Neutral Citation Number: [2021] EWHC 1381 (Comm)

Case No: LM-2020-000101

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT (QBD)

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

Date: 26 May 2021

Before:

HIS HONOUR JUDGE KEYSER QC
sitting as a Judge of the High Court

- -

Between:

WIGGIN OSBORNE FULLERLOVE (a firm)	**Claimant**
- and -	
DAVID KEITH BOND	**Defendant**

- -
- -

Alexander Hill-Smith (instructed by **Knights Professional Services Ltd**) for the **Claimant**
Timothy Becker (instructed under the **Direct Public Access Scheme**) for the **Defendant**

Hearing dates: 11, 12, 13 and 14 May 2021

- -

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.

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HIS HONOUR JUDGE KEYSER QC

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10.30 a.m. on Wednesday 26 May 2021.

JUDGE KEYSER QC:

Introduction

1. The claimant, Wiggin Osborne Fullerlove ("WOF"), is a firm of solicitors. The defendant, Mr David Bond, is a businessman. On 31 January 2015, at the request of Mr Bond, an advance of £626,000 was made from WOF's client account by way of a 30-day loan at an interest rate of 10% APR. No repayments have been made in respect of that advance ("the Loan"). WOF says that Mr Bond is personally liable for the repayment of the Loan with interest, because the Loan was made to him or because as agent he undertook liability jointly with his principal or because the principal was merely a vehicle for his personal affairs. Mr Bond says that the Loan was made to a limited company and that he is not personally liable for its repayment. That is the main issue in the case. Mr Bond also disputes WOF's entitlement to sue for repayment of the Loan and its case as to the agreed terms for repayment of the Loan; those are secondary issues in the case.

2. Although there was reference to numerous authorities in the course of argument, it is common ground that the case turns on its facts. I shall set out quite a lot of facts, some of more relevance than others, but I shall not refer to everything that either party appeared to think relevant.

3. I am grateful to Mr Alexander Hill-Smith, counsel for the claimant, and Mr Timothy Becker, counsel for the defendant, for their submissions.

Facts and Evidence

Mr Bond and the Bond companies

4. Mr Bond was called to the bar of England and Wales in 1977 but has never practised as a barrister. He has for many years been involved in the business of renting out shipping containers (also known as "tanks") and has carried out this business by means of a number of companies that he has owned or controlled. It is convenient to say something about the companies at this stage; more about some of their activities will be said later.

5. Bond International (UK) Limited ("BIUK") was incorporated on 14 July 1986 in England and Wales. At all material times Mr Bond was the sole director and the issued shares were held as to 5% each by Mr Bond and Ina Bond, whom I assume to be his late wife, and as to 90% by Bond International (US) Inc. On 1 May 2013 the company's registered office changed to 22 Hanover Square, London, W1S 1JP. On 13 June 2013 the company entered members' voluntary liquidation. The only creditor was HMRC, to whom about £178,000 was owed in respect of VAT. Mr Bond signed a declaration of solvency on the basis that the company was owed some £235,000 by Bond International (US) Inc. (Actually, he said in evidence that his signature had been placed on the certificate electronically by company secretarial staff. But he bears responsibility for it.) On 3 July 2013 the registered office was changed to an address in Northampton. On 17 December 2014 the liquidation became a creditors' voluntary liquidation; the debt to HMRC had not been paid. Mr Bond's evidence was that, when

BIUK went into members' voluntary liquidation, there were good prospects that Bond International (US) Inc would pay its debt, but that circumstances changed and the hopes were falsified. BIUK was dissolved in December 2017.

6. Bond International Leasing Limited ("BI-Leasing") was incorporated on 14 March 2012 in England and Wales. From May 2013 until February 2017 the company's registered office was 22 Hanover Square. Mr Bond has at all times been a director of the company. His son, D'Arcy Bond, was also a director until November 2014 and has again been since May 2019. The issued shares are held as to 24% by D'Arcy Bond; the remaining 76% was held by Bond International (US) Inc until 31 May 2015, when it was transferred to Bond International Group Limited.

7. Bond International (US) Inc ("BIUS") was incorporated in Delaware. As I have mentioned, it was the majority shareholder in BI-Leasing at the date of the Loan and had previously been named as a major debtor of BIUK in that company's liquidation. If that was a genuine debt, rather than a device by which to achieve a members' rather than a creditors' voluntary winding up of BIUK, it was BIUS's failure to pay that debt that resulted in the insolvency of BIUK. Mr Bond's evidence was that he did not know whether BIUS was still in existence; there is, however, a document in evidence that shows that it still existed in January 2021.

8. The two companies directly connected with the present case are Bond International Limited and Hawk Containers Limited, both of which are registered in the British Virgin Islands.

9. Bond International Limited ("BIL") was incorporated on 14 July 1986 (company no. 1996), struck off the BVI register of companies on 23 August 2010 and restored to the register on 13 May 2013. A Business Memorandum prepared in 2014 said that it was "owned by David Bond" and described it as "the largest private owned ISO (International Organisation for Standardisation) tank container leasing company." The Business Memorandum said: "The Company is incorporated in the British Virgin Islands with administrative offices in London. The Company operates from offices at 22 Hanover Square, London W1S 1JP." Mr Bond typically referred to himself as BIL's "President and CEO". For WOF, Mr Hill-Smith contended that Mr Bond was not a director of BIL. It seems to me probable that he was and is a director, though nothing much turns on the point.

10. Hawk Containers Limited was incorporated on 2 April 1987 (company no. 3117) and re-registered on 1 January 2007. It was struck off the register in about 2009 (the evidence does not show the precise date) and was restored to the register on 15 January 2015. It changed its name to Bond International Group Limited on 20 April 2015, in circumstances that will be mentioned below. I shall call the company "Hawk" in respect of periods before its change of name and "BIGL" in respect of periods thereafter. However, the referent of "Bond International Group Limited" before 20 April 2015 is a contentious matter.

WOF and Mr Mark Payne

11. WOF has a head office in Cheltenham and a branch office in Jermyn Street, London. It has a niche practice, specialising in onshore and offshore trust, tax and asset work for wealthy individuals, families and estates. The individual partners have generally dealt

more or less exclusively with their own client-base. In 2015 its managing partner was Mr Paul Hunston. Another of its equity partners was Mr Mark Payne. It was Mr Payne who arranged the Loan with which these proceedings are concerned. As will be explained in more detail below, he did so without obtaining authority from the client against whose ledger the funds were advanced; and, on account of this and other misdemeanours, he was subsequently required to resign from the partnership and was later struck off the Roll.

A Comment on the Witnesses

12. At the trial before me, the main witness for WOF was Mr Payne, and Mr Bond alone gave evidence in support of his defence. It is convenient to say something now about my view of those two witnesses; specific findings will appear below.

13. To the limited extent that the facts are in issue, their determination must principally depend on the contemporaneous documents and on the likely inferences to be drawn from them. These are the main touchstone for the resolution of disputed matters in the evidence given by Mr Payne and by Mr Bond. The manner and demeanour of the witnesses are not irrelevant, but they are an unreliable guide and, because of their immediacy, are correspondingly dangerous, as they tend to invite undue reliance. They may serve to confirm, but could only rarely override, the conclusions that could be drawn by more objective criteria.

14. As a witness, Mr Payne was subject of (polite) attack on account of the professional misconduct that has been mentioned above and will be referred to in more detail below. As that misconduct involved an element of dishonesty, certainly in a professional sense but also to some extent in a more general sense, it is relevant to an assessment of his evidence and I bear it in mind. However, there is more to be said. First, I am concerned with Mr Payne's honesty and reliability as a witness, not with his past professional misconduct. Second, while his professional misconduct is not in any way to be excused and necessarily attracted a condign sanction from the Law Society, three observations may be made with respect to it: (a) there is evidence that it was at least contributed to by work-related stress and associated depressive illness; (b) of eleven disciplinary offences charged against and accepted by Mr Payne, only one involved a motive of personal gain, and that one appears to have concerned misappropriation of client funds in the misguided expectation that Mr Payne would be able to repay them before their appropriation was discovered; (c) Mr Payne's irregular professional conduct actually included the personal discharge of about £1,000,000 of professional fees for which a client was responsible but which Mr Payne had failed to bill the client; this says something about his state of mind in the latter stages of his practice and justifies Mr Hunston's characterisation of his behaviour towards the end of his professional career as "bizarre". Third, WOF and Mr Payne have both stated that he has no financial interest in the outcome of these proceedings, and there is no contrary evidence. There is no apparent reason why he should give false evidence to assist WOF in these proceedings, especially when his involvement as a witness has involved revisiting some of the matters that led to his professional downfall. Fourth, although Mr Payne was subjected to rigorous cross-examination for more than one full day, with detailed reference to the documents, I found nothing in his evidence that was indicative of falsehood. Indeed, in all material respects his evidence was credible when tested against the documentary record. Fifth, for what it is worth, Mr Payne's oral evidence carried conviction, both in his concessions of uncertain memory on certain points and

in his firm insistence on certain other points. He gave his evidence clearly, plainly and without prevarication. I bear in mind that Mr Payne's memory of things that happened six or more years ago is liable to be fallible. But I found him a truthful witness.

15. Mr Bond was much less satisfactory as a witness. Instead of confining himself to answering the questions put to him, he regularly responded with long and argumentative speeches. In itself, this is merely a technical defect and a cause of slight annoyance. However, it is necessary to consider whether it was being used as a method of avoiding straight answers to potentially uncomfortable questions. On occasion, indeed, Mr Bond seemed unwilling to give simple answers to simple questions; although this may possibly have been in part the result of a desire to be precise, I formed the impression that it had more to do with a lack of straightness and candour. Mr Bond also repeatedly displayed a tendency to try to avoid awkward inferences from the documents by attributing responsibility for their contents to others, even where they bore his signature. Further, some of Mr Bond's evidence was just not credible; examples will appear in what follows.

