand total of £1,618,000 was realised by the first defendant. The first defendant apparently dissipated the sale proceeds before it was dissolved on 13 December 2016.

9. The claimant says that he only discovered sales had occurred after his brother drove past the Property and reported to him that the two houses were occupied. In his Particulars of Claim he says that this occurred in 2017 or 2018. In court he said it happened in 2019.

The Proceedings

10. The claimant brought his claim by Part 7 claim form. The claim form was filed and the fee paid, as evidenced by an e-mail receipt from the Court, on 2 September 2022. The claim form was sealed on 14 November 2022. The claim form was amended before it was served and the amended form was sealed on 6 December 2022.

11. The particulars of claim dated 13 March 2023 set out the claimant's case. In summary he claims:

(i) from the first defendant the sum of £600,000 due on 7 December 2015 but not paid in breach of the Sale Agreement;
(ii) from the second defendant sums unpaid pursuant to the Interest Agreement; and
(iii) damages against the second defendant under section 423 of the Insolvency Act 1986 (**section 423**) or for inducing the first defendant's breach of contract by dissipating the first defendant's funds; and
(iv) interest.

12. The defendants' defence is essentially that, because of an oral agreement entered into between the second defendant (on behalf of the first defendant) and the claimant, the defendants were entitled to invest the claimant's money into a development project at Maidstone (**the Maidstone Project**). They say that the Maidstone Project was unsuccessful and therefore the claimant's investment in that project was lost. In addition the defendants plead that the contractual claim is barred by limitation.

13. The claimant's reply denies that there was any such oral agreement and avers the claim was brought in time or, if necessary, pleads that the claimant will rely on section 32 of the Limitation Act 1980 (**section 32**).

14. By the conclusion of the trial the parties had agreed a schedule of payments made by cash deposit and bank transfer by or on behalf of the second defendant to the claimant in various amounts and on various dates up to July 2019 in respect of the Interest Agreement. These agreed payments totalled £84,830 (against a total due under the Interest Agreement of £96,000).

15. Attributing the agreed payments to earlier instalments first would leave outstanding £3,500 for each of 1 April, 1 May, and 1 June 2017 and £670 of the 1 March 2017 payment. No limitation issue would arise in relation to these contractual payments if they are unpaid.

16. It is the second defendant's case that, in addition to the now agreed payments, he handed the claimant £25,000 in cash on 24 December 2019 at the Coach and Horses pub in Rickmansworth, so that there is no outstanding liability under the Interest Agreement. That cash payment is denied by the claimant.

The Defendant's Alleged Oral Agreement

17. In the Defence it is pleaded that it was initially contemplated that the claimant's funds would in due course be invested in a project in Rickmansworth but that on the evening of 20 June 2014, that is the day the Sale Agreement and Interest Agreement were signed, an oral

agreement which superseded the Sale Agreement was reached by which the £600,000 owing to the claimant would be invested in other projects with the defendants. It is further pleaded that, pursuant to that oral agreement, by a letter dated 24 November 2016 (**the November 2016 Letter**), the claimant firstly confirmed that the sum of £585,000 owed to him by Bampford Limited (**Bampford**) had been used to purchase four properties in Maidstone and secondly authorised Bampford to transfer the four properties to Rouxville Investments Limited (**Rouxville**) in lieu of repayment of the money owed to the claimant by Bampford.

18. Rouxville is a company incorporated under the laws of Mauritius on 21 October 2016, its director being Gankart Limited. Bampford was a company incorporated in the Isle of Man on 12 November 2015 and dissolved on 26 March 2018. Its director was Wilton Directors (IOM) Limited.

19. The second defendant's evidence about the oral agreement in his witness statement dated 21 December 2023 is confusing. He says in paragraph 5 that the Sale Agreement was superseded by an oral agreement that was drawn up as the Interest Agreement. He also says at paragraph 11 that:

> "We have later mutually agreed that we will jointly invest on 'Maidstone Development', where the Claimant wrote to authorise the transfer of the properties situated at Maidstone to Rouxville Investments Limited for the project."

20. In the second defendant's witness statement dated 22 July 2024 he says that:

> "pursuant to an oral agreement on 20 June 2014, it was agreed the proceeds of sale will go towards further investment projects."

