Neutral Citation Number: [2021] EWHC 1510 (QB)

Case No: QB-2019-002771

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/06/2021

Before :

MR JUSTICE GRIFFITHS

- -

Between :

Amarjeet Singh Dhir	**Claimant**
- and -	
Flutter Entertainment PLC	**Defendant**

- -
- -

Kennedy Talbot QC and Philip Jones (instructed by **Mackrell Solicitors**) for the **Claimant**
Ian Mill QC and Hannah Glover (instructed by **Wiggin LLP**) for the **Defendant**

Hearing dates: 21-23, 26-28 April and 11 May 2021

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Approved Judgment

THE HON. MR JUSTICE GRIFFITHS :

1. The Claimant (Amarjeet Dhir) is a Dubai-based businessman who advanced money to another businessman in Dubai which he thought would be invested in the local property market. Unknown to him, the man taking his money (Tony Parente) was a gambling addict. As Mr Parente now admits, he applied money he had been given by Mr Dhir (and, it seems, others) to fund his gambling habit. One of the gambling businesses with which he lost a lot of money in a short space of time was the defendant, through that part of its operations branded as Paddy Power. Mr Dhir now seeks to recover from Paddy Power money in its hands which he says represents the money he is entitled to recover from Mr Parente.

2. The business of Paddy Power plc (and its related companies) merged with Betfair Group plc (and its related companies) in February 2016, to form the defendant (Flutter Entertainment plc) and its related companies. The defendant was then known as "Paddy Power Betfair". In May 2019, it rebranded as "Flutter Entertainment". In May 2020, the defendant merged with the Sky Bet and PokerStars businesses run by the Stars Group, but retained the name of Flutter. Nothing turns on these corporate reorganisations for the purposes of this case and from now on I will not refer to them. I will for the most part simply refer to the defendant as "Paddy Power", as that was the part of the business with which the trial has been concerned.

The issues

3. In deciding this case, I will consider the following issues in the following order:-

    i) Is the agreement under which Mr Dhir advanced the money to Mr Parente governed by the onshore law of the Emirate of Dubai ("onshore Dubai law") or by the law of the Dubai International Financial Centre ("DIFC")?

    ii) What were the terms of the agreement under which Mr Dhir advanced the money to Mr Parente?

    iii) In receiving the money, was Mr Parente subject to any trust or fiduciary obligations and, if so, what were they?

    iv) Can Mr Dhir trace the money he gave to Mr Parente into the hands of the defendant?

    v) Was Tony Carroll the defendant's agent? This is relevant to the next question.

    vi) What did the defendant know when it took money from Mr Parente? What ought it to have known?

    vii) Can Mr Dhir claim the money from the defendant on the basis of knowing or unconscionable receipt?

    viii) Can Mr Dhir claim the money from the defendant on the basis of unjust enrichment?

The evidence

4. I heard evidence from the following witnesses of fact, all of whom were cross examined:-

   i) The claimant, Mr Dhir.

   ii) Mr Parente. He was a witness for Mr Dhir and supported his claims.

   iii) Ian O'Brien, who is the Responsible Gambling Operations Manager for the Paddy Power and Betfair brands owned by the defendant. In 2015 and 2016 (the material times), he was a Responsible Gambling Analyst.

   iv) Sean Whelan, who was until February 2016 the Head of Compliance at Paddy Power. He was also, from about the middle of 2015, Paddy Power's Money Laundering Reporting Officer.

   v) Tom O'Brien, who was the Paddy Power Customer Risk and Anti Money Laundering Risk Manager before, in July 2016, being promoted to Head of Fraud at Paddy Power. He is now Head of Fraud and Anti Money Laundering Operations.

   vi) Ciaran McDermott, who is an HSU Manager for the Paddy Power brand. HSU used to stand for "High Staking/High Stakes Unit" but now it stands for "High Service Unit". Mr McDermott's job title was originally "VIP Manager", but his evidence was that the change in title to "HSU Manager" did not reflect any change in role.

   vii) Daniel Taylor, who is the Chief Executive Officer for the international operations of Flutter Entertainment plc (the defendant, but not limited to the Paddy Power brand). He joined Paddy Power plc as Managing Director for Retail in March 2015; becoming Managing Director (UK & Ireland) for Paddy Power Betfair's online and retail businesses in February 2017, Chief Executive Officer for Paddy Power Betfair in January 2018 and then moved to his current job title and role in July 2020.

5. I heard expert evidence in three disciplines from six witnesses, as follows:-

   i) DIFC law.

      a) The claimant's expert was Roger Bowden, barrister and solicitor of the High Court of New Zealand and a practitioner with rights of audience before the DIFC courts.

      b) The defendant's expert was David Russell QC, appointed Queen's Counsel in Australia. Like Mr Bowden, he is a practitioner with rights of audience before the DIFC courts. He is one of the draftsmen of the DIFC Trust Law 2018 and he is the Executive Editor of the Lexis-Nexis DIFC Academy publication "Laws of the DIFC".

   ii) Dubai law (that is, the onshore law of Dubai, as distinct from the law of the DIFC).

a) The claimant's expert was Mohamed Nedal Dajani, a legal practitioner in Dubai who is the Head of Sharjah and Northern Emirates for the Middle Eastern law firm BSA Ahmad Bin Hezeem & Associates. He has a law degree from the University of Jordan in Amman.

b) The defendant's expert was Dr Habib Mohammad Sharif Al Mulla, who is also a legal practitioner in Dubai. He is Chairman of the law firm Baker & McKenzie Habib Al Mulla (which he founded) and has rights of audience before all the Courts of the United Arab Emirates, with the exception of the DIFC (although he was the architect of the legal framework establishing the DIFC). He has a first degree in Shari'ah (Islamic) law, civil and criminal law from the United Arab Emirates University, an LLM from Harvard University in the USA and a PhD from Cambridge University in the UK.

iii) Forensic accountancy, to assist with the tracing claim.

a) The claimant's expert was Guy Rolliston FCA. He is a partner in Harley Fowler LLP, chartered accountants, and he is a founder member of the Expert Witness Institute.

b) The defendant's expert was Noel Lindsay FCA. He is the founder and Managing Director of Financial Investigations Ltd, a firm of chartered accountants specialising in financial and forensic investigations. He is a member of the Academy of Experts.

6. There were 29 trial bundles, containing thousands of documents, as well as the witness statements and pleadings. I will evaluate the evidence and reach conclusions on disputed questions of fact in due course.

The facts

7. Mr Parente started gambling in betting shops in England when he was 16 and it is only in the last three years that he has freed himself from what became a serious and lifelong history of problem gambling and gambling addiction. He opened a Betfair account in 2008, and he self-excluded from that account in 2010. This was before the merger of Betfair and Paddy Power in February 2016 to form the defendant.

8. Until 2010, he lived and worked in the UK. From October 2010 to June 2016, he lived in Dubai in the United Arab Emirates (UAE).

9. When Mr Parente moved to Dubai in 2010, he had sales experience, but no experience in the property market. In Dubai, he found employment with a real estate broker (estate agent), where he was a success, earning variable commission-based remuneration of £100,000 a year or more, matching buyers and sellers of property in Dubai.

10. In around 2012 or 2013, Mr Parente met Mr Dhir. Mr Dhir was a well-known investor in the Dubai property market. He was also the owner of Castles Real Estate, a real estate agency selling property for sale or rent in return for commission. Castles was incorporated in Dubai (not the DIFC).

11. Mr Parente and Mr Dhir started to introduce customers and deals to each other, and shared commission on them when they did.

12. Mr Parente's relationship with Mr Dhir enabled Mr Parente to leave his employment in about April 2014 and set up his own agency, which he called We Buy Your Property (WBYP). WBYP was incorporated in Dubai (not the DIFC). It had a local owner or sponsor, who was a Dubai national but played no active part, and two British partners, of whom Mr Parente was one. Legal ownership was entirely vested in the local partner, for regulatory reasons. But Mr Parente was the sole signatory on the bank account.

13. In its first full year of trading (ending July 2014), the turnover of WBYP was 6 million Arab Emirates Dirhams (AED) (about £1.3 million) and its annual net profit was AED 1.2 million (£260,000). By 2015, the annual net profit had risen to what turned out to be a peak of AED 2 million (£440,000). From this, Mr Parente was able legitimately to take annual earnings of about AED 800,000 (£175,000). Not all of this came from dealing with Mr Dhir and Castles.

14. Before leaving the UK, Mr Parente had mostly gambled, not with the defendant, but with Ladbrokes, at betting shops. He did try and open a Betfair account on 7 July 2013 (despite having self-excluded from Betfair in 2010) but Betfair closed it down immediately. One of his motives for moving to Dubai was to place himself in a jurisdiction in which gambling is illegal and where there would be no casinos or betting shops. However, he discovered that he could gamble online, even from Dubai, using a VPN (virtual private network) to evade local restrictions on connections to gambling sites.

15. In Dubai, Mr Parente's gambling through the VPN was, initially, with Ladbrokes, not the defendant. Until 2013 (he told me) he bet no more than £10,000 a quarter which was, he told me, within his means. However, from around 2013, his gambling escalated, to the point where he was betting about £60,000 to £65,000 per quarter - and it got worse. In 2014, (he said) he was gambling up to £47,000 in a single day with Ladbrokes, amounting to a total of £1.4 million between January and August 2014.

16. During the Dubai World Cup in March 2014, he met Tony Carroll, who then became his Ladbrokes Premier Account Manager, and he received free hospitality as a Ladbrokes VIP customer.

17. On a date he did not precisely identify between 2013 and 2015, Mr Parente "began to gamble and lose money that did not belong to me and that I was not entitled to use". After a pause between August and December 2014, when (he says) he managed not to gamble at all, he resumed his gambling and then continued to slide down the slippery slope which led, eventually, to criminal convictions for fraud and (in respect of other transactions) to these proceedings, because he was misappropriating or misapplying other people's money to gamble, and lose, on his own account.

Transactions between Mr Dhir and Mr Parente

18. Between April and November 2013, Mr Parente estimates that the (gross) value of the property deals between Mr Dhir/Castles and WBYP was about AED 60 million (£10 million).