Background to the Loan

16. One of Mr Payne's longstanding clients was Mrs Gilda Gourlay. Mrs Gourlay owned a company called Gourlay Leasing Limited ("GLL"), which was a vehicle for holding an investment portfolio that was managed by Triple Point Investment Management LLP. Mrs Gourlay and Mr Payne were at the material time and remain directors of GLL. Triple Point was a director until April 2015, when it resigned as a director and was replaced by Mrs Gourley's son, Mr Wade Newmark. Mr Newmark, who was himself a longstanding client of Mr Payne, was a financial adviser and was the principal source of financial advice to Mrs Gourlay. Mr Payne described Mrs Gourlay and Mr Newmark as friends of his as well as clients.

17. Mr Newmark got to know Mr Bond through business. He saw an investment opportunity for his mother in buying and leasing out shipping containers. He also saw the potential for tax advantages if the investment were made through a limited company. Initially the intention was to use GLL for this purpose.

18. On 10 December 2013 Mr Newmark introduced Mr Payne to Mr Bond and to his son, D'Arcy Bond. By email that day, Mr Bond sent to Mr Payne, for his "general interest and excitement", a pdf copy of the brochure for BIL. The footer to the email was:

> "David K Bond LLB (Hons) Barrister
>
> Bond International Limited
>
> c/o Bond International Leasing Limited
>
> 22 Hanover Square …"

That was typical of the standard footer to all emails sent by Mr Bond, other than those sent from his iPhone, save that later emails inserted "President and CEO" above "Bond International Limited" and that the reference to Bond International Leasing Limited was dropped.

19. A little later that evening, D'Arcy Bond sent to Mr Payne by email copies of BIL's standard documentation: Agreement in Principle; Tank Purchase Option Agreement; Equipment Management Services Agreement; Bill of Sale; Acknowledgment of Assignment.

20. The initial intention was that GLL would purchase tanks from BIL for leasing to third parties and would enter into an agreement with BIL for the provision by the latter of management services. As the transaction progressed, it became apparent that GLL would not be a convenient vehicle for the acquisition of the tanks, because Triple Point was not willing that a company of which it was a director invest in assets that would be managed by a third party. Accordingly Mr Payne acted in respect of the incorporation of a new company, Glaid Limited ("Glaid"), on 30 January 2014. The first directors were Mr Payne, W O F Directors (No. 1) Limited and W O F Directors (No. 2) Limited. Each of the corporate directors held one of the two issued shares in Glaid as nominee for Mrs Gourlay. (Mr Newmark was appointed as a director in January 2015, and the two corporate directors resigned in June 2015.) A further problem arose when it became clear that Triple Point would not release moneys for the purchase until the end of March 2014, not at the end of January 2014 as had been hoped; Mr Bond was insistent that the transaction must be completed by the end of January. In the event, funding to complete the transaction was obtained from Kleinwort Benson, secured against Mrs Gourlay's investment portfolio with Kleinwort Benson.

21. On 31 January 2014 Glaid purchased from BIL, for a price of $1,669,637.76, shipping containers that were leased to Solvay and Sinochem. By an Equipment Management Services Agreement executed on the same day, Glaid appointed BIL as its agent for the management, leasing and marketing of the tanks. Payment of $982,538.44, the loan obtained from Kleinwort Benson, was sent to an account in the name of BIL with ING Bank in The Netherlands. It was intended that the balance of the price be paid upon the redemption of GLL's investment with Triple Point. In the event, it was decided to defer the redemption of the investment and a further loan for the outstanding balance was obtained from Kleinwort Benson. The balance of $651,492.80 for the purchase price was eventually paid by Glaid Limited to BIL's account with ING Bank on 9 May 2014. (There was some shortfall from the total price, which was to be met out of Glaid's rental income.) It was envisaged by all parties that Mrs Gourlay would make further investments in tanks by way of transactions with BIL.

22. Mr Payne's evidence, both in his witness statement and orally in cross-examination, was that he did not undertake any due diligence in respect of Mr Bond or BIL but placed trust on his knowledge of Mr Newmark, who had introduced Mr Bond to him. In cross-examination he said that he had also been impressed by Mr Bond's status as a barrister. He said, further, that his professional judgement at the time was impaired by pressures and stress. I accept that evidence.

23. In March 2014 BIL produced a Business Memorandum for potentially interested investors. A copy was provided to Mr Newmark and Mr Payne. It said, "The Company is incorporated in the British Virgin Islands with administrative offices in London. The Company operates from offices at 22 Hanover Square, London, W15 1JP." There was a photograph of 22 Hanover Square. It identified the members of its "dynamic Management Board" as Mr Bond (described as "President and Chief Executive Officer"), D'Arcy Bond ("Chief Operating Officer") and Lisimba Allen ("Finance Director").

24. From March 2014 discussions among Mr Payne, Mr Newmark and Mr Bond focused largely on "Project Hawk", which was a project to devise and create an offshore vehicle to own and operate the container leasing business so as to provide a tax-efficient structure, attractive to wealthy individuals interested in investing in tank leasing, that would both save inheritance tax ("IHT") and take advantage of the Enterprise Investment Scheme ("EIS"). Mr Payne's evidence was that nothing was said about "Hawk Containers Limited" and that he was unaware of the existence of such a company (indeed, the company did not then exist; it had been struck off in 2009); he assumed that the use of "Hawk" simply related to the fact that BIL's documentation incorporated a logo of a bird of prey. I accept that evidence; indeed, Mr Bond's evidence did not suggest that he had mentioned Hawk to Mr Payne in 2014.

25. Project Hawk has nothing directly to do with the Loan and is relevant only as background. The project progressed slowly, and ultimately nothing came of it. It was decided that counsel's advice would be sought on the tax issues, though in the event counsel was not instructed for many months. By email on 28 April 2014 Mr Payne asked Mr Newmark: "Will you be responsible [for counsel's fees] or will David's company be responsible or the two of you jointly and equally?" On 30 April 2014, by email copied to Mr Bond and D'Arcy Bond, Mr Newmark replied: "I met with David today and he has confirm[ed] Bond International is happy to underwrite counsel's costs." On 12 May 2014 Mr Bond wrote to Mr Payne to request a copy of the draft instructions to counsel, saying that he understood the fees should not be more than £3,000 and asking to be told if they were likely to exceed that figure. The email also asked: "Have you had any further thoughts on prospective clients who might be interested in taking up the second £1 million that Glaid was unable to?"

26. Meanwhile, the members' voluntary winding up of BIUK was still proceeding. As mentioned above, the solvency of that company was premised on the expectation of repayment of a debt allegedly owed by BIUS, which owned 90% of the shares in BIUK. The liquidator made a request to Mr Bond for details concerning the holding company. I have not seen the request, but the response dated 10 June 2014 read in part as follows:

> "I refer to your request for details regarding the holding company, Bond International Ltd ('Bond').
>
> I can confirm Bond is registered in the British Virgin Islands and is a trading company operating worldwide. I am authorised to enter into contracts on behalf of the company, although I am not a director of Bond.
>
> …
>
> Bond has had very difficult trading circumstances in recent years. …
>
> It is expected that funds will be available to settle the Bond International UK Ltd debt of approx. £175k by 1st September 2014.
>
> We realise that this is past the settlement date that was intended when the declaration of solvency was signed in 2013. In the

> circumstances we hope you and the creditors will be prepared to wait a little longer for settlement."

27. A number of observations may be made about that letter. First, there is no reason to think that it was seen by Mr Payne; it is irrelevant to the objective construction of the Loan agreement. Second, there is no doubt from the letter that Mr Bond was referring to BIL, not to BIUS. Third, BIL was not the parent company of BIUK and was not the debtor named in the declaration of solvency; that was BIUS. Fourth, the statement that Mr Bond was not a director of BIL was contrary to certifications signed by Mr Bond dated 28 January 2014 and 29 July 2013, both of which said that the two directors were Mr Bond and one Geoffrey Pidduck. (Mr Pidduck was not named as a director in the Business Memorandum mentioned above.) Fifth, in his oral evidence Mr Bond claimed that the statement in the letter that he was not a director was a mistake and that he had not known of the letter; he said that its signature was electronic and would have been put on by BIL's administrative staff. However, the documents show clearly that the letter was drafted by BIL's accountants and was sent in draft to Mr Bond and D'Arcy Bond for approval before it was sent to BIUK's liquidator. It is very probable that Mr Bond knew and approved the contents of the letter that was sent to BIUK's liquidator. Sixth, the denial that Mr Bond was a director cannot be put down to the mere insertion of a mistaken "not", as Mr Bond suggested in his oral evidence, as though it were a simple typographical error, easily overlooked: the grammar of the relevant sentence shows plainly that "not" was included intentionally, and the sentence makes no sense if it is removed. If Mr Bond's evidence at trial that he was a director of BIL was true (and I think it probably was true), the statement in the letter that he was not a director was a deliberate falsehood.

28. In August 2014 BIL sent to Glaid and Mr Payne a Funding Requirement Schedule, which showed details in respect of a total of 54 tanks that were let or to be let to three lessees:

- 18 to Sinochem: already delivered: cost $942,727.14
- 16 to Vertellus: estimated delivery date January 2015: cost $1,000,000
- 20 to Milio: estimated delivery date September 2014: cost $1,118,000.

A covering email from D'Arcy Bond to Mr Payne on 15 August 2014 explained:

> "In brief:
>
> - Sinochem (State-owned Chemical Company, 5th largest company in China) equipment is already delivered and out on lease.
> - Milio (British owned oil trading firm based in Dubai) contract to be executed within the next week. I am flying to the States on Monday to conclude the deal.
> - Vertellus, (publicly listed US corporation) awaiting signed management agreement and approval from yourselves before executing the Lease Agreement.

> The total requirement is US$3,060,727.14
>
> The most immediate requirements are for Sinochem and Milio."

29. In September 2014, as part of its obligations as managing agent for the tanks, BIL submitted its second monthly Key Issues and Financial Report. One of the Key Issues and Points of Note was:

> "Glaid Ltd are considering putting in additional funds of circa £1 million as per original loan proposal. Bond has another financier in place but would prefer to finance through Glaid. Bond are meeting with new funders week commencing 15 September 2014 and as such need a commitment or comment from Glaid Ltd before then as we cannot afford not to move forward."