Documentary Evidence

21. A notable feature of this claim is the paucity of documentary evidence.

22. In considering such documentary evidence as exists and the absence of other documentary material I bear in mind the observation of Popplewell J in *Edgeworth Capital (Luxembourg S.A.R.L v Aabar Investments PJS* [2018] EWHC 1627:

> "the absence of a contemporaneous written record by those with business experience may count heavily against the existence of an oral contract, because in the twenty-first century the prevalence of emails, text messages and other forms of electronic communication is such that most agreements and discussions which are of legal significance, even if not embodied in writing, leave some form of electronic footprint. Moreover where parties contemplate that they will instruct lawyers to draft detailed written agreements between them, there is a presumption that they intend the terms of their bargain to be those reflected in such carefully drafted agreements, not those in any prior or contemporaneous oral conversation, even in the absence of a boilerplate entire agreement clause.

23. Where a party has failed to provide proper disclosure it is open to the court to draw adverse inferences at trial in relation to the absence of documents: *Matthews & Malek on Disclosure* (6th Edition) at [17-40]. If the court considers that the absence of documents is deliberate, the court may take that into account in assessing the credibility of the person in default. It may be inferred that failure to disclose demonstrates a lack of confidence in that party's cause and from that may be inferred a lack of truth and merit in the cause. A second

potential inference may be that an undisclosed document is unfavourable to the cause of the party who has failed to disclose it.

24. The lack of documents is consistent with the claimant's case that he was awaiting payment under the Sale Agreement once the second house was sold and payment in full under the Interest Agreement and there was no oral agreement. If his case is right the only documents one would expect to exist are the Sale and Interest Agreements, which both parties have disclosed and the completion statements for the sales of the houses, which have recently been disclosed.

25. On the defendants' case one would expect that significant further documents would exist and should have been disclosed, for example:

(i) the file of the solicitor who drew up the Sale and Interest Agreements and who acted in due course on the sale of the two houses;
(ii) bank statements of the first defendant showing the receipt of funds from the sale of the two houses and the transfer out of the first defendant of those receipts;
(iii) documents concerning the Maidstone Project including financial information;
(v) communications sent to, or copied to, the claimant concerning or referring to the claimant's investment in the Maidstone Project; and
(iv) documents demonstrating the relationship between the claimant, the defendants, Bampford and Rouxville.

26. The parties agreed by a consent order approved by Deputy Master Arkush dated 20 July 2023 to provide standard disclosure; the disclosure exercise might have been more illuminating had the parties turned their mind to the disclosure regime applicable in the Business and Property Courts.

27. All that was disclosed by the defendant in a disclosure list dated 5 October 2023 were: the Sale and Interest Agreements; a service agreement between the second defendant and Rouxville under which the second defendant was to provide services to Rouxville in relation to the Maidstone Project; four items of correspondence - the November 2016 Letter and letters from Steve Brown, Richard Morgan and Neil Crowther to which I will refer later in this judgment- and various bank statements of the parties and Mrs Stylianides. In the case of the first defendant the last bank statement disclosed was for a period ending 17 June 2016.

28. More recently a planning application in the name of Bampford submitted by its agent Mr Colin Begeman in respect of what appears to be the Maidstone Project was disclosed.

29. The claimant vehemently denies that he sent the November 2016 Letter and he served a Notice to Prove it dated 22 November 2023. Neither an original hard copy nor any metadata of an electronic version of the document has been produced by the defendants.

30. An application by the defendants to adduce expert evidence about the November 2016 Letter was refused, in part, because without the original or the metadata it would be impossible for any expert to give any useful opinion evidence about the document or when and how the claimant's signature might have been appended to it.

31. On 26 October 2024 the defendants disclosed two further documents, these are letters dated 12 January 2017 (**the January 2017 Letters**). One is apparently from the claimant and signed by him addressed to Wilton Trustees (IOM) Limited (**Wilton**). It suggests that the

claimant was the settlor of the Margrace Settlement (**Margrace**) of which Wilton is trustee. The other in similar terms is purportedly from one George Kyriakides suggesting that he was the other settlor of Margrace. The signature on the letter signed by George Kyriakides is witnessed by Theodosis Karamanis a solicitor advocate with an address in Cyprus. There is no witness to what purports to be the claimant's signature on his version of the letter. The claimant denies all knowledge of Wilton and Margrace and asserts his January 2017 Letter is not genuine.

32. The defendants have produced no other disclosure relating to Rouxville, Bampford, Wilton or Margrace. The claimant's solicitors included within the trial bundle a number of publicly available documents relating to Rouxville and Bampford.

33. Mrs Stylianides' witness statement in the proceedings includes her evidence of an occasion shortly before Christmas 2019 when she says that the claimant attended her house and demanded an update on the Maidstone Project. She exhibited to her statement a number of extracts from her personal diary in support. The claimant served a Notice to Prove the diary entries dated 23 November 2023. However, once the handwritten diary was read in court and it was explained that annotations referring to the claimant had been added by Mrs Stylianides in the course of preparing her witness statement and not contemporaneously and the original text turned out not to record matters of substantive relevance to matters in issue the question of the diary not being genuine was not pursued.