First written transaction – the November 2013 agreement

19. In November 2013, Mr Parente decided to do a deal on an apartment in a block in Dubai (not DIFC) called Trident Grand Residence. This was referred to in evidence as a "flip" and Mr Parente explained it as follows:

> "In or around November 2013, I approached Amar [Dhir] informing him I wanted to purchase a particular property, Apartment 803 Trident Grand Residence ('Trident'). I told him I wanted to buy it to flip and I would make a decent profit on it. What I mean by flip, is that I had to pay the seller for the property at a discount, the seller in return gave me a power of attorney (this meant that there was no sales transfer tax to pay) and this allowed me to sell the property in the seller's name to a buyer for a considerable profit."

20. Mr Parente asked Mr Dhir for AED 2.3 million in cash "so that I could buy and flip the Trident apartment". The evidence was that cash buying and selling of property in Dubai (using, literally, bundles of banknotes, with no use of the banking system) was common practice.

21. Mr Dhir's explanation of the "flip" was broadly similar but not quite the same:

> "Tony explained to me that he was going to buy this property and flip it. In broad terms a flip is when you buy the property direct from the buyer at a discount, take a power of attorney from the buyer over the property entitling you to sell the property (and therefore avoiding stamp duty as there has technically been no sale) with the aim to sell it for a profit to a buyer. In return Tony would pay me a profit element."

22. Whereas Mr Parente's evidence was that he was doing the deal, and he would take the profit, Mr Dhir's evidence was that "Tony would pay me a profit element". However, it was clear from Mr Dhir's evidence in cross-examination that the "profit element" was a fixed return, regardless of the amount of any profit (or loss) that Mr Parente personally made on the "flip"; Mr Parente's profit or loss would not concern or affect Mr Dhir at all. It was suggested to Mr Dhir that the "profit element" was really an interest payment, being a fixed amount in addition to the original amount lent, payable on a certain date, and therefore representing the value given for use of the money over a fixed period of time – which is what an interest payment is. Mr Dhir's response to this appeared to me to be deliberate evasion, well short of a denial, and no doubt reflected the fact that interest charges are not lawful under local onshore Dubai law (although they are lawful under DIFC law) (Day 1 p 90 line 15 to p 93 line 21). Mr Dhir's return, although described as "profit", was not the profit on the flip, or even a share of the profit on the flip, but a payment of interest as a reward to him for

lending his money. He would receive it regardless of the amount of profit made on the flip, and he would receive it, indeed, even if the flip proved not to be profitable at all. The actual profit (or loss) on the flip would all be Mr Parente's.

23. Mr Dhir agreed to Mr Parente's request and supplied the cash to Mr Parente. The agreement between them was documented in writing by Mr Dhir's cousin Aman on Mr Dhir's instructions. However, there was a difference between, on the one hand, the terms of the deal documented and signed and, on the other hand, the evidence of Mr Parente and Mr Dhir about what was actually agreed, or at least discussed, between them orally. This gives rise to an evidential dispute which I must resolve.

24. The written agreement was on Castles headed paper but stated the parties as Mr Dhir and Mr Parente. They both signed it. It was in English. The relevant terms were as follows:

> **Preambles**
>
> Whereas the First party is buying Apartment No 803 Trident Grand Residence (hereafter to be referred as the "Property") and has approached Second Party for providing an amount of AED 2,300,000/- (refer after [*sic*, no doubt intended as "hereafter"] to be referred as "The Loan Amount") as loan for buying the Property.
>
> **Property in reference to this agreement:**
>
> Location: Trident Grand Residence 803, Dubai Marina, Dubai
> Type: 03 Unit
> Purchase Amount: AED 2,300,000/- for which the First Party seek funding from the Second Party
> Re-payment Date: On or before 18lh February 2014
>
> **Terms & Conditions:**
>
> 1. The First Party has requested the Second Party for an amount of AED 2,300,000/- as loan for buying the Property and the Second Party accepts & agrees to lend an amount of AED 2,300,000/- to the First Party for buying the Property.
>
> 2. The First Party confirms that the Loan Amount will be paid back to the Second Party on or before 18th February 2014 along with the profit of AED 100,000/-. The First Party will provide two cheques to the Second Party - Cheque no 1 amounting to AED 2,300,000/- dated 18th February 2014 and Cheque no 2 amounting to AED100,000/- dated 18th February 2014.
>
> 3. The First Party confirms that in case he sells the Property and receives the sale consideration before the repayment date, then the First Party will inform the Second Party immediately and

> will pay the Loan Amount along with the Profit of AED 100,000/- to the Second Party.
>
> 4. The First Party and the Second Party agrees, that the Second Party is only providing a loan to the First Party for buying the Property with a fix profit of AED 100,000/- for a period of 3 months. The Second Party will not be responsible in case the First Party is selling the Property at a loss.
>
> 5. In case the First Party is not able to sell the Property within a period of this 3 months, the First Party and the Second Party will mutually agree for an extension for another period of 3 months for an additional fixed profit of AED 100,000/-. In case the second Party doesn't agree for an extension, then the First Party will be liable to pay back the loan amount along with the Profit of AED 100,000/- on 18th February 2014.
>
> 6. In case the First Party defaults with any of the terms and conditions of this agreement or fails to pay back the loan amount along with the Profit amount or fails to honor the cheques issued as per the clause no 2 of the agreement on the due date, then it will be treated as the breach of trust of the Second Party by the First Party and the breach of this agreement, the Second Party will have all the right to deposit the cheques and claim this amount from the Second Party.
>
> 7. This agreement is intended to bind the parties to the transaction contemplated hereby and constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all previous agreements between them on the subject.
>
> 8. This agreement shall be valid, upon signature by the First Party and the Second Party, or any such later date as mutually agreed between all parties in writing.
>
> 9. This agreement is signed in Dubai and shall be governed and construed in accordance with the laws of Dubai."

25. Mr Dhir's evidence was as follows:

> "…I needed a certain amount of assurances from Tony before I would give him the money, which he agreed to give me. These were, that the money would only be invested in the Trident deal or returned to me if for whatever reason the Trident property could not be purchased. Tony would also have to give me security cheques for the sum given to him and profit element. This type of security is common in Dubai as the drawer of a bounced cheque can go to prison if the cheque is not honoured.

> It was important to me that the money be used to pay for the property and the property only as I wanted to make sure that if for whatever reason the Trident property lost value and therefore could not be sold for the profit that Tony would be able to transfer the Trident property to me which I would then sell. This was an extra layer of security that I wanted.
>
> …Clause of the November 2013 Agreement [*sic* – no particular clause was identified in the evidence] can be said to encapsulate the understanding I had with Tony at the time. In other words, I was to give Tony money for an agreed purpose, in the case, the purchase of the Trident apartment, and Tony was to use the money specifically and only for the agreed purpose. The residential property market in Dubai works frequently in cash, so the money provided to Tony would be cash (i.e. physical banknotes). I would hand the money over to Tony and it was agreed between us that he would keep that money safe, use it only for the agreed purpose and, if that purpose could not be fulfilled, he would return the money to me. I told Tony that the money would essentially always be mine but that he was free to use it in the Trident property. Tony agreed to this."

26. Security cheques were referred to in clause 2 of the November 2013 agreement, and it was common ground that the penalty of imprisonment for dishonouring a cheque in Dubai makes the use of cheques as security a powerful and popular form of security in Dubai.

27. However, the other points are not in the document. In particular, the documented agreement does not say that the money could only be used to buy the property (although the Preamble refers to the property purchase as the reason why Mr Parente wanted the loan). It also does not say that the money "would essentially always be [Mr Dhir's]". It also does not say that if, for whatever reason the Trident property lost value and therefore could not be sold for the profit, Mr Parente would transfer the Trident property to Mr Dhir or that Mr Dhir would then sell it himself.

28. Mr Parente backed up Mr Dhir's evidence about these extra terms. Mr Parente's evidence was:-

> "At this distance in time I don't recall the exact words used but as I had expected Amar wanted as much security as possible. Amar told me that the money had to be used to buy the property only or returned to him if it was not. Amar was strict that I was not free to do with the money as I pleased. I understood that the money was effectively Amar's and remained his but that I could use it for this deal. Furthermore, if after buying Trident the deal went wrong then I was to transfer the property into his name. I also had to give him security cheques. I agreed to all of the demands Amar made of me in order to have the money.

> … The agreement drafted by Aman in the Trident deal accordingly reflected that the money, although loaned, was to be used to buy Trident only. Amar made clear the points I have previously made, namely that the money was to be used only to buy Trident or returned to him and that if the deal went sour that the property would have to be transferred to him. I agreed to these terms…"

29. It seems to be incredible that, if these extra terms had been agreed, they would not have been included in the written document. This document was drawn up on Mr Dhir's instructions and those instructions would surely have included everything that he regarded as important, which according to his evidence these extra terms were. Both Mr Dhir and Mr Parente signed the document and there has never been any claim to rectify or alter it. Even in evidence, neither Mr Dhir nor Mr Parente said that there was anything wrong with the document. Mr Parente's evidence was that he had checked it before he signed it.

30. The document also included an entire agreement clause at clause 7. I will, when I come to the equivalent clause in the 2015 agreement, consider the expert evidence about the legal effect of such a clause in Dubai. However, just taking it as a matter of evidence, it confirms that the parties intended it to be comprehensive. It looked as if it was comprehensive, on its face. I am satisfied that these extra terms were not agreed, because, if they had been agreed, they would have been included in the document.

31. To reach a contrary view, I would have to have a high level of confidence in both the honesty and the reliability of the evidence of Mr Dhir and Mr Parente, because there is no document or other evidence at all which supports their case on this question of extra terms. After listening to their evidence, I found that I could not have that level of confidence, for reasons I will now explain.

Credibility and reliability of Mr Dhir and Mr Parente

32. Mr Parente is a person who admits that he acted dishonestly, both towards Mr Dhir and many others. He was never prosecuted for his conduct toward Mr Dhir (which emerged only when he had left Dubai, so that he could not even be punished for the dishonoured cheques). He was, however, prosecuted for a series of frauds in 2017 against his employer, Devil Automotive Ltd, worth a total of over £77,000.