30. Mr Bond sent an email to Mr Payne on 8 September 2014:

> "If Glaid is likely to go ahead and invest the second £1 million tranche which you suggested could be a realistic possibility, then we would prefer to refinance the balance of 18 of the 30 Sinochem tanks through Glaid so that Glaid then has the complete Sinochem contract. The Sinochem tanks are US$52,377.73 per tank therefore x 18 = US$942,799.14 / US$1.61 per £1 = £585,589.53.
>
> Additionally we are now ready to proceed with a further contract with an existing long term US publicly traded corporation, Vertellus.
>
> There are 14 additional Vertellus tanks at US$68,650 per tank x 14 = US$961,100 / US$1.61 per £1 = £596,956.52.
>
> These tanks will be delivered in January 2015 but we need to pay a 30% deposit.
>
> This totals £1,182,546.05 with £585,589.53 payable now for 18 x Sinochem tanks, £179,086.96 payable now as a deposit and the balance of £417,869.56 payable in December/January."

31. On 10 September 2014 BIL, acting "as principal or undisclosed agent for third parties", executed an addendum to the existing lease agreement with Vertellus Specialties Inc for the leasing of a further 14 tanks to Vertellus with an on-hire date of January 2015.

32. Also on 10 September 2014 Mr Bond sent an email to Mr Payne:

> "I have heard from Wade [Newmark] that it is not practical for Glaid or Gourlay Leasing to consider further investment until March 2015.
>
> Bearing in mind that there is an approximate lead in time of up to 6 months to order and deliver new tanks, we would need to start making arrangements fairly soon should Glaid or Gourlay

> Leasing think it appropriate to commit further funds to tanks in March 2015.
>
> During our last conversation you mentioned that you had other clients for whom tanks would be a relevant investment, possibly including your own family.
>
> In addition to the transactions listed in the email below we have a further transaction for immediate financing where the tanks are delivered and paid for.
>
> In summary there are three separate transactions to be funded:
>
> 1. Sinochem—The Sinochem tanks are US$52,377.73 per tank therefore x 18 = US$942,799.14 / US$1.61 per £1 = £585,589.53;
>
> 2. Vertellus—14 Vertellus tanks at US$68,650 per tank x 14 = US$961,100 / US$1.61 per £1 = £596,956.52;
>
> 3. Milio—20 tanks at $58,000 per tank = $1,160,000 / US$1.61 per £1 = £720,500.
>
> Please let me know whether you consider any of these transactions to be relevant to other clients."

33. On 19 September 2014 Mr Bond wrote to Mr Payne:

> "The current transactions which require immediate funding are:
>
> 1. Sinochem—18 Sinochem tanks (out of 30 with 12 funded by Glaid) are US$52,377.73 per tank therefore x 18 = US$942,799.14 / US$1.61 per £1 = £585,589.53;
>
> 2. Milio—20 tanks at $58,000 per tank = $1,160,000 / US$1.61 per £1 = £720,500;
>
> 3. Vertellus—14 Vertellus tanks at US$68,650 per tank x 14 = US$961,100 / US$1.61 per £1 = £596,956.52.
>
> The Vertellus tanks are not delivered until January 2015 however we need to pay a 30% deposit, approximately £200,000.
>
> I am happy to meet any prospective clients for whom you might consider these transactions to be appropriate."

34. On the same day, 19 September, Mr Payne wrote to Mr Bond concerning the instructions he was now ready to send to counsel to advise on tax matters in connection with Project Hawk:

> "It occurs to me that sometimes Counsel (or more particularly their clerks) are sticklers under the KYC anti-money laundering

> legislation and that we may be required to provide copies of constitutional documents for Bond International Ltd. It would be helpful if you or Darcy could provide a copy of the Memorandum and Articles of Association, the Certificate of Incorporation and confirm the identity of the shareholders (and number of shares held) and the directors. I wouldn't want the advice held up on account of this!"

Among the documents provided in response to that request were a certificate dated 28 January 2014, signed by Mr Bond, showing that BIL was wholly owned by Akkel Holdings Limited and that the directors were Mr Bond and Mr Pidduck. A substantially identical document, dated 29 July 2013 and naming the owner of BIL as Akkel Trust, was also produced.

35. Mr Payne sent to counsel's clerk a letter confirming his compliance with the due diligence requirements of the Money Laundering Regulations 2007. According to Mr Payne, this was the first time he had carried out due diligence in respect of BIL; previously he had relied on Mr Newmark's knowledge of and confidence in Mr Bond. I accept that evidence.

36. On 26 September 2014 Mr Payne wrote to inform Mr Bond of the nature of counsel's advice, which had been given in a telephone conference call that day. The advice was broadly positive; there is no need for the purposes of this judgment to refer to its detail. No further steps were taken in relation to setting up the tax structure.

37. On 30 September 2014 Mr Bond on behalf of BIL placed an order for 14 tanks (the tanks that were to be leased to Vertellus) with NTTank (HK) Limited in Hong Kong. The total price of the order was $445,200.

38. On 10 October 2014 Mr Bond confirmed to Mr Payne that the lease agreement with Milio Limited had been signed.

39. On 15 October 2014 there was a meeting at WOF's London offices between Mr Payne and Mr Newmark and Mr Bond to discuss the mechanics of the EIS and IHT investment scheme contemplated by Project Hawk. This would involve setting up two new investment vehicles, Trade Co and Lease Co. Mr Payne's file note of the meeting recorded:

> "There was considerable urgency in obtaining funding for both Trade Co and Lease Co as 14 containers had been promised to an American company [scil. Vertellus] ready for delivery in January."

40. On 20 October 2014 Mr Bond wrote to Mr Payne:

> "Thank you for meeting last week. I have set out below the current transactions which require immediate funding:
>
> 1. Sinochem - 18 Sinochem tanks (out of 30 with 12 funded by Glaid) are US$52,377.73 per tank therefore x 18 = US$942,799.14 / US$1.61 per £1 = £585,589.53;

> 2. Milio - 20 tanks at $58,000 per tank = $1,160,000 / US$1.61 per £1 = £720,500.
>
> 3. Vertellus - 14 Vertellus tanks at US$68,650 per tank x 14 = US$961,100 / US$1.61 per £1 = £596,956.52.
>
> The Vertellus tanks are not delivered until January 2015 however we need to pay a 30% deposit now, approximately £200,000.
>
> I am happy to meet any prospective clients for whom you might consider these transactions to be appropriate.
>
> Let me know if you feel you have any immediate prospects."

41. The figure of "approximately £200,000" was not, in fact, the deposit that was due on the Vertellus tanks. The actual amount of the deposit was slightly less than £120,000.

42. On 23 October 2014 Coverdale Trust Services Limited ("Coverdale") provided to D'Arcy Bond information concerning the fees and documents that would be required to restore Hawk to the register and to change its name.

43. On 10 November 2014 Mrs Gourlay instructed Mr Payne to give notice to Triple Point to withdraw her investment; part of the funds would be used to repay the Kleinwort Benson loan. She wrote, "Please ensure this request is given to Triplepoint (sic) by 31st December 2014 at the latest as they require 90 days (sic) notice for us to achieve our 31st March 2015 liquidity target date."

44. On 14 November 2014 BIL placed an order with Klinge Corporation for 14 refrigeration units to be installed in the Vertellus tanks. The total price of the order was $215,551.42, of which 25% ($53,887.86) was payable by 29 January 2015. The invoice was sent as an attachment to an email from Allan Klinge to Mr Bond and D'Arcy Bond, which said: "I think we may be able to start as early as 6 weeks from now with the installation, but this will depend also on when the initial funds are received so that we can ensure the production slot for the units."

45. On 24 November 2014 Mr Payne received authorisation from one of his clients, a trust company called Fallowfield, to make a one-month loan of £1,000,000 to Mrs Gourlay to enable her to repay the Kleinwort Benson loan. It was from the account of this same client that Mr Payne subsequently and without authorisation advanced further moneys, by way of the Loan, in January 2015.

46. On 25 November 2014, at a board meeting of GLL attended by Mr Payne and a representative of Triple Point, it was resolved to approve the withdrawal of the investment from Triple Point and to commence the 90 days' notice period forthwith; the withdrawal would take effect on 31 March 2015 and the moneys would be paid to GLL by the third week of April 2015. Notice was duly given to Triple Point.

47. At this time, BIL was in dispute with a company called IGB, based in Germany, regarding management services contracts for tanks leased to IGB. The dispute was ventilated in *inter partes* correspondence in October and November 2014; it came to

court at an interim hearing in the Landgericht Hamburg in May 2015, when an order akin to a freezing injunction was made against BIL to secure enforcement of claims for sums of approximately €180,000 and $108,000.

48. It was the dispute between BIL and IGB that caused Mr Bond to take the decision to restore Hawk to the register of companies and to carry out new business through Hawk rather than through BIL. It was several months before Hawk was restored to the register, and several more months before its name was changed to BIGL. However, in about September 2014 "Bond International Group" entered into some form of joint venture agreement with Milio International DMCC, a Freezone company based in Dubai and operating in the oil and gas sector, and from November 2014 "Bond International Group" was carrying on some of its operations from Milio International DMCC's offices in Dubai—D'Arcy Bond was working from those offices—and was leasing transport equipment to that company. Mr Bond's evidence was that Hawk required a bank account and that Milio International Limited, a connected company registered in Jersey, permitted it to use one of its accounts. In cross-examination, Mr Bond initially denied that any assets had been moved from BIL to Hawk, but he later said that the lease for the 14 Vertellus tanks had been novated from BIL to Hawk; no documentation relating to such an assignment has been disclosed. The documents show that there was a great degree of flexibility when it came to corporate names in late 2014 and early 2015.