34. On the eve of the trial the defendants produced:

(i) two completion statements for the sale by the first defendant of the two houses at the Property and a CHAPS confirmation dated 7 December 2015. The first shows the balance of the purchase price of some £447,612 was paid to the first defendant. The second shows that from the proceeds a payment of £585,000 was made to "Wiltons (IOM) Ltd" before the balance of the proceeds of some £214,652 was paid to the first defendant. The CHAPS confirmation shows the payment to "Wiltons" with payment details described as "Margrace Settlement"; and

(ii) an undated spreadsheet purporting to show how the Maidstone Project made a loss of £85,000 and including reference to an investment by the claimant in Rouxville in the sum of £585,000.

Oral Evidence

35. The claimant was the only witness in support of his claim.

36. In addition to the second defendant the defendants called Mrs Stylianides Colin Begeman, who was employed by the second defendant to work on the development of the Property; and Richard Morgan who the second defendant says was the source of the cash which he says was paid to the claimant on 24 December 2019. The defendants served a witness statement of Colin Cantellow who had a similar role to Mr Begeman, but did not call him to give evidence.

37. The claimant gave his evidence in a straightforward manner and consistently denied the existence of any oral agreement. He became emotional and angry about the defendants' failure to tell him about the sales of the two houses at the Property and to pay him the £600,000 he claimed to be due under the Sale Agreement. The claimant was questioned about the inconsistent figures he has advanced at various stages as being the amount remaining due under the Interest Agreement. His explanation was that the way in which

payments had been made was opaque to him: payments were not made in regular monthly amounts and were made under various references with some amounts having been paid by the first defendant and some by Mrs Stylianides; he said that in the scheme of things the amounts unpaid under the Interest Agreement were "minutiae". I accept that explanation. The parties failed until during the course of the trial to cooperate to identify a clear schedule of payments made and received by bank deposit or transfer. Until that was done there was clearly scope for some confusion. The claimant did not always accurately state the dates of events after 2014 in his written evidence, but he accepted that he was wrong when it was clear that that was the case. I do not regard the claimant's inconsistencies in these respects to taint his evidence generally.

38. The second defendant was an unsatisfactory witness. His witness statements lacked any clear explanation as to what he claimed to have been agreed with the claimant about investing £600,000 in future projects or when it was said to have been agreed and he was unable to provide any clarity when cross-examined. At least three times his response to a challenge to there being any oral agreement was along the lines: if there was no such agreement why did it take the claimant so long to ask for the return of his money. He also acknowledged when questioned about not having told the claimant about the sale of the houses that he was "guilty" of not telling him.

39. When cross-examined about Bampford, Rouxville, Wilton and Margrace the second defendant's explanations, such as they were, raised more questions than they answered about either the connections between these entities and others mentioned for the first time during cross-examination or of there existing any mechanism by which they would facilitate an investment alleged to have been made by the claimant and for the claimant's benefit. The only rationale mentioned for the involvement of these off-shore entities was said to be "tax-saving", without further explanation of how any tax saving was to be achieved. The second defendant said that he had been given tax advice, but that it was not in writing. The second defendant was unable to explain why the November 2016 Letter referred to a loan to Bampford by the claimant rather than an investment.

40. The second defendant's written witness evidence and pleadings failed to include any mention of an event said to have occurred in late 2015, raised for the first time during cross-examination of the claimant. The event, as described by the second defendant during cross-examination, was an occasion when he claimed that he and the second defendant had visited the offices of Wilton Group in Grosvenor Street with £15,000 each in cash of which £26,000 was paid to Wilton to be used to establish Margrace and £4,000 was paid for the incorporation of Bampford and documents concerning Margrace were signed.

41. Like the claimant, the second defendant's evidence about the payments that had or had not been made pursuant to the Interest Agreement was not consistent. In the Defence it was pleaded that a total of £67,500 had been transferred to the claimant's bank account directly and £34,500 had been paid in cash. Once the parties had agreed the schedule of payments it was apparent that the bank figure was understated by £1,000, a minor inconsistency, although the amounts paid by the first defendant and Mrs Stylianides appeared to have been transposed. However the second defendant's only claim at trial that a cash payment had been made was as to £25,000, the remaining £9,500 mentioned in the Defence was not pursued.