33. Mr Parente pleaded guilty, and received a suspended sentence in 2019, after a plea in mitigation on his behalf which said that these offences were "wholly out of character from Mr Parente and arises purely as a result of his gambling addiction". That was untrue; the indicted offences were not out of character at all. Mr Parente admitted in cross-examination that he had been defrauding people all over the place, and of very large sums of money. The indicted offences were not isolated or exceptional. Mr Parente could not even count how many people or entities he had defrauded apart from Devil Automative Ltd, but he admitted that it was "more than 20", some in Dubai (not just Mr Dhir) and some in the UK. The amounts he had fraudulently obtained from people other than Devil Automotive exceeded, according to admissions he made in cross-examination, £5 million. The sentencing court was, therefore, misled. For this, Mr Parente must take the whole responsibility, because his advocate

depended on information from Mr Parente, and Mr Parente neither told him, nor corrected him, that the offences were not out of character.

34. Mr Parente presented himself to me, as he presented himself to the judge who sentenced him, as a wholly reformed and remorseful character. I have no reason to doubt his evidence about work he has done to raise awareness of gambling addiction, or that this is good work. However, there is a difference between regretting the consequences of being found out, and genuine recognition of and remorse for wrongdoing. Mr Parente's witness statement had many details of his good work, but made no mention of his UK criminal convictions or, indeed, of his other, unprosecuted, frauds.

35. When Mr Parente eventually left Dubai, he sent an email from the UK dated 3 June 2016 "to all the members of webuyyourproperty", copied to Mr Dhir, entitled "Sorry". It began:

> "How to start an email like this is very difficult but I am going to try my best as I want you to hear what has happened from me."

It looked like a confession and a *mea culpa*, and it was sent at a moment when making a clean breast of things was easier than it might have been before. He had obviously left his colleagues in the lurch, having plundered the business; indeed, he said "I have let my guys down". He was out of reach, in the UK. The email purported to be remorseful, and, at last, honest:

> "You will believe what you want to but this is my side in a to-the-point sort of way."

But it was shockingly dishonest, nevertheless. Mr Parente said nothing about his gambling, but blamed his conduct on covering a financial burden he could not carry on his own when a deal "went south". At the same time as saying "the blame is on me", he actually blamed others; wailing that he had mistakenly "trusted so many people" and saying "I have let my guys down but I will sort it and move on. if others thought like that maybe I wouldn't be where I am."

36. This made me seriously question his expressions of remorse and reform to me. There never seemed to be a point when Mr Parente clearly and honestly acknowledged the full extent of his wrongdoing and dishonesty, and this made me wonder if he has, even now, become a changed man who can be trusted to say the unvarnished truth, regardless of its implications for himself or for those he wishes to support.

37. By the end of his cross examination, I had come to the conclusion that Mr Parente was not to be believed on any point which was not independently corroborated by credible and reliable evidence.

38. Mr Dhir struck me differently. There is nothing in his history to impugn his honesty. Unlike Mr Parente, he seems to be both a respectable and respected businessman. However, he was vague about details and his evidence about the extra terms of the agreement with Mr Parente in November 2013 was not, as I have said, consistent with the document.

39. Mr Dhir was cross examined about other discrepancies between documents and his evidence in relation to particular payments and repayments between himself and Mr Parente, and his answers were implausible and unconvincing.

40. It emerged in the course of the hearing that Mr Dhir, and others to whom Mr Parente owed money, had reached a confidential settlement with Ladbrokes, which Mr Dhir had not disclosed, although elements of it were shown in the cross examination of Mr Dhir's expert accountant, Mr Rolliston, to be relevant to the evidence in this case.

41. In support of the particular payments made to Mr Parente which form the basis of his case against Paddy Power, Mr Dhir relied on a series of "Receipt Acknowledgements", most of which were signed and are accepted as genuine documents, produced on the date they bear. However, there was a final "Receipt Acknowledgment" which was not signed and which was admitted to have been created, not on the date it bears (30 April 2017), but a few days before the letter before claim in this case (20 March 2018). Mr Dhir said that it was created "just for our records" when they could not find the original, but it seemed very unlikely that there ever was an original in this form. Even Mr Dhir could not say he remembered seeing such an original (nor did Mr Parente), and Mr Dhir's evidence was that it was created by his cousin from his cousin's recollection. Mr Dhir nevertheless maintained that it was not a fabrication. I was convinced by anomalies in the figures stated in the document and the other evidence, which were explored with Mr Dhir in cross examination, that, not only was it not (as is admitted in these proceedings) genuine in the sense of having been created on the date it bears, but also that it was not a true copy of any pre-existing document. To put it bluntly, it was a fabrication. It was a fabrication got up to look genuine, including the signature lines (although it was never signed, and no-one was ever asked to sign it) so that it was in format the same as the earlier, genuine documents. The contents were also made up, because the figures were wrong. The fabricated date also makes no sense except as an effort to give the document more credibility than it would have had if it had been dated later, because the underlying transactions were all in April 2016, whereas the purported date was on 30 April 2017. I reject the suggestion that the date was a typographical error. Mr Dhir did not create this document, but he did rely on it, and refused to drop it even when all the difficulties were put to him.

42. I am reluctant to conclude that Mr Dhir was a dishonest witness, but I do conclude (from all the indications I have given, as well as from his performance in cross examination generally) that he is an unreliable witness. He perhaps was not able to give, and on my assessment did not give, evidence which correctly represented the actual events of 2013-17. He also did not limit himself to evidence that he could reliably give, but gave evidence which was not reliable. In his case, also, therefore, I have decided that I cannot place any reliance on his evidence on controversial issues but must always look for other evidence on those issues.

February 2014 agreement

43. Mr Parente did flip the Trident property at a profit, and he did pay Mr Dhir the AED 100,000 agreed in clause 4 of the November 2013 agreement. But he did not repay him the principal sum of AED 2.3 million. Instead, he proposed another transaction between them along the same lines, and Mr Dhir agreed to that.

44. The agreement was embodied in a written "Addendum of Memorandum of Understanding" signed by Mr Dhir and Mr Parente and dated 8 February 2014. It was drawn up on Mr Dhir's instructions by his cousin as before. The context was explained in the Preambles which said:-

> "Whereas the First party [Mr Parente] has taken a loan from the Second Party [Mr Dhir] for buying Apartment No 803 Trident Grand Residence (hereafter to be referred as the "Property") for an amount of AED 2,300,000/- (refer after [sic, no doubt intended as "hereafter"] to be referred as "The Loan Amount")
>
> Whereas the First Party has successfully sold the Property and realized the sale amount on 6th February 2014. Though the First Party has sold the Property and the realized the sale amount but still wants to extend the payment of the loan amount for another 3 months due to another Property investment opportunity which the First Party seeks to invest in."

45. The body of the agreement then acknowledged receipt of the AED 100,000 (clause 1), agreed to Mr Parente's request "for extending the loan term for another 3 months as the First Party wants to invest in another Property" and set the extended repayment date as 18 May 2014, when Mr Parente was to repay the loan amount along with "a fixed profit of AED 100,000/- for this 3 months" on the same payment date (clause 2). Other terms followed those of the November 2013 agreement, including the entire agreement clause (clause 5) and the choice of law clause (clause 7).

46. Mr Dhir's evidence was that "Again, my understanding of the February 2014 Agreement was the same as my understanding of the November 2013 Agreement" and, in particular, "the money could only be used to purchase property, if the property deal Tony had entered into was a loss maker then the property would be transferred to me and if for whatever reason Tony no longer needed the money to invest in property it would be returned to me".

47. However, this is not based on any fresh conversation, or supported by any evidence. As with the November 2013 Agreement, it goes beyond what was documented and signed as constituting "the entire understanding between the parties with respect to the subject matter hereof and supersedes all previous agreements between them on the subject" (clause 5). I find as a fact that no terms other than those in the written document were agreed.

48. The February 2014 agreement did not give the address or price or any other detail about the other property investment opportunity which Mr Parente sought to invest in, as mentioned in the Preamble. In fact, he had no such property in mind, and Mr Parente did not use the AED 2.3 million, which he had rolled over, to buy any particular property. Instead, he told me, "what I did was gamble a significant portion of this money at Ladbrokes". He does not say how much. I imagine he cannot remember exactly.

Further agreements between 2013 and 2015

49. This pattern was then repeated a number of times before the agreement with which I am concerned in October 2015. Mr Parente retained the principal sum and, indeed, increased it by borrowing more. On each occasion of renewal, the new transaction was documented by an "Addendum of Memorandum of Understanding" which was in essentially the same terms as before.

50. By the "Second Addendum of Memorandum of Understanding", dated 25 May 2014, Mr Dhir acknowledged receipt of his "fixed profit amount of AED 100,000/-" on time (clause 1), but agreed

> "to extend the loan term till 18th August 2014 and also provide an additional amount of AED 600,000/- to the First Party by way of cash. The total amount of funding has been increased from AED 2,300,000/- to AED 2,900,000/- (hereafter to be referred as the "Revised Loan Amount"). The First Party and the Second Party mutually agrees that the fixed profit will be AED 125,000/- for this 3 months till 18th August 2014."

51. By the "Third Addendum of Memorandum of Understanding", dated 15 July 2014, Mr Dhir acknowledged receipt of the "fixed profit" of AED 125,000 (clause 1), and agreed to extend the loan term for another six months and also to provide Mr Parente with an additional AED 1 million, making the new loan amount AED 2.9 million (clause 2). The fixed profit for this was agreed at AED 170,000 "for every 3 months and to be paid at the end of every 3 months" (clause 2).

52. By the "Fourth Addendum of Memorandum of Understanding", dated 20 February 2015, Mr Dhir agreed "to extend the loan term from 18 February 2015 to 18 February 2016", and Mr Parente agreed to pay him the "fixed profit" of AED 170,000 "for every 3 months and to be paid at the end of every 3 months" (clause 1). There was provision for either side to end the agreement "in between the loan term i.e. before 18th Feb 2016" on the giving of 3 months' notice (clause 4).

53. The money was always paid in cash. Fresh post-dated cheques by way of security were provided by Mr Parente to Mr Dhir from time to time. This was all set out in the written documents and performed in accordance with them.