49. Mr Payne's evidence was that he had not known of the dispute between BIL and IGB. I accept that evidence.

The Loan

50. From the middle of December 2014 Mr Bond made repeated and unsuccessful efforts to contact Mr Payne. In an email on 30 December 2014 he wrote:

> "I hope you are taking a recuperative breaks (sic) and apologise if I am disturbing it!
>
> I did call and leave messages several times before Christmas and I did also email you.
>
> I have a friend who has expressed interest in putting up to £1 million into an EIS structure and more importantly he may put up the approx. £600k we need to pay for the new Vertellus tanks to be released to the customer pending other funding.
>
> This is urgent, hence my harassment, as the tanks need to be shipped immediately from China to have the refrigeration units fitted in the US.
>
> These tanks are 'reserved' for Glaid and the EIS facility could cover us until Glaid is able to draw down further funds as discussed with Wade."

51. The clear meaning of the email of 30 December 2014 is that BIL urgently required £600,000 as being the amount required to pay to the manufacturer of the tanks in order

to obtain their release to the customer (Vertellus). That was incorrect: the amount that BIL actually needed to pay was only about £420,000. In his oral evidence, Mr Bond said that the amount received in the Loan that followed on from this request was the full amount that would be payable by GLL or Glaid to BIL for the purchase of the tanks. That clearly was not the basis on which WOF advanced the funds: they were advanced as being the funds required by BIL to secure the release to it of the tanks by the manufacturers. There was at the time no contract between GLL or Glaid and BIL for the purchase of the tanks; and, as Mr Payne said (obviously rightly), an advance of the price to enable GLL or Glaid to buy the tanks from BIL would have been made by way of a loan to GLL or Glaid, whatever may have been the mechanics of payment. I am satisfied that Mr Bond's request for the Loan misled Mr Payne into believing that the amount of the Loan was urgently required to enable Mr Bond's companies to fulfil its contractual obligations to the manufacturer, whereas in fact only part of the Loan was required for that purpose.

52. Mr Payne's evidence regarding the use of the word "reserved" in the email of 30 December 2014 was to the effect that he understood that the tanks were available for Glaid, if it wanted them, but that there was no binding commitment to purchase them. In a passage of his witness statement concerning the Loan, he said: "Whilst the potential transaction with Glaid/GLL was in the background, the loan was not specifically linked to either Glaid or GLL as I knew that Mrs Gourlay would not have further funds available until March 2015 at the earliest." That, indeed, was also the effect of Mr Bond's oral evidence, because he said that, although he preferred to enter into a transaction with Glaid, he was keeping other irons in the fire.

53. Not even the email of 30 December 2014 elicited a response, and on 9 January 2015 Mr Bond sent a further email: "I am beginning to think I must have offended you." Mr Payne replied apologetically, explaining that he had been under pressure of work, and they arranged to meet at WOF's offices in Cheltenham at 12.30 p.m. on 15 January 2015. There is no documentary record of what transpired at that meeting; the evidence comes solely from Mr Payne and Mr Bond, whose accounts are slightly but materially different.

54. In his witness statement, Mr Payne gave evidence as follows:

> "48. I had lunch with Mr Bond on 15 January 2015. I cannot now be sure of the precise venue. During this lunch, Mr Bond explained that he needed short-term funding of just over £600,000 to secure the immediate release of a number of tanks already leased to Vertellus. I believe that Mr Bond referred during the lunch to a figure of £626,000 as Mr Bond had previously referred to the need for this funding in his email of 30 December 2014. I mentioned to Mr Bond that I had a client in mind who might agree to make funds available for a short-term loan and who had the necessary funds available on client account.
>
> 49. No specific corporate entity was referred to by Mr Bond during the meal. I knew that Mr Bond controlled a number of corporate entities but he did not designate any particular one of these as the potential borrower."

55. In cross-examination Mr Payne acknowledged that his memory of the meeting on 15 January 2015 had been hazy without the benefit of documents; however, the opportunity to review the documents had helped him to pinpoint what had been said. He said that he thought there had been a brief meeting at WOF's offices followed by lunch at a nearby restaurant; he could not recall whether the material discussion took place at the offices or over lunch. He said that he had not, then or previously, seen the documents concerning Hawk/BIGL. He confirmed the substantive contents of his witness statement.

56. In his own witness statement, Mr Bond gave the following evidence:

> "13. At the meeting on 15th January 2015, Mark Payne volunteered that he had a client who might loan Bond International companies £626,000, as temporary 'bridge funding' to secure the acquisition of tank containers to be leased to a company, Vertellus Specialty Chemicals Inc. The tanks were 'reserved' to be purchased from Bond International Group Limited by the Claimant's client, Gourlay Leasing or its wholly owned subsidiary Glaid Limited, as part of the Estate and Inheritance Tax planning which the Claimant had structured for that client, in circumstances where that client, did not have the necessary funding immediately available to complete the purchase, as there had been a delay in the redemption of funds from Triplepoint, that held £2 million of that client's funds, managed by the Claimant, which, because of the delay would now not be available until April 2015.
>
> 14. Mark Payne said that one of his clients had funds available and that he believed that client would be willing to make the loan. I specifically told Mark Payne that instructions had been given to change the name of Hawk Containers Limited, the sister company of Bond International Limited, to Bond International Group Limited and it was explicitly clear to Mark Payne that any such loan was to be to Bond International Group Limited. …
>
> …
>
> 16. There was never at any time, any intent, mention, suggestion or understanding that the Claimant's client's loan was entered into in a personal capacity by myself. At all material times the Claimant knew that I was acting as a Director of the Bond companies, specifically of Bond International Limited and Hawk Containers Limited which was changing its name to Bond International Group Limited and that the terms of the loan were agreed by myself acting as a Director of a disclosed and known company, Bond International Group Limited for whose account the Claimant's client's loan funds were advanced on 3 February 2015, with a subsequent payment of £1 million by the Claimant from their client account to the same corporate account on 29 June 2015.

> …
>
> 20. At the meeting on the 15th January 2015, I also explained to Mark Payne that Milio International Limited, a company registered in Jersey, who were partners with Bond International on several substantial infrastructure projects, were operating a bank account on behalf of Bond
>
> International Group Limited. Mr Payne was already aware that in November 2014, Bond International had moved its operations to Dubai and that operational offices were being shared in Dubai with Milio International Limited and that my son, D'Arcy Bond, Chief Operations Officer of Bond International, was based there."

57. A more explicit account was contained in Part 18 Further Information provided by Mr Bond:

> "At the meeting on 15th January 2015, when the Claimant's partner, Mr Payne volunteered the loan on behalf of the Claimant's client to Bond International Limited, to bridge the funding gap caused by the Claimant's neglect to give notice to withdraw funds from Triplepoint, within the requisite period on behalf of their client Gourlay Leasing Ltd, on whose behalf the Claimant had structured the arrangements with Bond International Limited, the Defendant suggested to Mr Payne of the Claimant and Mr Payne agreed with the suggestion, that the loan should instead be made to Bond International Group Limited instead of Bond International Limited.
>
> The Defendant explained to the Claimant that Hawk Containers Limited, a sister company of Bond International Limited, wholly owned by the same shareholder, was in the process of changing its name to Bond International Group Limited and it was agreed that the new contractual arrangements for the purchase and management of tank containers with the Claimant's client, Gourlay Leasing Limited would be with Bond International Group Limited. The Claimant agreed with the Defendant that this made sense since Bond International Limited was in dispute with its German financiers who were in extreme financial difficulties and that by putting the new arrangements with the Claimant's client, Gourlay Leasing Limited, into a different wholly owned company within the Bond Group, the interests of the Claimant's client would be 'ring-fenced' from any risk of potential third party action."
>
> "At the meeting on the 15th January 2015 it was agreed by the Claimant that the loan to Hawk Containers Limited, trading as Bond International Group Limited, would be repaid by the Claimant's client Gourlay Leasing Limited when they had

> arranged 'leveraged' funding or borrowing against their portfolio of tank containers."

58. In his oral evidence, Mr Bond said that the condition and term of the Loan were that it would be repaid out of the proceeds of sale of the Vertellus tanks to GLL, or when GLL raised leverage finance, or when GLL drew down its investment with Triple Point: that is, when GLL came up with the money for the tanks. The Loan did not have to be repaid after 30 days; that was just the initial period of the Loan. I address this issue later in the judgment.

59. On 20 January 2015 Mr Bond sent an email to Mr Payne from his iPhone:

> "I appreciate you are off skiing. Any success with this?
>
> I am meeting Wade tomorrow pm but I believe it will take up to 60 days for him to secure leverage funding."

In oral evidence, Mr Payne said that he was unsure whether the reference to "leverage funding" related only to the Vertellus funding or for a larger package of transactions that Mr Newmark was trying to arrange.

60. It appears that Mr Payne and Mr Bond must have spoken, though there is no direct evidence on the point. On 21 January 2015 Mr Bond sent an email with the standard BIL footer to Mr Payne:

> "Thank you for confirmation of the availability of these funds.
>
> Please could you arrange the transfer to:
>
> CREDIT SUISSE, GENEVA—USD
>
> BENEFICIARY NAME: MILIO INTERNATIONAL LIMITED
>
> SWIFT CODE: [code set out]
>
> ACCOUNT NUMBER: [number set out]
>
> IBAN: [number set out]
>
> Ref: Bond International Group Limited
>
> I confirm that the loan is for a period of 30 days and that interest will be paid at an APR of 10%.
>
> Let me know if you need anything further."

61. In cross-examination, Mr Payne said that he read the email when he was en route to a delayed skiing break. He acknowledged that he had seen the reference to "Bond International Group Limited" but he said that it did not identify a payee or a client, only a reference, and he had not paid it any attention—"It didn't really register with me". It was only later in the year that the name really entered his consciousness. He said that

the reference to a loan period of 30 days reflected precisely what had been discussed previously.

62. While matters were progressing between Mr Payne and Mr Bond, other things were taking place, of which (as I find) Mr Payne did not know.

1) On 13 January 2015 D'Arcy Bond provided by email to Coverdale various attachments containing the information that Coverdale had said in October 2014 would be required for the restoration of Hawk to good standing (that is, its restoration to the register) and for a change of company name. The email said:

> "Regarding copies of resolutions, the Company has been dormant and as such there have been no resolutions to date.
>
> …
>
> The name proposed to be changed to os (sic; read is) Bond International Group. Please check if this is available.
>
> I will send the resolution of the Directors to change the name shortly along with payment for the restoration to good standing for Hawk."