42. When questioned about the completion statements for the two house sales and whether he had received money from the first defendant the second defendant denied he had

benefitted personally but his explanations as to what had actually happened to the proceeds of sales of the two houses were evasive and unclear. So far as the spreadsheet relating to the Maidstone Project was concerned, the second defendant claimed that it showed that he had spent a number of hundreds of thousands of pounds of his own money but he could not explain why he would do that for the apparent benefit of Rouxville.

43. The second defendant also did not appear to appreciate the importance of documents as evidence or his obligations relating to the disclosure of documents. For example, after being questioned about the provenance of the November 2016 Letter and the 2017 Letters, on the first day of the trial, he arrived at court on the second day of the trial explaining that he had searched his files for the originals overnight and was now able to produce them. In fact what he brought to court were further copies of the documents and no further ability to explain how they had originally reached him.

44. Save where it is inherently probable or corroborated by a document or another witness whose evidence I accept I do not consider the second defendant's evidence to be reliable.

45. Originally the defendants sought to rely on a letter written by Colin Begeman dated 4 May 2023 as a witness summary on the grounds that "it is likely that he [Mr Begeman] is too ill to maintain contact, or had sadly passed away." Deputy Master Rhys rejected this justification but gave permission to the claimant to serve a witness summons on Mr Begeman. Mr Begeman was called by the defendants to give evidence at trial. Although he acknowledged he had suffered from ill health, there was no satisfactory explanation for this attempt by the defendants to avoid Mr Begeman being called at trial and cross-examined.

46. Mr Begeman and Mr Cantellow's evidence was brief and neither was able to say anything about the question whether any oral agreement was reached between the claimant and second defendant concerning the Maidstone Project.

47. Richard Morgan's evidence was that he handed the second defendant £25,000 in cash in a carrier bag on 24 December 2019. Mr Morgan had originally provided this information in a letter dated 4 February 2022 which was disclosed by the defendants. In that letter he was clear that he had not met the person to whom the money was paid, his witness statement claimed that he had met the second defendant's friend. In his witness statement he explained that as the proprietor of a group of public houses he was in a position to "borrow" cash from his business and that there would have been cash readily available in the run-up to Christmas. He confirmed in cross-examination that he could not say to whom the cash was given or why.

48. Mrs Stylianides' evidence about occasions when the claimant visited England were supported so far as the times and dates of the visits by her contemporaneously kept diary. However, the diary did not include details of the conversations that were had between the claimant and the second defendant and contained no explicit reference to the Maidstone Project.

The Law

49. There was no dispute between the parties as to the substantive law.

Section 423

50. Relevantly section 423 provides:

> "(1)This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—
>
> > (a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration…or
> > (c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.
>
> (2)Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for—
>
> > (a) restoring the position to what it would have been if the transaction had not been entered into, and
> > (b) protecting the interests of persons who are victims of the transaction.
>
> (3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose—
>
> > (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or
> > (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make… "

51. The test is whether any purpose of the transaction was either of the two prohibited ones: *JSC BTA Bank v Ablyazov* [2019] B.C.C. 96 at [14].

52. Section 424 provides that a victim of the transaction can apply for an order under section 423. A 'victim' does not have to be a person who was in the transferor's mind at the time of the transaction: *Sands v Clitheroe* [2006] BPIR 1000 at [19] and [22]. Section 423(5) deems the victim to be any person prejudiced or capable of being prejudiced by the transaction.

53. Section 425 provides a non-exhaustive list of orders that may be made under it, including one requiring any person to pay to any other person in respect of benefits received from the debtor: section 425(1)(d). The objective of the remedy is both compensatory - to restore the position to what it would have been had the transaction not been entered into - and protective of the interests of victims: s.423(2).

Inducing breach of contract

54. The elements of the tort of inducing breach of contract are set out in the judgment of the Court of Appeal in *Northamber PLC v Genee World Limited & Ors* [2024] EWCA Civ 428 at [30].

> "In order for A to be liable in tort for inducing B to breach a contract with C: (1) there must be a breach of contract by B; (2) A must induce B to break the contract with C by persuading, encouraging or assisting them to do so; (3) A must know of the contract and know that their conduct will have that effect; (4) A must intend to induce the breach of contract either as an end in itself or as the means to achieving some further end; and (5) A must have no lawful justification for that conduct."

55. A director will not be liable for inducing their company to breach a contract if they are acting bona fide within the scope of their authority: *Northamber PLC* at [71]. An example of directors being held liable is: *Antuzis v DJ Houghton Catching Services Ltd* [2019] Bus. L.R.