54. I find as a fact that no terms were agreed outside the terms of the written documents.

The October 2015 Agreement

55. The final agreement before Mr Parente's flight from Dubai in June 2016 was entitled, simply, "Memorandum of Understanding", and dated 2 October 2015 ("the October 2015 Agreement"). This agreement is the foundation of Mr Dhir's claim against Paddy Power.

56. Mr Parente had made sure always to pay the "fixed profit" amounts to Mr Dhir on time, but he had never used the principal sum to buy property. Instead, "what I had done with it was to gamble it away at Ladbrokes". In 2015, Mr Parente told me he lost over £1.1 million with Ladbrokes, "the vast majority of which was from money which

was not mine". It did not all come from Mr Dhir. Some of it came from "my legitimate business income" and some of it came from "people I described as investors" apart from Mr Dhir. Nor did Mr Parente gamble all his money before October 2015: he would use some of it to pay money due to other investors so that they too did not realise their principal was at risk, just as he had in order to retain the confidence of Mr Dhir. Whenever and however he got money, he either gambled it or used it to pay investors or, sometimes:

> "…if a suitable opportunity presented itself (e.g. a deal where a property could be easily and quickly be "flipped") I might use the money on that deal and the profit would go partly to investors and partly to pay for further gambling".

57. Because of the amount of cash involved, exactly whose money was going where was not at all clear. Mr Parente did not care, anyway, as long as he could keep it all going while he tried to gamble his way out of trouble. And so it was that, in October 2015, he turned again to Mr Dhir.

58. The October 2015 Agreement was drafted, as before, by Mr Dhir's cousin on Mr Dhir's instructions. Unlike its predecessors, it was not on Castles headed paper.

59. All the previous agreements since the original "Memorandum of Understanding" dated 18 November 2013 had been titled as Addenda to the November 2013 agreement. The October 2015 Agreement, however, was a complete re-set, which consolidated the old and new lending into a single new agreement which made no reference to the previous agreements at all.

60. The October 2015 Agreement was in the following terms:

> "This agreement is executed in Dubai, UAE 2nd October 2015 between:
>
> 1. Mr. Antonio Pino Parente… (Hereinafter called the "FIRST PARTY")
>
> 2. Mr. Amarjeet Singh Dhir… (Hereinafter called the "SECOND PARTY")
>
> **Preambles**
>
> Whereas the First party has approached Second Party for providing an amount of AED 6.000.000/- (hereafter to be referred as "The Loan Amount") as loan for the purpose of his business activities in real estate market in Dubai. The First Party is the owner of Property No 1304 and Property No 1712, Mosela Tower. Plot No 18, The Greens, Al Thanyah Third, Dubai (hereafter to be referred as "The Properties") and has agreed to provide the Properties as security to the Second Party against the Loan Amount.

Properties in reference to this agreement:

Location: Property No 1304 and Property No 1712, Mosela Tower, Plot No 18. The Greens. Al Thanyah Third, Dubai

Loan Amount: AED 6.000.000/-

Re-payment Date: On or before 31st March 2017

Terms & Conditions:

1. The First Party has requested the Second Party for an amount of AED 6,000,000/- as loan and the Second Party accepts & agrees to lend an amount of AED 6,000,000/- to the First Party. The First Party and the Second Party agrees that the First Party will provide an amount of AED 540,000/- (at the rate of 6% per annum) as profit on the Loan Amount to the Second Party over a period of one year.

2. The First Party and the Second Party agrees that the Loan Amount of AED 6,000,000/- will be paid in full or partially as and when required by the First Party within a period of 12 months from the date of this agreement i.e. on or before 30th September 2016. The Profit at the rate of 6% per annum will also be calculated on pro-rata basis depending on the date on which the amount is released to by the Second Party to the First Party and the date on which the Loan Amount is repaid by the First Party to the Second Party. For example, within this period of 12 months, the First Party only demands an amount of AED 3,500,000/- out of the total loan amount of AED 6,000,000/-, then the First Party will only be liable to pay this amount of AED 3,500,000/- along with the profit (calculated at rate of 6% on pro-rata basis) on or before 31st March 2017.

3. The First Party confirms that the Loan Amount will be paid back to the Second Party on or before 31st March 2017 along with the profit of AED 540.000/- or any amount calculated on pro-rata basis based on the amount actually disbursed to the First Party by the Second Party. As per the demand of the First Party, the Second Party will release the amount demanded (not exceeding the loan amount of AED 6.000,000/-) to the First Party and the First Party will provide a posted dated cheque (dated 31" March 2017) of the amount disbursed in favor of the Second Party which will be handed over to the Second Party. With regards to the profit amount, the same will be calculated and paid semi-annually (every 6 months) at the rate of the 6% p.a. on the amount disbursed calculated on pro-rata basis.

4. The First Party is the owner of the Properties which has been provided as a security to the Second Party and the First Party

> also agrees to issue the power of attorney with regards to the Properties in favor of the Second Party.
>
> 5. The First Party acknowledges and confirm that the Properties provided as security to the Second Party has a mortgage outstanding amounting to AED 3,500,000/- (approx.). The First Party also confirms that the First Party will settle the mortgage on the Properties within a period of 9 months i.e. on or before 30th June 2016, so that the Properties are free from any charge or outstanding loan amount.
>
> 6. In case the First Party defaults with any of the terms and conditions of this agreement or fails to pay back the loan amount along with the Profit amount or fails to honor the cheques issued as per the clause no 3 of the agreement on the due date, then it will be treated as the breach of trust of the Second Party by the First Party and the breach of this agreement, the Second Party will have all the right to deposit the cheques and claim this amount from the Second Party. The Parties also agree that in such a case of the default by the First Party, the Second Party has the right to use the power of attorney to sell the Properties (provided as a security) and claim a part of the loan amount along with the amount of Profit. However any amount outstanding (loan amount plus the profit) post the sale Properties, will be claimed by the Second Party from the First Party.
>
> 7. This agreement is intended to bind the parties to the transaction contemplated hereby and constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all previous agreements between them on the subject.
>
> 8. This agreement shall be valid, upon signature by the First Party and the Second Party. or any such later date as mutually agreed between all parties in writing.
>
> 9. This agreement is signed in Dubai and shall be governed and construed in accordance with the laws of Dubai."

61. The provision of named properties belonging to Mr Parente as security (through powers of attorney over them), in addition to the usual post-dated cheques, was new in this agreement, compared with its predecessors. The level of lending was also significantly increased. Mr Parente's evidence was that it was to be drawn down, and was in fact drawn down, by instalments on demand from him (except to the extent that it represented money previously advanced). This assertion is disputed, and I will return to it.

62. Mr Dhir's evidence in chief about the October 2015 Agreement was:

> "We discussed and agreed the same conditions as before, namely money had to be invested in the Dubai property market, if a deal went bad then the property would be transferred to me, there would be security cheques, the money would essentially always be mine but that he was free to use it within the confines of the Dubai property market and in line with whatever deals we had discussed. Tony agreed to all of this. There was also a further condition of our agreement and that was my money would not be combined with other people's money to invest in property in a collaborative fashion. This approach would not work for me, both from a security and business point of view. This was discussed and agreed with Tony and Tony knew that it was only my money which had to be used in a property deal, particularly because if a deal went wrong and the property could not be sold, the property would have to be transferred into my name."

63. None of this (except the security cheques) is in the written document. That document was completely bespoke; it was not even the same as the previous documents agreed between the same parties. The document does refer to the transfer (through power of attorney) of certain properties, but those are the security properties already belonging to Mr Parente. There is no reference to Mr Dhir having or getting any interest in such further properties as Mr Parente might buy with the money he borrowed from Mr Dhir. The difference between the documented transaction, and the transaction now alleged by Mr Dhir and Mr Parente, is therefore very stark.

64. Mr Parente gave evidence in chief supportive of Mr Dhir's account of the terms not embodied in the written Agreement, but even in this evidence there was a degree of tension. For example, Mr Parente said "I understood and agreed that effectively the money was Amar's although I could use it to try and make more money in the real estate market of Dubai". The word "effectively" is doing a lot of work there.

65. Mr Dhir was not able to give a persuasive explanation of the discrepancies between the oral evidence and the evidence of the written document which he had commissioned and signed to document the terms of the October 2015 Agreement. When asked to explain why the document did not refer to him getting a transfer of the new properties in any circumstances, for example, he said

> "I don't know. This -- I don't remember how it was done, I have no idea how it was done like this."

66. Mr Dhir accepted that he told his cousin what terms had been agreed, and checked the draft to make sure that it reflected what had been agreed. He also said in cross examination that he did not actually recall any conversation or discussion with Mr Parente about the October 2015 Agreement before it was executed. Instead, he fell back on a suggestion that, because of previous dealings, other matters went without saying:-

> Q. So why do we find those terms in none of those agreements?

> A. Because this was always agreed and he knew it principally, and in his brain he knew that, how I work. That is the nature of my work.
>
> Q. So, in other words, what you're really saying, Mr Dhir, is: because Mr Parente knew the way you worked, that he must have known that that is what you intended?
>
> A. He knew how I work and he knew this is the way I will never appreciate and I will never accept it.
>
> Q. Presumably your cousin, Aman, knew that that was the way you worked?
>
> A. Yes, he knew always.
>
> Q. So why didn't he set that basic understanding out in the written agreements, can you help me with that?
>
> A. Any of the agreements in the past we have done, we don't write these things because this is a general rule. This is a general thumb rule. We don't need to write it in the agreement. It was -- it is mandatory. This was something which is the guideline. We don't need to mention it."

67. I reject this evidence. There is no good reason why a bespoke document, drawn up on Mr Dhir's instructions and checked by him, which is quite lengthy, and which contains a number of specific terms, including terms dealing with the consequences of breach, did not contain these additional points if they had in fact been agreed, or even discussed as important. Mr Parente's evidence about the October 2015 document was that it was presented to him by Mr Dhir, and that before he signed it he also checked that the contents of it were correct and that they represented the entirety of the agreement between them. That further militates against terms having been agreed or understood which were not reflected in the document.