2) On 15 January 2015 D'Arcy Bond remitted the required fees to Coverdale and Coverdale confirmed to D'Arcy Bond and Mr Bond that Hawk had been restored to good standing.

3) On 20 January 2015 D'Arcy Bond asked Coverdale: "Can you also confirm is the name Bond International Group available? I can then forward you the resolution to change the name from Hawk Containers Limited." Coverdale replied, confirming that the name Bond International Group was available and had been reserved. Coverdale's email asked for a revised register of directors, the one previously provided having been inadequate, and remarked: "Also, please note that the letter confirming the intended activities the subject states Hawk Containers Limited, however the body of the letter refers to Bond International Limited. Kindly provide the letter confirming the intended activities of Hawk Containers Limited."

4) On 21 January 2015 D'Arcy Bond provided to Coverdale a revised register of directors, a statement of the nature of Hawk's business, and a board resolution for the change of name. The statement of the nature of Hawk's business was signed by Mr Bond as CEO & Director and said: "Hawk Containers Limited is a tank container leasing company that carries out its business on a global basis." (Of course, Hawk had been struck off between 2009 and 15 January 2015 and was not yet doing any business.) The list of directors, signed by Mr Bond on 13 January 2015, said that the two directors of Hawk were himself and D'Arcy Bond, the latter having been appointed in December 2014. Mr Bond also signed a minute of a meeting of the board on 9 January 2015, which recorded that resolutions had been approved (1) to change Hawk's name to "Bond International Group" and (2) to appoint D'Arcy Bond as a director. (This conflicted with the date of appointment stated on the list of directors. And the

meeting on 9 January 2015 was six days before Hawk was restored to the register and four days before the fees and paperwork for that purpose had been provided to Coverdale.)

5) On 21 January 2015, NTTank (HK) Limited issued an invoice for the 14 tanks in the sum of $445,200. The invoice was addressed to "Bond International Group, c/o Milio International Limited". The invoice was accompanied by a "Tank Container New Construction Initial Inspection Certificate" in respect of the tanks, which named the owner as Bond International Limited.

63. On Saturday 31 January 2015 a payment of £626,000 was made from WOF's client account to the account held by Milio International Limited with Credit Suisse. The funds were received on Tuesday 3 February 2015 and receipt was acknowledged by Mr Bond.

64. In February 2015 Mr Bond spoke to Mr Payne about repayment of the Loan. There is an issue as to what was said, which reflects the issue as to the terms on which the Loan had been agreed. Mr Payne's evidence was that Mr Bond explained to him that repayment of the Loan had been delayed; he requested, and Mr Payne agreed, that the interest rate would reduce from 10% p.a. to 5% p.a. after the expiration of the 30-day period; Mr Payne stipulated that the Loan would be repayable on demand. Mr Bond's evidence was that repayment of the Loan had not become due, and there was no mention of it becoming repayable on demand (which would be contrary to the existing terms of the agreement), but that Mr Payne agreed that the interest rate would reduce to 5% p.a. after the expiration of the 30-day period. I return to this issue later in the judgment.

65. As a result of specific disclosure given by Mr Bond, it is possible to identify what use was made of the moneys advanced by way of the Loan. In particular:

- Only about £361,000 was applied for the acquisition of the Vertellus tanks.
- A payment of €25,000 was made to LeBuhn & Puchta, the firm of German lawyers that was acting for BIL in its dispute with IGB, in respect of that dispute.

After the Loan

66. On 17 April 2015 Mr Bond sent to Mr Payne an email, copied to Mr Newmark, with the standard BIL footer:

> "Wade is in agreement that if it can be achieved, it would work best if we were able to switch the loan by your client to Bond to Gourlay and if possible increase it from the £626,000 to approx. £1 million (£938,000).
>
> This would mean that Gourlay would then have £3 million of revenue earning equipment which Wade wishes to leverage to £5-6 million in total against the £2 million in cash invested.
>
> This should be significantly easier to accomplish if £3 million in tanks is already generating revenue."

Two points may be noted for present purposes. First, the email is clear that the Loan was to "Bond", not to GLL or Glaid. Second, there is no mention of Hawk or BIGL; the only Bond company mentioned in the email is BIL, which is mentioned in the footer.

67. On 20 April 2015 Hawk changed its registered name to Bond International Group Limited.

68. On 14 June 2015 WOF raised an invoice in respect of the fees for counsel's advice on tax matters the previous year. The invoice was addressed to, "Bond International Group Limited, PO Box 4519, Road Town, Tortola, BVI". In cross-examination, Mr Payne said that he had probably been asked to raise the invoice to BIGL; the advice had not, however, been obtained for BIGL. (Of course, BIGL—or, as it then was, Hawk—did not exist in 2014, as it had been struck off the register several years previously.) It is unclear whether the invoice was ever paid, but it was certainly not paid by the Bond companies. When Mr Bond was asked about it in cross-examination, he said that he had been led to believe that the fees would not exceed £3,000 and had not agreed to pay for fees of £8,500 plus VAT; and, when asked whether he had paid £3,000 in respect of the fees, he said that Mr Newmark had told him he would sort the matter out with Mr Payne and he heard no more about the matter.

69. On 25 June 2015 Mr Payne sent an email to Mr Bond:

> "I am just working through my final fairly small comments on the various draft documents for the initial purchase of 1 million of tanks from Bond.
>
> I note the name for the company is Bond International Group Ltd, but can you please confirm the company's registered number and I will insert that in some of the documents. I have already changed the company name in the Bill of Sale as that simply referred to Bond International Ltd."

70. According to Mr Payne, the terms of that email reflect the fact that it was only at this stage that he consciously became aware of the name Bond International Group Limited.

71. On 26 June 2015 the Tank Container Sale and Purchase Agreement between BIGL as Vendor and GLL as Purchaser was executed.

72. On 29 June 2015 payment of £1,000,000 was remitted to the account of Milio International Limited with Credit Suisse. No repayment in respect of the Loan was made from these funds. Payments that were made from the funds included repayment of a loan from a Mr and Mrs Turner and payments to Mr Bond for salary.

The Aftermath

73. On 2 December 2015 Mr Payne's professional misconduct caught up with him. A meeting took place between WOF's senior partner, Mr Tim Osborne, and its managing partner, Mr Hunston, and Mr Payne. At that meeting, Mr Payne was asked to and did resign his partnership in WOF with immediate effect. That evening, Mr Hunston sent an email to the Solicitors Regulation Authority ("SRA"), reporting Mr Payne's conduct. Parts of the email read as follows:

> "Following a meeting between one of this firm's clients [in a matter not related to this case] and this firm's Senior Partner, Tim Osborne, yesterday afternoon, it has come to my attention that Mark Payne, who is one of our partners, has over a number of years been engaged in a pattern of deception involving a number of his clients and in the course of that deception Mr Payne has utilised client monies in order to cover up his deception. He has also used client funds to make unauthorised loans between unconnected clients. He has also used funds held on client account for a client to fund a personal investment amounting to approximately £200,000. It is not clear whether this use of funds was made with the consent of the client, structured as a loan from the client, or whether these funds were taken without the client's knowledge or consent
>
> …
>
> On 29 January 2015, Mr Payne arranged for the transfer of £626,000 from this firm's client account held for the estate of Lord Reay [Fallowfield was the trust company holding that estate] to Millio International Limited. In his email [to the firm's accounts department, authorising the transfer], Mr Payne indicated that the transfer related to an investment which had been authorised by the trustees of Lord Reay's estate. Mr Payne has told us that no authorisation from anyone else had been received and that in fact he authorised this transaction on his own. Mr Payne has told us that this investment is by way of a loan from the Lord Reay's estate to Millio International Limited which has not yet been repaid. So far we have been unable to verify the nature of the investment."

74. At this stage, the other partners in WOF had had no contact or dealings with Mr Bond. On 8 December 2015 Mr Payne sent to Mr Hunston an email with the subject line "Bond International":

> "… I took a call late yesterday from David Bond. He tells me that he believes Bond are close to closing the transaction which will generate the funds to repay that loan from Fallowfield (Reay) for about £660k odd with interest.
>
> I took it that this meant he hoped it would complete next week, which I hope is not unrealistic."

Mr Hunston's evidence was that the reference in the subject line to Bond International had no significance for him: it did not identify an individual or a legal entity, and he was aware that the advance had been made to Milio International Limited at the direction of Mr Bond.

75. On 9 December 2015 Mr Hunston spoke to Mr Bond ("DB") by telephone. Having done so, he prepared an attendance note of the conversation, which I find to be accurate:

> "DB confirmed that [he] had spoken with Mark Payne recently and confirmed that he had told Mark that the outstanding loan of around £660,000 should be paid shortly. He said that by shortly, he meant by the end of December. He said that he explained that this arrangement was all rather an 'incestuous affair' and that the loan would actually be repaid by Gourlay Leasing Ltd. He said that Gourlay Leasing was realising funds from the financing of a tranche of containers and a part of the funds realised would be utilised to repay the loan. DB confirmed that the funds would be remitted to WOF's client account as soon as they were available."

76. On 18 December 2015 WOF repaid the £626,000, together with interest, to the client ledger out of its office account. WOF was in turn indemnified by its insurer, Axis Speciality Europe SE ("Axis") to the extent of £601,845.11.

77. On 29 December 2015 Mr Payne reported himself to the SRA.

78. Despite what Mr Bond had told Mr Hunston on 9 December, no payment in respect of the Loan was made by the end of 2015.

79. On 19 January 2016 Mr Payne met with personnel from Deloitte LLP, who had been engaged by WOF to carry out an investigation into his conduct of WOF's affairs. A note of the meeting was prepared and agreed with Mr Payne. It contains the following record in respect of the Loan:

> "MP said the second transaction was a loan to Bond International (a company run by David Bond, an associate of Wade Newmark). Wade Newmark introduced Bond to MP. Milio are a company who supplied containers and Bond International were a container shipping company, so the money went from WOF direct to Milio as a supplier but it was a loan to Bond. There was no formal agreement and Fallowfield had not formally approved the lending of the money. MP thought the Director would have agreed to make the loan had security been provided for it.
>
> The loan to Bond was to be a 28 day loan.
>
> [Q. Was this for MP's personal benefit?] MP said not; he was just trying to be helpful. He was hoping Bond would build a big business *(and on reflection MP thought he was helping Bond over a short cash flow issue pending the onward sale of the containers)*. It was a loan that was beneficial to both parties. The lender (Fallowfield) would be earning 10% interest."