1532 at [118]-[133]. There, directors caused a company to withhold payments due to its workers. The directors were liable because they did not honestly believe they were paying the workers the proper amount or that they were entitled to withhold payments. They "actually realised" that what they were doing involved causing the company to breach its contractual obligations.

The Law of Property (Miscellaneous Provisions) Act 1989 (the 1989 Act)

56. The variation of any material term in a contract for the sale or other disposition of an interest in land must comply with the formalities prescribed by section 2 of 1989 Act if either party were to be able to enforce the contract as varied, however, the formalities prescribed by section 2 are not required for the variation of a term of a contract to which the section applies if that term is not itself material to the contract see: *McCausland v Duncan Lawrie Ltd* [1997] 1 WLR 38. p.49.

Limitation

57. CPR PD7A paragraph.6.1 explains that proceedings are started when the court issues a claim form but that where the claim form as issued was received on a date earlier than that on which it was issued, the claim is brought for the purposes of the Limitation Act 1980 on that earlier date.

58 The applicable limitation period prescribed by the Limitation Act 1980 (**the 1980 Act**) for the claimant's claims are:

(i) contract: 6 years from breach, by reason of section 5 of the 1980 Act. The cause of action accrued on 7 December 2015, the date of completion of the sale of the second house;

(ii) transaction defrauding creditors: given that the claim is effectively an action for a sum of money recoverable by virtue of a statute, 6 years from the date of the transaction, by reason of section 9(1) of the 1980 Act. The date the monies were withdrawn from the first defendant has not been disclosed by the defendants. The withdrawal must have been made in the period from 7 December 2015 to 13 December 2016; and

(iii) tort of inducing breach of contract: 6 years from the date damage was suffered by reason of section 2 of the Limitation Act 1980. Damage occurred on 7 December 2015 on the sale of the second house.

59. Section 32(1)(b) of the 1980 Act provides an extension of time when any fact relevant to a claimant's right of action has been deliberately concealed from him by the defendant. The limitation period begins when the claimant discovers the fraud or concealment or could with reasonable diligence have discovered it. Section 32(2) of the 1980 Act provides that, for the purposes of section (1), "deliberate commission of a breach of duty" which was "unlikely to be discovered for some time" amounts to deliberate concealment. The judgment of the Court of Appeal in *Giles v Rhind* [2009] Ch. 191 at [36]-[55] explains that "breach of duty" in section 32(2) includes a claim under section 423.

Conclusions on the Facts

60. The claimant's evidence was that the Sale Agreement and the Interest Agreement were drawn up on the second defendant's instructions by the second defendant's solicitor Neil Crowther of Worsdell & Vintner solicitors of Uxbridge, who the claimant met for the first time on the day he signed the Agreements. The claimant's evidence was that Mr Crowther asked him if was intending to take independent advice after the claimant had read the

Agreements and that the claimant declined to do so. In an email dated 15 February 2022 sent by Mr Crowther to the second defendant, and included in the defendants' disclosure, he confirms he prepared the Agreements and was present when they were signed on 20 June 2014. Mr Crowther wrote that he prepared the Agreements at the joint request of the claimant and the second defendant, and confirms the claimant's evidence about the taking of separate advice. Mr Crowther observed in his letter, that the fact that the claimant did not take a charge over the property "is perhaps an indication of these other arrangements which he would be making with you personally." Mr Crowther's letter does not explain why clause 6 was included in the Sale Agreement, in circumstances where it did not reflect the reality that completion would take place immediately. Mr Crowther was not called to give evidence and was therefore not cross-examined, nor was his file disclosed.

61. I am satisfied that Mr Crowther acted on the instructions of the second defendant in drawing up the Agreements. Instruction by the second defendant is consistent with what Mr Crowther says in his letter about a party such as the claimant normally being in need of separate legal advice. I attach no weight to Mr Crowther's suggestion that the claimant not taking a charge over the Property was an indication of other arrangements made personally between the claimant and the second defendant. It is simply consistent with the claimant not having been advised independently about how he might protect his position.

62. There is no reference to any deposit being paid in either Agreement. While there are confusing references to a £10,000 deposit in the Particulars of Claim, the claimant denied any deposit was paid and said he had become confused with a separate payment by the second defendant of £9,200 to repay a loan of €10,000 made to help buy a house. There is no documentary evidence that any sum was paid by way of deposit and the second defendant's evidence did not suggest that any such deposit had been paid. I conclude that no deposit was paid.