68. I conclude on the evidence that the documented October 2015 Agreement was correct in fact to say (in clause 7) that it contained the entirety of the agreement between Mr Dhir and Mr Parente. There was no collateral agreement. There were no other agreed terms. There were no other prior discussions or understandings which bound the parties or affected the loan which was the subject matter of the written agreement. I say this as a matter of fact on the evidence. I will come later to the expert evidence about the purely legal significance of the entire agreement clause.

Advances pursuant to the October 2015 Agreement

69. The defendant's case is that Mr Dhir cannot prove that any money at all was lent to Mr Parente under the October 2015 Agreement. They point out that all the alleged payments were made in cash in Dubai. There is no record of cash in the same amounts being deposited into any bank account held or controlled by Mr Parente, and Mr Parente does not allege that it passed through the banking system intact, if at all. The claimant's case is that Mr Parente used the money mainly to fund his gambling. The claimant accepts that there is no trace of it except in documents drawn up between Mr Dhir and Mr Parente themselves, in the form of "Receipt Acknowledgements".

70. Further uncertainty is created by some confusion in the evidence (exemplified by the errors in the figures in the fabricated Receipt Acknowledgment purportedly dated 30 April 2017 which I considered at para 41 above) between payments and repayment under the October 2015 Agreement, and payments made pursuant to another transaction between Mr Dhir and Mr Parente involving the sale of WBYP. These were also cash payments. This confusion was explored in Mr Dhir's cross examination, from which he seemed to me incapable of resolving it. It was all something of a mess.

71. The WBYP transaction was a written agreement dated 28 January 2016 between "M/S Castles Plaza Real Estate… represented by [Mr Dhir]" (the First Party) and "M/S We Buy Your Property… represented by [Mr Parente]" (the Second Party) whereby they agreed "the takeover of the business of the Second Party" for a price of AED 600,000. The context was Mr Parente's desire to return to England, although he agreed to continue to work with his old staff from Mr Dhir's offices for a time after the sale. He eventually left Dubai, suddenly and without warning, in June 2016, before he had told Mr Dhir about his gambling.

72. Only the "Receipt Acknowledgements" provide evidence independent of the recollections and evidence of Mr Dhir and Mr Parente about what, precisely, was advanced by Mr Dhir specifically under the October 2015 Agreement and when. They are critically important, given my judgment that neither Mr Dhir nor Mr Parente were credible or reliable witnesses.

73. All the Receipt Acknowledgments were signed by Mr Dhir and Mr Parente, except the last. The first, dated 12 October 2015 is a good example. It was in the following terms:-

> "Receipt Acknowledgement
>
> Date: 12th October 2015
>
> I, Antonio Pino Parente… hereby acknowledge the receipt of AED 1,200,000/- paid by way of cash from Mr. Amarjeet Singh Dhir…. This amount of AED 1,200,000/- is received as per our Memorandum of Understanding signed between us 2nd October 2015, out of the total loan amount of AED 6,000,000/- as per the agreement. I hereby issue and handover the following cheque to Mr. Amarjeet Singh Dhir

> - Cheque amounting to AED 1,200,000/- (Drawn on Emirates NBD bank dated 31st March 2017) in lieu of the amount disbursed to me out of the total loan amount of AED 6,000,000/-."

74. The full series of these Receipt Acknowledgements is as follows:-

i) Receipt Acknowledgement dated 12 October 2015 for AED 1.2 million (quoted above).

ii) Receipt Acknowledgement dated 15 November 2015 for AED 850,000, raising the total lent (according to this document) to AED 2.05 million.

iii) Receipt Acknowledgement dated 1 February 2016 for AED 1.3 million, raising the total lent (according to this document) to AED 3.35 million.

iv) Receipt Acknowledgement dated 18 February 2016 for AED 1.85 million, raising the total lent (according to this document) to AED 5.2 million.

v) Receipt Acknowledgement dated 4 May 2016 for AED 900,000, raising the total lent (according to this document) to AED 4,893,000.

vi) Receipt Acknowledgement purportedly dated 30 April 2017 for the following amounts:

> "- AED 140,000/- on 4th April 2016
>
> - AED 119,000/- on 5th April 2016
>
> - AED 1,050,000/- on 27th April 2016
>
> Total amount received is AED 1,309,000/- by Mr. Amarjeet Singh Dhir in the month of April 2016.
>
> Total amount which has been released to Mr. Antonio is AED 5,200,000/-…"

75. I have already rejected both the authenticity and the accuracy of the last of these (para 41 above).

76. The authenticity of the first five was, initially, challenged, but a plausible explanation for certain anomalies in connection with them was given in Mr Dhir's second witness statement. By the end of the trial, the defendant accepted that the first five were genuine documents in the sense that they were created on the dates they bear, but it was not accepted that they evidenced genuine transactions.

77. Once it is accepted, as it now is, that the first five Receipt Acknowledgements were created on the dates they bear, they become potentially highly reliable, because the parties will have known exactly what amounts were being handed over on that date and it was open to them to state and agree, as they did in those documents, that they were being handed over as advances under the October 2015 Agreement. I also find them to be credible as well as reliable, because there was no motive for them to be

concocted on the dates they bear. Mr Dhir's evidence was that he had no idea that Mr Parente was a gambling addict, or that he was using money Mr Dhir lent him to gamble and not to invest in property. This was not challenged, and it is inherently likely. I also see no reason to doubt Mr Parente's evidence that his calculated recycling of relatively small amounts of money, to maintain the confidence of those (not limited to Mr Dhir) willing to supply him with money while he squandered most of it on gambling, was conducted in the hope that his luck would turn and "I would have my day and win big and I could pay off Amar and the other investors that I had duped". It was not suggested that Mr Dhir and Mr Parente were, before Mr Parente ran away from Dubai in June 2016, in cahoots to construct a case which would allow either or both of them to claim gambling losses back from Ladbrokes, Paddy Power or anyone else. Therefore, I see no reason to doubt that the first five Receipt Acknowledgements were genuine in every sense of the word. Consequently, I accept that Mr Dhir advanced to Mr Parente the sums noted in the first five Receipt Acknowledgements pursuant to the October 2015 Agreement and in cash, on the dates and in the amounts documented in them. For reasons I have already given, however, I reject the last Receipt Acknowledgement and do not accept the dates and figures for the advances which, after the event, the final Receipt Acknowledgement purported to record.

Mr Parente joins Paddy Power

78. So far, I have mentioned Mr Parente's gambling as taking place mostly with Ladbrokes. I have already mentioned that in March 2014, he met Tony Carroll, who became his Ladbrokes Premier Account Manager.

79. Tony Carroll (who did not give evidence to me) apparently fell out with Ladbrokes and left them in 2015. In early September 2015 he told Mr Parente he was working as a VIP manager for Paddy Power and encouraged him to start gambling with them. On 24 September 2015, Mr Parente opened the Paddy Power account which is the focus of these proceedings. This was before the first Receipt Acknowledgement (dated 12 October 2015).

The Carroll Agreement

80. On the same day, 24 September 2015, Paddy Power Online Ltd entered into a written agreement ("the Carroll Agreement") ostensibly with Mr Carroll's wife Ericka, although she appears to have been a hairdresser with no active involvement with gambling, or with Mr Parente. The Carroll Agreement was entitled "Collaborative Agreement" and described Mrs Ericka Carroll as "Introducer". The Preambles explained:

> "Paddy Power wishes to expand its business with the Introducer's help. The Introducer has agreed to co-operate with Paddy Power by introducing new players to Paddy Power's betting service. Paddy Power and the Introducer have agreed to share the net revenues which result from the activity of new players who have been introduced by the Introducer on the terms set out in this Agreement."

81. The body of the Carroll Agreement provided for the Introducer to introduce new contacts exclusively to Paddy Power (clause 2.3). Gambling would then be between the contact and Paddy Power: "The Introducer shall not act as principal or agent in any gambling transaction" (clause 3.1). By clause 17, nothing in the Carroll Agreement "shall constitute or be deemed to constitute a partnership between the parties, or shall constitute either party as the agent, employee or representative of the other party." In consideration of her services, the Introducer was to receive 25% of Paddy Power's net revenue from the clients introduced (clause 4), until termination of the agreement. She was also entitled to an up-front monthly retainer of £5,000 per month, which was off set against the 25% as and when it fell due (clause 4.8). Invoicing was to be generated by Paddy Power on the Introducer's behalf from its own records (clause 4.9; clause 4.3).

82. Throughout Mr Parente's relationship with Paddy Power, Paddy Power generated and paid invoices ostensibly from Mrs Ericka Carroll in accordance with the terms of the Carroll Agreement. Mr Dhir's case is that the agreement was a "sham", in the sense that it was "a deliberate and deceptive attempt on the part of the Defendant to create the appearance of an introducer agreement between it and Mrs Carroll and so as to conceal the true relationship between the Defendant and Mr Carroll." (Re-Amended Particulars of Claim para 9.4). However, by the end of the trial, although the claimant strongly maintained its position that the use of Mrs Carroll's name rather than her husband's was disreputable and dishonest, both sides accepted that there was a relationship between Mr Tony Carroll and Paddy Power on the terms of the Carroll Agreement, and that it would not be incorrect to analyse this as an agreement in which Mr Carroll was Mrs Carroll's disclosed principal. That is how I interpret the evidence. There is no evidence that Mrs Carroll ever did anything. Mr Carroll did it all. Mr Parente saw his relationship as being with Mr Carroll, not Mrs Carroll, and he knew and accepted that Mr Carroll was getting paid commission, although he did not know how much or how it was calculated. That commission was paid in accordance with the terms of the Carroll Agreement. Paddy Power treated Mr Carroll (not Mrs Carroll) as "the agent" and referred to him in those terms in some of the internal emails. That does not mean that he was, as a matter of law, Paddy Power's agent. That is a disputed issue (because of its relevance to the question of whether his knowledge is to be imputed to them) to which I will come in due course.

Mr Parente's dealings with Paddy Power

83. Mr Parente opened his new account with Paddy Power on 24 September 2015. He eventually closed it on his own initiative by a self-exclusion processed on 3 October 2016. All Mr Dhir's claims are based on Mr Parente's dealings with Paddy Power on this account and over this period. The October 2015 Agreement between Mr Dhir and Mr Parente shortly post-dates the opening of Mr Parente's account with Paddy Power.