The parenthesis that I have shown in italics is identified in the note of the meeting as something that was not said in the meeting but is a subsequent comment added by Mr Payne when he approved the note.

80. On 3 February 2016 Mr Hunston sent an email to Mr Bond:

> "When we spoke before Christmas, you indicated that you anticipated that the loan to Bond International which had been arranged by Mark Payne in January 2015 and amounting to £626,000 would be repaid, together with accrued interest, by the end of February 2016. Obviously, I am very keen to get this issue resolved and I would therefore be grateful if you could confirm that it remains the company's intention to make this repayment as soon as possible and in any event before 29 February 2016."

81. Mr Bond forwarded WOF's email to Mr Newmark, asking "Can we discuss?", but did not respond to the email. On 6 February 2016 Mr Newmark replied to Mr Bond:

> "I have been also chased by Wiggin regarding your loan for any update. Clearly I am trying here but I am caught between the conventional world of corporate banking … and Asset Finance Banks … As you can see every week I am pushing along."

82. Having received no response to the email of 3 February 2016, on 26 February 2016 Mr Hunston sent a further email to Mr Bond; Mr Bond's son D'Arcy Bond was copied in. Mr Hunston wrote:

> "The loan was originally made on 30 January 2015 for a term of 30 days at an interest rate of 10% per annum. It is now almost a year since the loan should have been repaid and this now needs to be dealt with as a matter of urgency."

83. On 1 March 2016 Mr Bond sent to Mr Hunston an email in reply:

> "Thank you for your email.
>
> I confirm the terms of the loan were 10% pa for the first month and then 5% pa thereafter.
>
> As I believe you know, this loan is to be refinanced through Gourlay with whom we work together.
>
> I am meeting with Wade Newmark this morning and we will update you after our meeting."

It may be noted that Mr Bond did not dispute Mr Hunston's assertion that the Loan was for a term of 30 days. Nor did he suggest that liability lay elsewhere than with Bond (whichever person or entity that might be); he did not say that GLL was liable for the Loan, merely that the Loan was to be refinanced through GLL.

84. On 2 March 2016 Mr Hunston spoke to Mr Newmark. There is a file note of the conversation. Mr Newmark expressed astonishment that no payments had been made in respect of the Loan and the hope that he and GLL could come up with funds and a plan for repayment. Mr Hunston recorded:

> "I agreed that the alternative to reaching some kind of arrangement with Gourlay to take over the loan was that we

> would have to sue Bond International, which was a BVI company, but I said that we would have no hesitation in doing that. WN said that he knew that David Bond was not short of his own personal unencumbered assets … I said that obviously those were personal assets rather than corporate assets but I would have no hesitation in pursuing those assets also if it turned out that there were insufficient assets in the company."

85. In the event, GLL made proposals for repayment of the Loan but these were not acceptable to WOF.

86. In December 2016 WOF commenced proceedings in the Chancery Division against Mr Payne (*WOF v Payne*) for breach of the partnership agreement in respect of the various matters that were to form the subject of the SRA proceedings, including the making of the £626,000 loan. In his defence and counterclaim Mr Payne acknowledged his wrongdoing, though he said that WOF ought to have sought to resolve matters through the agreed accounting procedures in the partnership deed rather than by the proceedings. He said that his behaviour had been occasioned by the stress and anxiety he was under at the time and that, of the various dishonest actions he had committed, only one—not the one relating to the £626,000 loan—had been for his own personal gain. His account of the making of the £626,000 loan was contained in the following passages in the amended defence:

> "36.1 It is admitted that the defendant caused a payment of £626,000 to be made on 30 January 2015 from the client account of a Manx company owned by a trust established by the late Lord Reay to a company called Milio International Limited ('Milio'). The [scil. lending] company was known as Fallowfield.
>
> 36.2 It is averred that the circumstances of the payment were as follows:
>
> 36.2.1 The defendant was approached by David Bond, a client of WOF, seeking a loan to finance the purchase of gas shipping tanks. …
>
> 36.2.2 At the time, the defendant understood that the purpose of the loan was for the monies lent to be used to finance the purchase of the tanks by Bond International Limited, a company beneficially owned or controlled by David Bond. The loan was needed urgently. The loan was to be a short-term loan, to be repaid on the onward sale of the tanks to a third party, as the defendant understood from David Bond that terms had been agreed with a prospective purchaser who was not able to complete the purchase of the tanks at that time.

> 36.2.3 The defendant considered that the loan would benefit Bond International Limited and would also benefit the lender.
>
> 36.2.4 The defendant further considered that the making of the loan would be a suitable investment for Fallowfield. He had recently arranged for Fallowfield to make a short term loan of about £1,000,000 to another client of WOF with the authority of the trustee shareholders and directors of Fallowfield, and so knew that the trustee shareholders and directors of Fallowfield were prepared in principle to make such loans. The interest payable on the loan of 10% p.a. was significantly better than the return being achieved on the cash held for Fallowfield.
>
> 36.2.5 In view of the urgency of the need for the loan, the defendant arranged for the loan to be made by Fallowfield to Bond International Limited by means of the payment to Milio without first obtaining the authority of the trustee shareholders and directors of Fallowfield.
>
> 36.2.6 In so doing, the defendant had intended to seek retrospective approval of the trustee shareholders and directors of Fallowfield to the making of the loan.
>
> …
>
> 36.7 It is averred that the loan made to Bond International Limited was a genuine loan, which remains repayable with interest."

87. Mr Payne gave some further information in Part 18 responses in April 2017, to the following effect. He believed that he had one meeting with Mr Bond in connection with the loan at WOF's Cheltenham office and that other oral communications would have been by telephone. Mr Bond told him that the loan was required urgently; to the best of his recollection, he was told that the tanks had been ordered and there was a real risk that, if the purchase were not concluded swiftly, the owner or manufacturer would sell them to a third party. It was on Mr Bond's instructions that the moneys were paid to Milio International Limited.

88. Meanwhile, on 26 January 2017 BrookStreet des Roches ("BDR"), solicitors acting for WOF, wrote to Mr Bond in respect of the Loan. The letter set out some of the facts and continued:

> "Having considered the surrounding documents with our client and having taken Counsel's opinion, it is clear the loan was made

> personally to you and you took responsibility to repay the monies.
>
> To the extent you had a separate agreement with Milio International or indeed any other third party for the repayment of the monies loaned, that is, as a matter of law, entirely a matter for you and does not affect our client's cause of action.
>
> The purpose of this letter therefore is to formally demand repayment of the original £626,000 together with interest …"

89. On 13 February 2017 Mr Bond replied to BDR:

> "You appear to suggest that the funds advanced were a personal loan to myself which I confirm was never the case the case (sic).
>
> The funds were advanced to secure a transaction for the benefit of a WOF client, which client is working diligently to resolve this issue within the next 60 days."

The "WOF client" referred to in this response can only be GLL or Glaid. Mr Bond's ostensible stance, therefore, was not that the liability for the Loan rested with one of the Bond companies but that it rested with GLL or Glaid.

90. In September 2017 Axis brought its own proceedings against Mr Payne for breach of the contract of insurance between Axis and the partners in WOF. By his defence in those proceedings, Mr Payne gave the same account of the £626,000 loan as was contained in this defence in *WOF v Payne*.

91. In March 2018, after agreement had been reached with WOF and Axis, Mr Payne's proposals for an Individual Voluntary Arrangement were approved and the proceedings against him were subsequently stayed.

92. To take matters out of sequence: the SRA took disciplinary proceedings against Mr Payne. He did not contest the proceedings but admitted to having acted dishonestly in relation to all eleven of the allegations against him. The proceedings were dealt with on the basis of a Statement of Agreed Facts and Indicated Outcome, which Mr Payne signed. In respect of the allegation concerning the advance of £626,000 in January 2015, he admitted that he had acted without the client's authority and that he had given a false explanation of the payment to WOF's accounts department. The document contained a summary of the nature of Mr Payne's dishonesty in respect of the several allegations:

> "106. The Respondent's dishonest misconduct was systematic and repeated over a very long period of time. …
>
> 107. He fabricated a letter, told lies in communications to his clients and to members of staff at the Firm in which, as a partner, he held a senior position, in order to conceal the web of deception he had been weaving.

> 108. His dishonesty not only concerned the misappropriation of client monies for personal gain but also the fabrication of a document to cover his tracks and the telling of lies to clients and colleagues in order not to be found out.
>
> 109. He had a number of opportunities to reflect on and to own up to what he had done. However, he chose not to do that apparently, according to the Respondent, misguidedly believing that he could put all the clients back in the position in which each should have been but for his actions."

The Agreed Outcome was confirmed by the SRA's Judgment dated 3 May 2019, which ordered that Mr Payne be struck off the Roll of Solicitors.

These proceedings

93. The present proceedings were commenced by the issue of a claim form on 8 June 2020. A considerable amount of time at trial was taken up with exploration of the course of disclosure and specific disclosure in the case, but I choose not to recite that story here. Instead I shall set out what seem to me to be the key parts of the statements of case.