63. The final letter disclosed by the defendants is from a Mr Steve Brown, director of Managereal Properties Ltd, and addressed to the second defendant, dated 20 July 2014. It refers to a meeting the previous day with the second defendant and the claimant who was described both as a business partner and owner of the Property and refers to the Rickmansworth development. Mr Brown was not called to give evidence. The claimant denied any knowledge of Mr Brown or any meeting with him and pointed out that the letter was written and apparently referred to a meeting that had taken place after he had left for Cyprus. This letter adds nothing to the defendants' claim that an oral agreement was reached to invest in the Maidstone Project.

64. The claimant's witness statement said that he visited the UK in 2016 and stayed with the second defendant and Mrs Stylianides for about a week and visited the Property with the second defendant and was told by the second defendant that the second house was not yet sold.

65. The second defendant's witness statements do not deal with this visit of the claimant to England. Colin Begeman and Colin Cantellow both describe a visit by the claimant to the Property in May 2015 at which they were both present and at which issues with a neighbour were discussed Mr Begeman and Mr Cantellow also refer to a meeting the following day at Maidstone attended by the claimant, the second defendant, his son and Mr Begeman. The claimant was adamant that he had not visited Maidstone at all.

66. The claimant was cross-examined about the failure of his second responsive witness statement to deal with the defendants' evidence about his attendance at a site visit to the Maidstone Project.

67. Mrs Styliandes' diary referred to a visit by the claimant to England when he stayed as a guest of the second defendant and Mrs Styliandes in May 2015.

68. I conclude that it is more likely than not that the relevant visit of the claimant to England took place in May 2015 and that on that occasion he visited the Property and discussed ongoing issues with the second defendant, Mr Begeman and Mr Cantellow. Mrs Stylianides's diary corroborates a visit at that time and there would have been no purpose in any such site visit to the Property or discussions about the development there after the houses had been sold. I do not attribute any significance to a responsive witness statement failing to contain a denial of the Maidstone visit; witness statements are not pleadings. It is possible that he did visit and has forgotten doing so, because the visit had little significance for him. I do not need to decide whether the claimant visited the Maidstone Project during this or any trip to England. Such a visit would not be evidence of any investment.

69. The next event of significance according to the second defendant is the visit to Wilton's offices in Grosvenor Street in late 2015. The evidence of this event is simply not credible. It was not mentioned by the second defendant in any document before trial began. The second defendant did not explain where the £30,000 of cash came from. There is no documentary evidence of a cash payment being received by Wilton. It would be highly unusual for a professional services company to be willing to accept a substantial cash payment without performing some form of due diligence, of which there is no evidence. There is also no explanation why any payment that might have needed to be paid to Wilton could not have been paid directly by the first defendant just as the tranche of £585,000 was paid to Wilton on 7 December 2015 as the completion statement for the second house shows. I do not believe this aspect of the second defendant's evidence.

70. No original hard copy nor electronic copy metadata have been revealed for the November 2016 Letter and no explanation has been offered as to its provenance. The November 2016 Letter is not explicable on its face. If the claimant had agreed to invest in the Maidstone Project the letter would not have referred to a loan by the claimant to Bampford No documentation evidencing any such loan has been produced. No plausible explanation has been offered by the defendants how the claimant would benefit by the transfer of properties to Rouxville, from which there is no evidence the claimant would have been entitled to any benefit. No explanation how a genuine document addressed to Bampford is in the second defendant's possession has been given. The defendants have failed to establish that the document is genuine.

71. The January 2017 Letters are also curious. They were produced very shortly before trial, again without explanation as to their provenance. Neither Mr Kyriakides, nor Mr Karamanis was called to give evidence. How or why Mr Kyriakides and the claimant would have chosen to establish Margrace is unexplained. Wilton is apparently the trustee of Margrace. Wilton and Bampford have the same postal address and Wilton appears to be its sole director. No explanation for the connection between these entities and the defendants' case on the variation of the Sale Agreement by oral agreement has been offered. The claimant denies all knowledge of Wilton and Bampford and Margrace and asserts that the January 2017 letter apparently signed by him is not genuine. I agree with him.

72. It is common ground that the claimant visited the Stylianides' home in late 2019 seeking payment of what he was owed and spoke angrily with Mrs Stylianides. Mrs Stylianides' diary establishes the date of this visit. That the claimant should do this and do it at this time is consistent with his having only recently been told by his brother that the two houses appeared to have been sold and is consistent with the claimant not having told him that that was the position at any earlier time. That is consistent with the second defendant's statement that he was "guilty" of that omission.