84. Mr Parente deposited £20,000 to open the account, and was encouraged to do so (via Tony Carroll) by a matching £20,000 given to him by Paddy Power. The day on which he opened his account was also the date of the agreement between Paddy Power and Mrs Carroll.

85. Through Mr Carroll's good offices, Mr Parente was from the very start a client handled by Paddy Power's HSU (as to which, see para 4(vi) above). His Dubai address was given to them and he supplied a copy of his passport. He was noted (on

information from Mr Carroll) as being a Dubai-based property developer, including the name of his business, WBYH.

86. The HSU New Account Details form included a prompt as to whether he had any previous Paddy Power accounts and, if so, whether they had been closed due to problem gambling issues or self-exclusion. These sections were left blank but, in any event, Mr Parente's previous self-exclusion had been with Betfair, before the merger with Paddy Power.

87. On 25 September 2015 (the day after Mr Parente's account was opened), Paddy Power did an internet search which confirmed his link with WBYP but did not show any details of ownership or income or directorships. A Customer Due Diligence form was filled up which noted that there was no source of funds or source of wealth information, and that the ownership of two UK properties apparently linked with him had not been checked (Land Register entries later showed that he was not, in fact, the owner of one of them). On the level of information available, Mr Parente was assessed as medium risk.

88. Despite this, he was allowed to gamble straight away, and did so on a grand scale, which rapidly escalated to ever more reckless and extravagant levels.

89. The defendant soon noticed that it had what was described in internal correspondence as "a wild man!!" on its hands (email from Martin Sullivan to Ciaran McDermott dated 16 October 2015) but this seemed to be a source rather of satisfaction than of concern to them. On the day of that email, he had placed 164 bets totalling £548,065 on the defendant's "Playtech Instant Casino" at a losing rate of 2.88%, representing losses to him on that day alone of over £15,000. The "wild man" was rewarded for his losses the following day with a pre-agreed 7.5% bonus on them. Mr McDermott, who had been an HSU manager by that stage for nearly 4 years, waved away this apparent encouragement by saying in evidence that it was "a common thing".

90. While Mr Parente was still in Dubai (before June 2016), he gambled with the defendant online. This was illegal in Dubai but nothing in the defendant's internal records, or indeed in the evidence of any defendant witness to me, showed any interest in or concern about that aspect. The defendant also allowed Mr Parente's account to be funded with cash deposits (from which it followed that there was no audit trail of the origin of the cash) although this was in breach of the Isle of Man law governing their relationship. Again, the defendants' witnesses were disconcertingly casual about that, while not denying the breach.

91. On 4 November 2015, Paddy Power prepared an Enhanced Due Diligence report on Mr Parente, because his gambling had hit an anti-money laundering trigger point. This noted that his losses had already hit £152,912 and that more information was required in relation to his employment and income. The fact was that practically nothing was known about his income, or his assets. He was, however, allowed to continue gambling.

92. The Enhanced Due Diligence report was considered by the defendant's Anti Money Laundering Decision Committee on 13 November 2015, which set a limit of 12 weeks for source of wealth and source of funds information to be obtained. However, he was still allowed to gamble.

93. At the expiry of the 12-week limit, the Anti Money Laundering Decision Committee considered Mr Parente's case again, on 23 February 2016. Absolutely no further information had been obtained. However, the Committee extended the deadline by a further week, and Mr Parente was allowed to continue his gambling in the meantime, as before.

94. Immediately after that meeting, Mr Carroll obtained from Mr Parente and passed on to the defendant proof of his title to a property in Dubai (but no indication of the equity Mr Parente held in it, or of any charges that might have been registered against it) and a copy of his Dubai residence permit, which described him as "General Manager" of WBYP but did not state his income.

95. This scanty information was internally reviewed by Mr Tom O'Brien on 29 February 2016. He noted that Mr Parente had by that stage lost £220,000 since starting with Paddy Power 5 months previously. He was known to be working in real estate in Dubai "but unable to confirm role or likely income". There was evidence of a house purchase "worth circa 460k in May 2015". In relation to his WBYP connection, Mr O'Brien wrote "Still difficult to establish salary as it is likely to be heavily commission based. Low tax in Dubai would increase income. Found reference to his previous employment in another Dubai real estate agency referring to him as a Senior Manager in 2012" – this was based on an internet search. He suggested "Revert to customer looking for evidence of income/salary?".

96. There was no suggestion that Mr Parente's gambling should be stopped or curbed in the meantime, and it was not stopped or curbed.

97. Mr Tom O'Brien emailed Ciaran McDermott on 29 February saying that the information "does appear positive" but "we still need more information to justify a spend of c220k [i.e. losses of £220,000] in 6 months" (actually, 5 months). He said: "Ideally we need something that gives us an indication of his income such as salary slip or other proof of earnings" and asked that this be requested from "the agent/customer" (Mr Carroll was the agent referred to). However, he said he would be recommending an extension of the expiring 12-week deadline to the Committee and "the best outcome is likely to be extension by a week".

98. On the same day, a search was made for any previous Betfair activity, but it drew a blank, despite the fact that there had been such activity, and that it had ended in Mr Parente self-excluding, which was a sign that he was a problem gambler.

99. The one-week extension of time yielded no further information, but the Committee on 1 March 2016 (as Mr Tom O'Brien had anticipated and recommended) simply extended the deadline for another week. Again, however, there was no limit on Mr Parente's gambling in the meantime. By this point, he had been gambling compulsively and recklessly, as the defendant had been observing from its own detailed monitoring, for over 5 months, with no evidence that he had legitimate sources of income or wealth from which to do so.

100. That week, too, passed without any more information being gathered. The Committee met again, on 8 March 2016 and recommended that Mr Parente's account be suspended. His losses had by then reached £222,432 and the Committee noted that he had no directorships, no shareholdings, no known property ownership, and that,

although he was employed by WBYP, "a salary and role in the company could not be established".

101. However, the account was not suspended. The day after the Committee meeting, Mr Carroll sent in a copy of a single payslip from WBYP, covering May 2014 (and, therefore, well out of date) showing a net salary of AED75,000, with lines for commission and incentive/bonus left blank (suggesting that there was none). The defendant's internal reviewer, Declan Fitzgerald, on 9 March 2016 converted AED75,000 to £14,352.10 and deduced from this an annual net salary of £172,225. Incredibly, based on this, Mr Fitzgerald cheerfully recommended that this was sufficient to cover Mr Parente's losses of over £222,000 in less than 6 months, and said in an email to Mr Tom O'Brien and Mr O'Brien's own manager Ciaran Scallan on that day:

> "Given the customer lost £158,362 in 2015 and £64,070 to date in 2016, and without taking into account potential commission, the customer looks to have provided evidence of sufficient SOF [source of funds] to substantiate their betting. It would be my recommendation that the customers Risk Score is adjusted to include sufficient SOF [source of funds] which would result in a new score of -63 (NFA)."

102. On 10 March 2016, Mr Carroll sent in three more payslips, which were up to date, covering January, February, and March 2016. They showed Mr Parente's current salary as AED100,000 in each of those months but, again, no other benefits (lines for commission and incentive/bonus were blank). Mr Tom O'Brien told me that he deduced from this that Mr Parente "appeared to have an annual income of at least £229,000 plus any bonus and commission payments". There was, however, no evidence that he had any bonus or commission payments and an annual income of £229,000 was obviously not enough to fund a gambling habit on the scale of Mr Parente's with the defendant; he had lost almost the whole of that sum in less than 6 months.

103. The defendant was quite satisfied with what I find was no more than a box-ticking exercise in which no real attempt was made to make sure that Mr Parente had legitimate funds with which to lose on the epic scale characterised by his brief relationship with them. By 21 April 2016, the defendant marked Mr Parente's file "Case Closed – SOF [source of funds] validated". That was a risible conclusion, demonstrating a complete lack of interest in the facts of the case.

104. Mr Parente continued to lose money hand over fist, to the defendant's profit, and finally, on 1 June 2016, he hit another anti-money laundering trigger which at last caused his account to be suspended.

105. The suspension did not last long. Mr Parente provided no more information about source of wealth or source of funds, but, on the basis of a copy of his passport and a utility bill, the defendant lifted the suspension on 17 June 2016. The utility bill was addressed to a property in Hertfordshire (Mr Parente having recently completed his flight from Dubai). The bill showed that Mr Parente lived there, but not who owned it.

106. From 17 June 2016, therefore, Mr Parente was allowed to gamble again, after this brief hiatus. This included rapid-fire betting with cash at one of the defendant's high street betting offices at a rate which would hardly seem physically possible were it not thoroughly recorded in the defendant's own records. For example, on 28 July 2016 he placed 76 cash bets at the Kingsbury betting shop in amounts varying from £20 to £300, the rate of betting (apparently over the counter, not at a machine) being every 2 or 3 minutes and, at times, 2 or 3 bets in a single minute. Another example to which I was taken was on 19 August 2016 when, at the same betting shop, he placed 52 cash bets over the counter between 1.58 pm and 4.40 pm, in stakes ranging from £50 to £1,000. The final example was on 8 September 2016 when, in under 4 hours, he placed 92 bets over the counter in cash at the same establishment. Of course, none of these crazy sprees ended in profit for him.

107. On 5 September 2016, Mr Parente hit another monitoring trigger, but this had no effect on his account, which was operated freely as before. A leisurely approach was adopted to the trigger. The account was not reviewed until 20 October 2016, when Mr Parente was assessed as high risk and a note was made that his source of funds/source of wealth information should be updated. Meanwhile, however, there was no suspension or limitation placed on his account although no further information was, in fact, obtained. It was Mr Parente himself who closed the account, by self-exclusion, on 3 October 2016. In the meantime, his September 2016 losses of £77,846 on 5,323 individual bets totalling stakes of £2,368,025 had been laconically noted by the HSU as "Business as usual".

108. Mr McDermott gave evidence in chief that responsible gambling awareness was prioritised at Paddy Power by this time, and that he (as an HSU manager of several years' standing) had personally received training about it. The training must have been quite poor, because Mr McDermott's evidence in cross-examination was that he saw no reason, at the time, to raise any responsible gambling concerns about Mr Parente, and he was not aware of anyone else raising them either. He would (he said in evidence) have taken the same view about anyone else in a similar position: "In these circumstances, no. I can't see why I would do anything about them."