94. The following paragraphs of the particulars of claim are especially significant.

> "6. At a lunch on 15 January 2015 in Cheltenham, the Defendant requested a short term loan from Mr Payne in the sum of £626,000, the purpose of the loan being to secure the acquisition of a number of tanks already leased to a company 'Vertellus'. The Defendant said that the tanks were earmarked for a potential purchaser of the tanks, Gourlay Leasing Limited or its wholly owned subsidiary Glaid Limited, in circumstances where that potential purchaser did not have the necessary funding immediately available to complete the purchase. The Defendant did not state that the loan was to be made to any corporate entity. In the premises, it was intended to be made to the Defendant personally. Mr Payne said that one of his clients had the funds available in client account with the ability and willingness to make such a loan.
>
> 7. Following the lunch on 20 January 2015, the Defendant acting in a personal capacity sent Mr Payne an email timed 14:24 headed 'Vertellus: £626,000 loan' asking whether Mr Payne had had any success with the loan arrangements. …
>
> 8. On 21 January 2015, the Defendant sent a further email to Mr Payne timed 13:42 headed '£626,000 loan to fund 14 Tanks leased to Vertellus'. The text of the email read as follows: 'Thank you for the confirmation of the availability of these

> funds.' The email gave details of the Swiss bank account to which the monies were to be sent. The email gave the beneficiary name as Milio International Limited and gave the beneficiary reference as Bond International Group Limited.
>
> 9. This email further provided that the loan was to be for a term of 30 days and was then to carry interest at a rate of 10% APR.
>
> 10. The email was signed 'My best wishes Sincerely David'. There was then a line and in bold lettering in a different font it said 'David K Bond LLB (Hons) Barrister' and then below that, not in bold, it said 'President and CEO' and then below that in smaller lettering 'Bond International Limited 22 Hanover Square London W1'. This was the standard format of emails from the Defendant. …
>
> 11. At the time of sending this email, there was no legal entity known as Bond International Group Limited. Hawk Containers Limited later changed its name to Bond International Group Limited on 19 April 2015.
>
> 12. Further, there was no legal entity known as Bond International Limited operating from 22 Hanover Square, London W1. This was the registered office of Bond International Leasing Limited but not Bond International (UK) Limited
>
> 13. In the premises the loan was made by the Defendant personally and/or the Defendant has personal liability as agent, for an undisclosed and/or unidentified foreign principal in respect of the loan."

95. The following extracts from the defence show the nature of the case advanced by Mr Bond.

> "6. With respect to paragraph 6, it is denied that the Defendant requested any loan from Mr Payne at the meeting at the Claimant's Cheltenham offices on 15 January 2015. At that meeting Mark Payne had volunteered that he had a client who might loan the Bond International companies £626,000, as temporary 'bridge funding' to secure the acquisition of tank containers to be leased to a company 'Vertellus'. The tanks were 'reserved' to be purchased from Bond International by the Claimant's client, Gourlay Leasing or its wholly owned subsidiary Glaid Limited … in circumstances where that client, did not have the necessary funding immediately available to complete the purchase … [and] those funds would not be available until April 2015. Mr Payne said that one of his clients had funds available and that he believed that client would be willing to make the loan. It was categorically clear to both Mr Payne and the Defendant that any such loan was to be to the Bond International Group of Companies, the structure and detail

of which he was comprehensively familiar with, having reviewed all of the contractual documentation of behalf of the Claimant's client Gourlay Leasing Ltd / Glaid Ltd for the previous transactions for which the Claimant had transferred £610,000 on 4 February 2014 and £398,970 on 9 May 2014 to Bond International from the Claimant's client account.

7. It is denied that the Defendant acted in a personal capacity when he sent the email timed 14.24 to Mr Payne on 20 January. … In January 2015, the new Bond International company phone given to the Defendant was an iPhone with which the Defendant was not then familiar and which had not yet had the Bond International corporate 'signature' inputted and in consequence states 'sent from my iPhone' which is the default setting.

8. Paragraph 8 is admitted. The email is unambiguously stated to be from Bond International and is unequivocally clear that the payment instruction is for the account of Bond International Group Limited which was the trading name of Hawk Containers Limited which was in the process of having its name changed and was part of the Bond International Group. Milio International Limited was a trading partner of Bond International on whose behalf it operated a bank account. Essentially Hawk Containers Ltd, trading as Bond International Group Limited, fulfilled the role of a special purpose vehicle for future transactions with clients of the Claimant.

9. Paragraph 9 is admitted save that it is denied that there was ever any suggestion or contemplation by either the Claimant or the Defendant that the loan from their client was anything other than a loan to a disclosed, known and identified company and not a personal loan to the Defendant. It was further agreed by the Claimant that the interest rate on the client's loan to Bond International would reduce to 5% APR after 30 days. …

10. Paragraph 10 is admitted. …

11. Paragraph 11 is not admitted. Bond International Group Limited was the trading name of Hawk Containers Limited, a sister company of Bond International Limited and an integral part of the Bond International Group through which it was decided that all business with clients of the Claimant would be transacted …

12. Paragraph 12 is not admitted. The offices at 22 Hanover Square were an agency/representative office arrangement between Bond International Limited and Bond International Leasing Limited.

13. Paragraph 13 is denied. …"

96. The amended reply includes the following passages.

> "3.4. It was not made 'categorically clear' to either the Claimant or the Defendant that the loan was to be made to the Bond International Group of Companies. There is no legal entity known as the Bond International Group of Companies. On its true construction, in the absence of any specificity as to the legal entity entering into the loan agreement, and/or in the light of the fact that it was an extremely short term loan purportedly to secure the release of tanks with urgent funding personally requested by the Defendant, the loan was made to the Defendant personally and/or the Defendant was personally liable on the loan; further or alternatively, the Bond International Group of Companies, alternatively those members of the Group registered in the British Virgin Islands, had no independent existence, they did not keep separate accounts, and were under the complete control of the Defendant and are to be identified with him personally."
>
> 6.1. There is no legal entity known as Bond International; this combination of words occurred in the name of a number of different legal entities controlled by the Defendant and the email does not identify with precision any specific legal entity.
>
> 6.2. The Defendant had made no reference to Bond International Group Limited at any stage at the time of or prior to the loan agreement save in relation to the bank account in the name of Milio into which the loan monies were directed to be paid.
>
> 6.3. It is not admitted that Bond International Group Limited was the trading name of Hawk Containers Limited in January 2015; this was not within the knowledge of Mr Payne in any event."
>
> 7.2. It is admitted that there was an oral discussion between the Defendant and Mr Payne in which the Defendant asked for the interest rate to be reduced to 5% APR after 30 days and Mr Payne agreed: there was no consideration given by the Defendant for such an arrangement."

Discussion

WOF's entitlement to sue

97. For Mr Bond, Mr Becker raised a half-hearted query as to the right of WOF to sue for repayment of the Loan. In my judgment, there is no doubt but that WOF is the proper claimant and entitled to seek recovery of the debt. First, the Loan was made from an account of which WOF was the owner and without the consent of the beneficiary of the account, Fallowfield. A claim in debt is a claim in law and the Loan was made by WOF. Therefore WOF has the right to sue for repayment. Second, if that were not so,

and if Fallowfield were the lender, yet WOF would be subrogated to Fallowfield's rights because it repaid the debt to Fallowfield. Third, the fact that WOF has recovered on its insurance policy in respect of its outlay has nothing to do with Mr Bond—it is *res inter alios acta*—though it might have relevance as between WOF and the insurer.

The terms of the Loan

98. There is an issue as to the terms of the Loan. WOF's case is that the Loan was initially for a fixed term of 30 days at an interest rate of 10% APR and that it was then renewed as a loan repayable on demand at an interest rate of 5% APR. By contrast, Mr Bond's case is that the Loan was repayable when GLL obtained leverage finance (or, when GLL paid BIGL for the tanks, which I take to be effectively the same thing) and that the interest rate was 10% APR for the first 30 days and 5% APR thereafter.

99. I find that WOF's case on this issue is correct.

1) The documentary record of the terms of the Loan, contained in Mr Bond's email of 21 January 2015, is unequivocal: "I confirm that the loan is for a period of 30 days and that interest will be paid at an APR of 10%." This is clear as to the term of the Loan; it does not identify any condition for repayment of the Loan; it does not identify a distinct period of the Loan at a different interest rate. Mr Bond said in cross-examination that the email "could have been better worded"; he suggested it might have said, "The Loan is for an initial period of 30 days at 10%". Even if rewritten in that way, it would still not deal with the condition for repayment. Mr Bond's suggestion merely reflects the fact that the email is inconsistent with his case as to what was agreed.

2) Mr Bond's suggestion that the email should have referred to an "initial" period of the Loan makes no sense whatsoever. If the Loan is only repayable upon the provision of funds by GLL, what is the difference between the "initial" period of the Loan and any later period? The only proposal is that it concerns the rate of interest. But that cannot be right, because Mr Bond's own evidence is that in the telephone conversation in February 2015 Mr Payne "agreed to the interest rate reducing to 5%": supplemental statement, paragraph 12. If the different interest rate was not agreed until February, the mention of the 30-day period in January cannot have been to the period at which a higher interest rate would be payable and is therefore inexplicable. In his oral evidence, Mr Bond said: "When the 30-day period came to an end, I asked if the interest rate could be reduced and he agreed." But *what* 30-day period, if that was neither the term of the Loan nor the pre-agreed period of a different interest rate?

3) In his email of 1 March 2016, in response to Mr Hunston's email of 26 February 2016, Mr Bond did not contradict Mr Hunston's assertion that the Loan was repayable after 30 days.

4) Mr Bond did not provide any satisfactory answer to the question of when the Loan actually became or might become repayable. GLL has never bought the tanks; they remain owned by BIGL. I was never entirely sure whether Mr Bond was contending that liability to repay the Loan had never accrued because the condition precedent to repayment had never been satisfied. If that is not what he was contending, neither he nor Mr Becker satisfactorily explained when the

> Loan did or would become repayable. In fairness to Mr Bond, I observe that in a remarkable passage in his cross-examination, when he showed great unwillingness to acknowledge that BIGL had ever had a liability to repay the Loan, he eventually suggested that any liability it had might now be statute-barred. Whatever the legal logic of that suggestion, it does at least imply that the time for repayment was several years ago, though it leaves unexplained the question when or why the Loan became repayable. Perhaps the most valuable thing to be drawn from this evidence is confirmation of what appears from the history since 2015: that, whether liability for repayment of the Loan rests with Mr Bond or his companies, he will duck and dive to make sure to avoid repayment.

5) WOF's case is supported by Mr Payne, whose evidence I regard as more reliable and truthful than that of Mr Bond.