73. To the extent that Mrs Stylianides said in her witness statement that the claimant expressed concern about what was going on with the Maidstone Project, I do not accept that she is remembering matters accurately. Her diary does not mention Maidstone. She now knows and in 2019 knew that the second defendant was having financial difficulties with the Maidstone Project and I conclude that she has conflated questions from the claimant about when he would be paid with an understanding derived from the second defendant that payment to the claimant depended on the Maidstone Project rather than from her own knowledge about any arrangements between the claimant and the second defendant.

74. The final significant dispute in time concerns whether or not a cash payment was made to the claimant on 24 December 2019 at the Coach and Horses in Rickmansworth. The second defendant has sought to support his version of events by calling Mr Morgan to give evidence about being the source of the cash, however Mr Morgan's evidence did not go so far as to identify the recipient of the cash. The second defendant said that he and the claimant had lunch together in the pub after the cash was handed over. The claimant says that they had lunch at Pizza Hut in Watford on the occasion of this visit and that he had not been in a pub since 2002. The second defendant's account of what occurred is implausible. All the other payments to the claimant pursuant to the Interest Agreement were made by deposit of cash or bank transfer. There was no reason for the second defendant to suppose that the claimant would welcome or would accept a large amount of sterling in cash. While it was the second defendant's evidence that he did not need to and did not count the money in the bag he was handed by Mr Morgan because he trusted him, it is implausible that the claimant would simply accept what he was told was in the bag without requiring it to be counted. It is also implausible that the second defendant would hand over a cash sum which resulted in a significant overpayment of what was due under the Interest Agreement. If, as Mr Morgan and the second defendant agreed the money was in due course repaid, evidence of that repayment via a bank transaction could be expected to exist and to have been disclosed. There is no evidence as to the way in which the second defendant would have been able to make a cash repayment to Mr Morgan without leaving a trace in his banking documents. Just as I do not accept the second defendant's evidence about the attendance at Wilton's Grosvenor Street offices with a large amount of cash, I do not accept that the second defendant made any cash payment to the claimant on 24 December 2019 or on any other date.

The Alleged Oral Agreement and the Claimant's Claims

75. . The parties had prior to 20 June 2014, agreed terms and the second defendant had instructed Mr Crowther to draft documents reflecting those terms. It is inherently implausible that parties would, on the same day as signing the written Sale Agreement and Interest Agreement, agree orally to a contract superseding them. The opportunities for reaching any oral agreement after that day were limited by the claimant's return to Cyprus the following day.

76. The claimant was firm in his oral evidence and adamantly denied that there was any oral agreement varying or superseding the Sale and Interest Agreements.

77. The second defendant's evidence of the existence of the oral agreement was hopelessly vague. The second defendant could not say when the oral agreement was reached and could not identify any terms as to repayment or otherwise. There is scant documentation about the Maidstone Project and, once the November 2016 Letter and January 2017 Letters are put to one side, there is nothing evidencing the claimant's participation in the project.

78. In July 2014 Mr Brown was writing a letter about investment in the Rickmansworth project, which is inconsistent with any earlier oral agreement to invest the proceeds in the Maidstone Project having been reached.

79. The fact that there was a meeting at the Property in May 2015 sheds no light on the existence of any oral agreement. That the claimant may have visited the site of the Maidstone Project would not establish that he had agreed to invest money into it and the third party witnesses' recollections are of the vaguest sort as to any knowledge of the claimant's connection to the Maidstone Project.

80. The claimant's £600,000 vanishes from the documentary record at some point between completion of the sale of the second house in December 2015 and dissolution of the first defendant in December 2016.

81. The second defendant would appear to have made arrangements involving offshore companies in the Isle of Man and Mauritius and a settlement in the Isle of Man in connection with the Maidstone Project for the purpose of saving tax. The lack of disclosure and the lack of frank and open evidence from the second defendant about these arrangements leads to the inevitable inference that these were arrangements made for his own purposes and not involving the claimant.

82. It is pleaded by the defendants that the Maidstone Project "suffered a loss as a result of Covid 19", there is nothing to that effect in the second defendant's witness evidence. If that plea is correct the loss must have been incurred after March 2020, years after the claimant agreed to the transfer of the Property. Although a spreadsheet has belatedly been produced apparently illustrating a deficit of £85,000 on the Maidstone Project there is no contemporary evidence quantifying this loss, or communicating it to the claimant. It is implausible that these events would go undocumented or uncommunicated, if the claimant was really an investor.

83. I am not satisfied that there was ever any oral agreement varying the terms of the Sale Agreement. The second defendant evidently wished to have the claimant's funds available for intended further investment purposes and appears to have treated them as so available but has not established that he or the first defendant had any contractual entitlement to do that. The case of the defendants on the oral agreement fails on the facts. I do not therefore need to identify whether it would have failed as a variation of a contract for the sale of land which would be void because of non-compliance with s.2 of the 1989 Act. The first defendant has no other defence to the claim for £600,000 for breach of the Sale Agreement.