109. I do not mean, however, to single Mr McDermott out. All the defendant's witnesses involved with Mr Parente at the time were equally tone-deaf, and none of them accepted any personal responsibility for failings in the conduct of Mr Parente's account. It was not until the defendant's final witness gave evidence that there was any recognition that what had happened was out of order. Mr Daniel Taylor, who is now Chief Executive Officer for the defendant's international operations, said in cross examination that there were "without doubt… strong indicators of problem gambling" and "our responsible gambling responsibilities were not met in this case". Paddy Power's approach to responsible gambling "was not good enough". He said "Mr Parente was able to spend significantly more than was affordable, and for that, you know, I am embarrassed."

110. This recognition was welcome. However, all the earlier witnesses had stonewalled, denying that there was a breach of policy (Mr Whelan would only go so far as saying the policy had been "flexed") or that the policy itself was inadequate, or that allowing and positively encouraging months of high-stakes gambling before even seeking, let alone obtaining, satisfactory evidence that Mr Parente could afford it, or had legitimate sources of income or wealth to pay for it, was wrong. Some attempt was

made to suggest that the way Paddy Power handled Mr Parente was in the past, and that lessons have been learned, and that what happened was, at the time, in line with industry norms. I was not entirely convinced. These events took place only 5 years ago. All the witnesses before Mr Taylor tried to defend the indefensible. I cannot comment on industry norms but, in my judgment, Paddy Power knew that it was dealing with a compulsive gambler who could not afford what he was doing, and Paddy Power did not really care. I do not see what industry norms can offer by way of exculpation for that.

111. On 16 October 2018, following an investigation into Paddy Power's handling of the accounts of Mr Parente and others, the Gambling Commission made the following public statement (in which PPB refers to Paddy Power Betfair):

> "The Gambling Commission has found, and PPB accept, that it breached social responsibility code provision 3.4.1(1) which relates to customer interaction, when five customers were able to gamble extensively despite indicators of problem gambling.
>
> We also found, and PPB accepts, that it failed to act in accordance with our guidance on anti-money laundering, The Prevention of Money Laundering and Combating the Financing of Terrorism - Guidance for remote and non-remote casinos.
>
> This statement reiterates the Commission's view that any operator who offers customers the opportunity to bet on an exchange is liable in respect of both anti-money laundering (AML) and social responsibility provisions for all money through the exchange.
>
> In line with our Statement of principles for licensing and regulation, PPB will pay a regulatory settlement of £2.2m, including a £1.7m payment in lieu of a financial penalty and divestment of £0.5m of monies received."

112. Of these sums, £265,606 of the payment in lieu of financial penalty, and £132,803 of the divestment, related to Mr Parente's case. The divested sum was initially going to be paid back to Mr Parente but, in the event, the Gambling Commission did not approve of that. While Paddy Power retained the funds in escrow, it received claims against them from Mr Parente's sister and from Mr Dhir. The Gambling Commission expressed the view that, where the Gambling Commission could not categorically determine the origin of the funds used to gamble with Paddy Power, the funds should not be returned to either of those two claimants, but should be paid to charity. Accordingly, the divested sum was donated to GamCare and the Gordon Moody Association.

(i) Is the agreement under which Mr Dhir advanced the money to Mr Parente governed by the onshore law of the Emirate of Dubai ("onshore Dubai law") or by the law of the Dubai International Financial Centre ("DIFC law")?

113. The relevant agreement for these purposes is the October 2015 Agreement (para 60 above) which included an express choice of law in clause 9 as follows:

> "This agreement is signed in Dubai and shall be governed and construed in accordance with the laws of Dubai".

114. What, however, was meant by "the laws of Dubai"? The claimant says that it meant the laws of the Dubai International Financial Centre ("DIFC"), while the defendant says that it means the law of the rest of Dubai ("onshore Dubai"). All the experts agreed that it had to be one or the other: it could not be both. Taken in isolation, the phrase "the laws of Dubai" is ambiguous: *National Bonds Corporation PJSC v Taleem PJSC* [2011] DIFC CA 001 at para 39.

115. The defendant's DIFC law expert David Russell QC referred to DIFC law as "the common law island in the civil law sea", echoing the simile of "a common law island in a civil law ocean" which has been attributed to DIFC judge Chief Justice Michael Hwang. The defendant's onshore Dubai law expert, Dr Habib Al Mulla, gave uncontroversial evidence that Dubai is one of the seven Emirates which together form the United Arab Emirates. The DIFC is an independent jurisdiction, occupying 272 acres of Dubai, which has its own legal and regulatory framework for all civil and commercial (but not criminal) matters. The laws of the DIFC are written and administered in English and operate according to common law principles.

116. There seemed to be some confusion in the evidence of the claimant's DIFC law expert (Mr Roger Bowden) between the jurisdiction of the DIFC and whether the applicable law was the law of the DIFC. In the present case, the jurisdiction invoked by the claimant and accepted by the defendant is the jurisdiction of this court, the High Court of Justice in England and Wales. That is not, however, a jurisdiction conferred by the October 2015 Agreement: it is simply one chosen by the claimant and accepted by the defendant for the purposes of this litigation. The question for me is the applicable law.

117. Mr Bowden also suggested that I should, first, determine that the October 2015 Agreement provided for a trust, because that "would establish that the Agreement should be construed according to DIFC law, a body of law which recognises trusts, as against On-Shore Dubai law which does not". This is counter-intuitive, because the natural order is to determine the applicable law before construing the legal effect of a written agreement. It is also an awkward argument given the terms of the October 2015 Agreement, which contains no clear wording establishing an express trust. Indeed, by the end of the trial, the claimant conceded that this was not an express trust case even if DIFC law applied to the October 2015 Agreement: that was also the position eventually reached by Mr Bowden in cross-examination.

118. Mr Bowden said that "of some relevance" is the Law on the Application of Civil and Commercial Laws in the DIFC, but, again, this had an air of the jurisdiction tail wagging the choice of law dog because that Law applies to cases being heard in the courts of the DIFC. Whilst there are undoubtedly cases in which an express choice of jurisdiction may cast light on a choice of law which has not otherwise been made explicit, and even more cases in which an express choice of law will confer jurisdiction, the October 2015 Agreement is silent on jurisdiction. In any event, both the DIFC law experts agreed that the only provision of the Law on the Application of Civil and Commercial Laws in the DIFC which could apply in the present case was Article 8(2)(d), which (after provisions which they considered not to apply to this case) applies "the law of any Jurisdiction which appears to the Court or Arbitrator to

be the one most closely related to the facts of and the persons concerned in the matter". That does not add much to ordinary principles.

119. The defendant's onshore Dubai law expert, Dr Habib Al Mulla, said that, under onshore Dubai law, the applicable law in this case would be determined by Article 19(1) of the Civil Code, which provides (in translation):

> "The form and the substance of contractual obligations shall be governed by the law of the state in which the contracting parties are both resident if they are resident in the same state, but if they are resident in different states the law of the state in which the contract was concluded shall apply unless the contracting parties agree, or it is apparent from the circumstances that another law should apply."

This would create a default law for the October 2015 Agreement of onshore Dubai law, since both Mr Dhir and Mr Parente were resident in onshore Dubai (not the DIFC) and the contract was concluded within onshore Dubai (not the DIFC). However, that would be displaced by agreement between the parties, or by a contrary intention "apparent from the circumstances".

120. Clause 9 of the October 2015 Agreement suggests that the choice of law was linked by the parties to the place where the Agreement was being signed, otherwise it is hard to understand why the place of signature was mentioned in clause 9 at all: "This agreement is signed in Dubai and shall be governed and construed in accordance with the laws of Dubai". It was signed in onshore Dubai, not in the DIFC, which is a physical territory within greater Dubai. One would expect the reference to "Dubai" to mean the same in both parts of this single sentence. Since "signed in Dubai" was a reference to signature in onshore Dubai and not in the DIFC, this suggests that the subsequent reference to "the laws of Dubai" in the same sentence was also to onshore Dubai and not the DIFC.

121. Both parties were connected more with onshore Dubai than with the DIFC. They both lived and worked in onshore Dubai, not in the DIFC.

122. The Preambles to the October 2015 Agreement said that the Loan Amount was sought by Mr Parente "for the purpose of his business activities in real estate market in Dubai". The Preambles did not say that his business activities in real estate were expected to be in the DIFC and neither Mr Dhir nor Mr Parente gave evidence that they had any specific expectation of a DIFC acquisition when the wording of the Preambles was agreed.

123. Regular property dealing in the DIFC would have required Mr Parente's business to be registered in the DIFC, which was never done (although a one-off transaction would not require that). There was no evidence of Mr Dhir and Mr Parente collaborating on property deals within the DIFC. The only "flip" in respect of which I was shown a written agreement identifying the property in question was the original agreement of November 2013 (para 24 above). The property there was Trident Grand Residence 803 in Dubai Marina, which was part of onshore Dubai and not within the DIFC.

124. The properties identified in the October 2015 Agreement were not properties being bought, but properties being provided by Mr Parente as security for the Loan Amount. All three of these properties were within onshore Dubai, not the DIFC.

125. Both the DIFC experts agreed (returning to the jurisdiction angle) that the laws of the DIFC will be applied in Dubai only if the matter is within the jurisdiction of the DIFC Courts. They also agreed that the only basis upon which this case could be brought within the jurisdiction of the DIFC Courts would be Article 5(A)(1)(b) of the Judicial Authority Law, which gives the DIFC Court of First Instance exclusive jurisdiction to determine:

> "Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC pursuant to express or implied terms stipulated in the contract".

126. The October 2015 Agreement was neither concluded nor finalised within the DIFC. It did not expressly provide that it should be performed within DIFC, even partly. Nothing in it implied that it was to be performed within the DIFC at all. The claimant's expert gave his opinion that, since it did not preclude performance within the DIFC, that was sufficient. The defendant's expert disagreed. I also disagree. If it is enough that performance within the DIFC is theoretically possible, the jurisdiction of the DIFC over contracts concluded elsewhere in Dubai, by parties with no connection with DIFC, would be extended considerably, and for no obvious juridical, commercial, or practical reason.