100. It may have been contemplated that after 30 days Mr Bond and his companies might not be in a position to repay the Loan (though on the basis of Mr Payne's evidence I accept that he thought that a potential buyer was in the wings). That does not mean that the obligation to repay after 30 days was not agreed at the outset. The Loan was an advance made urgently to enable BIL to fulfil its contractual obligations to the manufacturer of the tanks. It achieved that purpose—and more, because BIL had not in fact required for that purpose as much as it borrowed. After 30 days, if the Loan were not repaid, perhaps it would be extended. That is what in fact happened. But WOF did not bind itself to any further agreement.

Liability for the Loan

101. The principal issue in this case is whether Mr Bond has liability for repayment of the Loan.

102. Mr Hill-Smith referred to the decision of the Court of Appeal in *Hamid v Francis Bradshaw Partnership* [2013] EWCA Civ 470, [2013] BLR 447. The claimant sued the defendant, a firm of engineers, for damages in respect of defective construction work. A preliminary issue was whether the defendant had been engaged by the claimant personally or by the company of which he was the sole director and shareholder. The contract had been made partly orally and partly in a letter from the claimant. Jackson LJ, with whom Rix and McCombe LJJ agreed, analysed the authorities and continued:

> "57. In my view the principles which emerge from this line of authorities are the following:
>
> (i) Where an issue arises as to the identity of a party referred to in a deed or contract, extrinsic evidence is admissible to assist the resolution of that issue.
>
> (ii) In determining the identity of the contracting party, the court's approach is objective, not subjective. The question is what a reasonable person, furnished with the relevant information, would conclude. The private thoughts of the protagonists concerning who was contracting with whom are irrelevant and inadmissible.

> (iii) If the extrinsic evidence establishes that a party has been misdescribed in the document, the court may correct that error as a matter of construction without any need for formal rectification.
>
> (iv) Where the issue is whether a party signed a document as principal or as agent for someone else, there is no automatic relaxation of the parol evidence rule. The person who signed is the contracting party unless (a) the document makes clear that he signed as agent for a sufficiently identified principal or as the officer of a sufficiently identified company, or (b) extrinsic evidence establishes that both parties knew he was signing as agent or company officer.
>
> 58. In my fourth proposition the phrase 'sufficiently identified' is not a happy one. It is intended to include cases where there is an inconsequential misdescription of the entity on behalf of whom the individual was signing. This is exemplified by *Badgerhill Properties Ltd v Cottrell* [1991] BCC 463."

103. In the present case, the evidence shows that the agreement for the Loan was made orally. The terms were discussed in the meeting between Mr Payne and Mr Bond in the face-to-face meeting on 15 January 2015 and agreement was apparently confirmed in a conversation, presumably by telephone, on 21 January 2015. There is no witness evidence as to that latter conversation; it appears to have done no more than confirm that the loan discussed on 15 January 2015 was agreed. Mr Bond's email of 21 January 2015 is immediate confirmation of the terms of the agreement, together with instructions as to how the moneys were to be advanced, but did not itself conclude the contract; it is evidence of the contract but not itself a contractual document. The critical question is what was said between Mr Payne and Mr Bond. The subjective intentions and beliefs of those men are not themselves relevant; they might, however, cast light on what was said and done.

104. In his main witness statement in these proceedings, Mr Payne stated:

> "I had not discussed with Mr Bond his corporate arrangements. As far as I was concerned, I knew that Mr Bond was purporting to operate a company known as Bond International Limited but I knew nothing about it other than that it had a registered office in the BVI. As far as I was concerned, by making the short-term loan, my client was doing a personal favour to Mr Bond and the loan was made to him so that he could secure the release of the tanks. What happened to the tanks after that was not part of my client's concern. In particular, Mr Bond made no mention (at or about the time of making the loan) of any company as the borrower."

This seems to me to be substantially correct but to incorporate an element of retrospective interpretation. I accept and find that no mention was made of a specific company to which the Loan was to be made. I also consider that Mr Payne viewed the

Loan as being a personal assistance to Mr Bond, as well of course as a sound investment for Fallowfield. I consider it improbable, however, that he consciously thought that the Loan was being made to Mr Bond. It is more likely that, if he thought about the matter at all, he thought that the borrower was BIL. That, at any rate, was what he said repeatedly later, in passages of which I have made mention.

105. Mr Bond's evidence is that he made clear that the Loan was to be made to BIGL. I reject that evidence. Mr Payne says that no mention was made of BIGL or Hawk, and I believe him. Mr Bond says that he made clear the position regarding BIL's dispute in Germany and the intention to use Hawk/BIGL instead, but I think this most improbable; it is not even consistent with the terms of the defence. The discussions between these two men, whose relationship was by now not merely professional but also friendly, almost certainly did not involve specific consideration of the person or entity that would be taking the Loan. Mr Payne's subjective belief as to the identity of the borrower is irrelevant. However, it may be noted that Mr Bond has relied on the fact that Mr Payne subsequently spoke of the Loan as having been made to BIL rather than to him. It is interesting that Mr Payne did not speak of the Loan as having been made to Hawk/BIGL; he might have been expected to do so, if the discussions had been as Mr Bond says. Mr Payne knew of BIL and may naturally have thought that business was being conducted by BIL. But I accept his evidence that the request for a loan was simply made by Mr Bond, without mention of any specific company or of the dispute with IGB.

106. Mr Bond does not contend that the Loan was taken by BIL. He says it was taken by Hawk/BIGL.

107. In these circumstances, I hold that the borrower under the Loan was Mr Bond. He is straightforwardly liable as principal.

108. If that conclusion were wrong, I should nevertheless hold that Mr Bond was liable jointly with a corporate principal. The furthest that the matter can possibly have gone (though I find that it did not in fact go this far) is that Mr Bond was acting for a disclosed but unidentified principal; that is, that he was acting for an unspecified company within the group of companies connected with Mr Bond. In *The Santa Carina* [1977] 1 Lloyd's Rep 478 the Court of Appeal held that, where an agent is known to be acting as agent for an unidentified principal, it is for the counter-party to prove on the facts that the agent was personally liable on the contract; there is no presumption of personal liability. At p. 484 Roskill LJ said, in the context of oral contracts:

> "The question is always, what did these parties agree? There cannot in these circumstances be any question of presumption because if there were a presumption that would put the onus of proof upon defendants to prove that they were not personally liable. It is for plaintiffs to prove those facts from which an inference must be drawn on a balance of probabilities that the defendants are personally liable notwithstanding that the plaintiffs knew that the defendants were contracting as agents."

To similar effect (though with a different emphasis regarding the burden; I am satisfied that the burden lies on the party alleging that the agent is personally liable), in *Kai Yung v Hong Kong Banking Corporation* [1981] AC 787 (PC), Lord Scarman said at 795:

> "It is not the law that, if a principal is liable, his agent cannot be. The true principle of the law is that a person is liable for his engagements (as for his torts) even though he is acting for another, unless he can show that by the law of agency he is to be held to have expressly or impliedly negatived his personal liability."

109. On the counter-factual hypothesis under consideration (which is essentially the scenario alleged in the defence), the circumstances point clearly to the conclusion that Mr Bond was personally liable on the contract. First, it was (as I find) Mr Bond who sought the Loan. Second, he was the controlling person in the Bond companies; Mr Payne's evidence is that he knew this. Third, it was probable that the unidentified principal was a foreign company and likely that it was based in the BVI: that was true of BIL, which was the only Bond company of which Mr Payne had any substantial knowledge. Fourth, the contract, being one of loan, was one of credit. (In respect of the third and fourth points, see *Teheran-Europe Co Ltd v S. T. Belton (Tractors) Ltd* [1968] 2 QB 545, *per* Diplock LJ at 558.) Fifth, WOF was advancing funds on behalf of one of its clients. Sixth, no enquiry was made as to particular identity of the company and no due diligence was carried out in respect of it. Seventh, no security was taken or requested for the repayment of the Loan.

110. However, I would unhesitatingly reject the further alternative way in which Mr Hill-Smith put the case for Mr Bond's personal liability on the Loan contract, namely by way of reliance on the decision of the Supreme Court in *Prest v Petrodel Resources Ltd* [2013] UKSC 34, [2013] 2 AC 415. The facts of the present case come nowhere near the justification there identified for piercing the corporate veil. I say no more on this point.

Misrepresentation

111. By an amendment of the particulars of claim, WOF alleges that, in offering repayment of the loan within 30 days as a term of the loan agreement, Mr Bond represented to Mr Payne that he believed that there were reasonable prospects that the loan would be capable of repayment and would be repaid at the end of the 30-day period. It is alleged that Mr Payne relied on that implied representation when arranging for the loan moneys to be provided. As he said in cross-examination: "I expected, and relied on the representation, that the loan would be repaid in 30 days. I made the loan on that basis."

112. In the light of my conclusions regarding contractual liability, it is unnecessary to state a firm view on this way of putting the case. However, I would have rejected it. The only basis for the implication of the representation that can be identified in the amended particulars of claim is that Mr Bond had control of the corporate borrower; his knowledge of the affairs of the borrower is relied on as importing a representation by him that he believed that the borrower had reasonable prospects of performing its contractual obligations. Mr Hill-Smith produced no authority in support of this argument, and it seems to me to go too far. The agent impliedly represents that he has authority to bind his principal to the contractual obligation being undertaken. I see no other implied representation. If Mr Hill-Smith were right, any contracting party would impliedly represent that it believed it had reasonable prospects of performing its obligations, and the counterparty's entry into the contract would be liable to analysis in terms of reliance on the representation; and, as the representation alleged is purely as

> to the existence of a state of mind, every such representation, if false, would be fraudulent. In truth, a contracting party relies on the undertaking or warranty of the counterparty and on its own judgement as to the reliability of the counterparty, not on implied representations of fact as to the prospects of performance, and contractual promises are not lightly to be converted into representations of fact (cf. *Idemitsu Kosan Co Ltd v Sumitomo Corporation* [2016] EWHC 1909 (Comm), *per* Mr Baker QC at [14]-23]).

Conclusion

113. For the reasons set out above, there will be judgment for the claimant.