84. No explanation for the withdrawal of funds from the first defendant has been provided by the second defendant. It is to be inferred and I do infer that the second defendant knew

that withdrawal of the money from the first defendant would inevitably lead to the first defendant being unable to pay its debt to the claimant and breach its contract with him and would render the first defendant insolvent, thereby prejudicing the claimant. I infer also that the funds were withdrawn for the second defendant's direct or indirect benefit, possibly for investment in the Maidstone Project without consideration being paid to the first defendant. The second defendant has fabricated the alleged oral agreement as the only way of explaining away his unauthorised use of money owed by the first defendant to the claimant. I conclude that he has fabricated also the cash payments to Wiltons and to the claimant and the November 2016 Letter and the January 2017 Letters in an attempt to draw the claimant into transactions, which in truth were nothing to do with the claimant. I conclude also that the second defendant was acting dishonestly and in breach of his statutory duty to act in the best interests of the first defendant's creditors.

85. The claimant's section 423 claim and the claim of inducing breach of contract by the first defendant are therefore made out against the second defendant. The claimant is a victim of the transaction entitled to an order under section 425.

Limitation

86. Since the claim form was received by the Court on 2 September 2022, it is the date six years prior to that which is significant for the purposes of limitation. The section 423 claim will be within its primary limitation period if the withdrawal of funds from the first defendant took place after 2 September 2016. The first defendant's bank statements which would establish when the withdrawal took place or to whom the withdrawal was paid have never been produced. I was therefore invited to draw the adverse inference that the transaction took place after 2 September 2016. In light of the defendants' failures to comply with even the standard disclosure direction to which they had consented, I draw that inference. The section 423 claim against the second defendant is in time.

87. If necessary the claimant relies on section 32 of the 1980 Act. The section applies differently to the section 423 claim and to the breach of contract and inducing breach of contract causes of action.

88. For the purposes of the section 423 claim, the transfer of funds away from the second defendant constitutes a deliberate commission of a breach of duty for the purposes of s.32(1). The claimant could not be expected to have reasonably discovered the breach of duty earlier than the dissolution of the second defendant on 13 December 2016. Accordingly, if the inference as to the date of withdrawal was incorrect, the section 423 claim was nevertheless made in time.

89. For the remaining claims, the primary limitation period expired in December 2021, before the claim form was filed. The question then is whether the claimant can rely on section 32.

90. The claimant relies on the fact that the second defendant failed to tell him at any relevant time that the second house had been sold and thus concealed that sale. That sale is a fact relevant to his right of action, because the Sale Agreement required that repayment be made on the happening of the second sale. The defendants' case was that there was no act of concealment as a matter of fact, but did not argue that the claimant could with reasonable diligence have discovered the fraud or concealment at any alternative date, or that there is any other bar to the claimant's reliance on the section.

91. The second defendant said in his 21 December 2023 witness statement "I have been consistently keeping the claimant updated as to the progress of the construction site and the entire project, for both Cuckoo Hill project, and Maidstone development". This assertion is totally unsupported by documentary evidence and is contradicted by what the second defendant said in cross-examination about being guilty of not telling the claimant about the second sale. That failure to tell the claimant that the sale had occurred in my judgment constitutes an act of deliberate concealment for the purposes of section 32.

92. The commencement of the limitation period for the contractual claim against the first defendant was thus postponed until the date at which the claimant could with reasonable diligence have discovered the sale of the second of the two houses at the Property, which date would be at the earliest December 2016 when the first defendant was dissolved and the claimant could have inferred from the fact of the dissolution that matters were being kept from him. The same would apply to the tortious claim against the second defendant for inducing breach of contract, if I were to construe the pleading that he was out of time to bring the contractual claim, as extending to a claim for inducing breach of contract.

93. The claims against the defendants were all brought in time.

94. The claimant is entitled to declaratory relief as pleaded and judgments against both defendants for £600,000 plus interest and against the second defendant for £11,170 plus interest.

Interest

95. The claimant's contractual claim for interest against the first defendant under clause 3(i)(ii) of the Sale Agreement is at the rate of 4% above Barclays Bank's prevailing base rate.

96. The Interest Agreement did not include an express contractual rate in respect of unpaid sums.

Consequential Matters

97. This judgment is intended to be handed down remotely and without attendance at 2pm on Wednesday 26 February 2025. If the parties are unable to agree matters consequential on the judgment a further hearing will be listed in due course.