127. Furthermore, it is only from the Preambles that even this theoretical possibility can be constructed. The body of the October 2015 Agreement was for borrowing and lending which was expected to take place, and did in fact take place, outside the DIFC between parties outside the DIFC. Even the security cheques were drawn on banks outside the DIFC.

128. Turning to the onshore Dubai law experts, both sides' experts agreed that the (onshore) courts of Dubai would accept jurisdiction in relation to any claim brought by Mr Parente or Mr Dhir pursuant to the October 2015 Agreement and that the (onshore) courts of Dubai would then apply (onshore) Dubai law in determining the claim.

129. The parties agree that Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ("Rome I") governs my consideration of the choice of law dispute in this case. Article 3(1) of Rome I provides:

> "A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract."

130. I have concluded that both the express terms of the contract (see para 120 above) and the circumstances of the case (paras 121-128 above) clearly point towards onshore

Dubai law and not DIFC law being the parties' choice of law under clause 9 of the October 2015 Agreement. Neither the theoretical possibility of Mr Parente buying property in DIFC as well as onshore Dubai, nor the references in the agreement to "trust" (which I consider more fully, below) tip the scales towards DIFC. I must therefore apply onshore Dubai law to the October 2015 Agreement.

(ii) What were the terms of the agreement under which Mr Dhir advanced the money to Mr Parente?

131. For reasons I have explained in paras 27-68 above, the terms of the agreement under which Mr Dhir advanced the money to Mr Parente were the terms of the October 2015 Agreement set out at para 60 above, and none other. The written document was intended to, and did, embody all the terms agreed between them. There were no terms or conditions agreed orally which are not reflected in the express terms of the October 2015 Agreement.

132. My findings of fact make the arguments addressed to me about the effect of clause 7 irrelevant. However, I am also persuaded that, as a matter of Dubai onshore law, clause 7 would have been effective to exclude any collateral agreement in any case. I found the defendant's onshore Dubai law expert witness Dr Habib Al Mulla more persuasive and authoritative in this respect than the claimant's expert witness Mr Dajani.

133. Clause 7 provided:

> "This agreement is intended to bind the parties to the transaction contemplated hereby and constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all previous agreements between them on the subject".

134. This would, on its face, both render the written document definitive of "the entire understanding" and, furthermore, expressly supersede "all previous agreements between them on the subject".

135. This interpretation is also consistent with provisions of the onshore Dubai law Civil Code cited to me. Adopting what appears to be the most respected (although unofficial and not always literal) translations from the Arabic by James Whelan (2010), with square brackets indicating where Whelan's translation (according to Dr Al Mulla) is a gloss on rather than a literal translation of the words in the original, I was referred to the following:

> **Article 258**
>
> (1) The criterion in [the construction of] contracts is intentions and meanings and not words and form.
>
> (2) The basic principle [presumption] is that words have their true meaning and a word may not be construed figuratively unless it is impossible to give its true meaning.

> **Article 259**
>
> The implied shall be disregarded in the face of the express.
>
> **Article 260**
>
> Words should be given effect to rather than ignored, but if it is impossible to give effect to words, they shall be ignored.
>
> **Article 265**
>
> (1) If the wording of a contract is clear, it may not be departed from by way of interpretation to ascertain the intention of the parties.
>
> (2) If there is scope for interpretation of the contract, an enquiry shall be made into the mutual intentions of the parties without stopping at the literal meaning of the words, and guidance may be sought in so doing from the nature of the transaction, and the trust [in Arabic, *amāna* or *amaana*] and confidence which should exist between the parties in accordance with the custom current in dealings.

136. I have concluded that the terms of the agreement under which Mr Dhir advanced the money to Mr Parente were the express written terms of the October 2015 Agreement set out at para 60 above; that there were no other terms or conditions discussed or agreed orally; and that no other terms governed this transaction. However, the Articles of the Civil Code which I have just quoted further convince me that the clear words of Clause 7 are to be given their full and natural meaning and effect. The intention of the parties was that the whole of their agreement can and should be found in the October 2015 Agreement itself and it was not their intention or their agreement that any inquiry should be made into any prior agreements or externally evidenced understanding between them in order to ascertain the terms by which they were to be mutually bound.

(iii) In receiving the money, was Mr Parente subject to any trust or fiduciary obligations and, if so, what were they?

137. The terms of the October 2015 Agreement do not, on their face, create any trust. They look like a straightforward loan contract with provision for repayment. The lending is secured, expressly, by the cheques (which if dishonoured expose the drawer to imprisonment in Dubai) and it is also secured against the properties identified as security in clause 4.

138. The body of the agreement imposes no restriction on Mr Parente's use of the money, although the Preambles refer to "his business activities in real estate market in Dubai" as the background against which he was seeking the loan. If the loan was to be trust property, then the obvious remedy for breach would have been an interest in the property acquired with the loan, but nothing in the October 2015 Agreement provides for that. If the money borrowed was held by Mr Parente on trust, it is difficult to see how he could use it for "his business activities" at all. I note that the Preambles refer

to "his" business activities, i.e. Mr Parente's. He was not Mr Dhir's agent in his use of the money. He was not doing Mr Dhir's business. He was conducting his own business, with money borrowed from Mr Dhir.

139. No expert supported a construction of the agreement which created an express trust from the words of the October 2015 Agreement. The DIFC law experts agreed (and I, from the same common law tradition as the DIFC, would say the same) that the document was not apt to create an express common law or DIFC trust. The onshore Dubai law experts, for their part, agreed that Dubai law does not have a concept of trust at all, in the common law sense of that word, a point to which I will return.

140. The focus of the argument that Mr Parente was subject to trust or fiduciary obligations, which might support Mr Dhir's tracing claim against Paddy Power, was clause 6, which provides (in English, that being the language of the October 2015 Agreement):

> "In case the First Party defaults with any of the terms and conditions of this agreement or fails to pay back the loan amount along with the Profit amount or fails to honor the cheques issued as per the clause no 2 of the agreement on the due date, then it will be treated as the breach of trust of the Second Party by the First Party and the breach of this agreement, the Second Party will have all the right to deposit the cheques and claim this amount from the Second Party."

141. A reference to something being a "breach of trust" does not, however, in itself create a trust in the common law sense of the word, or (especially since the reference appears in an agreement I have decided was governed by onshore Dubai law) necessarily refer to a fiduciary duty in the English sense of the word. Even in English law, for example, the fact that the relationship between every employer and employee is one of "trust and confidence" (*Malik and Mahmud v BCCI* [1998] AC 20 per Lord Nicholls at 34A; per Lord Steyn at 45C-46H) does not in itself mean that it is a relationship involving fiduciary duties (*University of Nottingham v Fishel* [2000] ICR 1462 per Elias J at 1490F and at 1493D). In order to determine the question, a careful enquiry both into the nature of the relationship, and the nature of the rights and duties it imposes, is essential.

Islamic law background

142. This case is unlikely to be unique in raising the interface between Arab and Islamic law concepts, translated with words such as "fiduciary" and "trust", and English and common law jurisprudence about trusts and breaches of fiduciary duty which might potentially lead to proprietary or other equitable remedies. However, there appears to be little if any reported authority.

143. Large parts of the Arab world have a broadly coherent system of jurisprudence, despite national and regional divergences, much as the common law world does, and for the same reason - which is a shared history. Until 1920, most of the Islamic world was part of the Ottoman Empire, in which Islamic law and culture (with, of course, significant religious and other minorities) was the dominant influence. In 1877, the *Majalla* or *Mecelle* was introduced by the Ottomans as a Civil Code based on the

French Civil Code model in form, but in substance based on the Islamic legal traditions of the centuries-old Hanafi school of Islamic jurisprudence. "The spirit of the Majalla has permeated the entire Middle East ever since its enactment" (Chibli Mallat "Introduction to Middle Eastern Law" (2007) p 245), and in some respects it remained directly in force (for example) in Jordan until 1976 and in Israel until 1984 (Mallat, op. cit.). A Commercial Code was separately introduced by the Ottomans, drawn directly from the French Commercial Code, in 1850, and this remained current (for example) in Egypt well into the twentieth century.

144. The combination of classical Islamic law and modern European civil law influences continued when Arab nations gradually equipped themselves with separate national legal codes and jurisprudence after independence. Although, immediately after the First World War, Britain was (with France) one of the two main colonial powers bridging the transition from Ottoman rule to full independence under the auspices of the League of Nations, this was for the most part too late for the common law to be imported into British Mandates in the Near and Middle East in the way that it was elsewhere in the British Empire. Even Egypt, which was in the British sphere of influence as early as the nineteenth century, was allowed to retain its French-inspired civil codes to the exclusion of English common law (Mallat, op. cit. at p 241). This had implications beyond Egypt itself, because of the political and cultural influence of Egypt within the Arab world after full independence in the twentieth century.

145. Thus, the claimant's expert in Dubai law, Mr Dajani, told me that his law degree from Jordan was mainly "civil law of Jordan… which is the same adopted in the UAE and other Arab countries, because it is coming from the French, Egypt and Arab countries: they all apply civil law". Dr Al Mulla agreed that the laws of Dubai (unlike the laws of the DIFC) "are issued in Arabic and follow civil law principles".

146. Some English law cases have considered the law of Saudi Arabia, but that law is unusually free of Western and non-Islamic influences and so those cases are part of a separate discourse: *Al Qahtani & Sons v Antliff* [2010] EWHC 1735 (Comm) per Jonathan Hirst QC at paras 30-32, *Shetty v ARPIC* [2013] EWHC 1152 (Ch) per Floyd LJ at paras 65-68; and *Byers v Samba Financial Group* [2021] EWHC 60 (Ch) per Fancourt J at 118-120.

Onshore Dubai law

147. In the case of the onshore law of Dubai, both experts referred to the current edition of the Dubai Civil Code, as the source of the relevant law, supplemented in parts by cases in the Court of Cassation, and cross referring to Article 404 of the Penal Code.

148. The onshore Dubai law experts agreed, as I have mentioned, that "trusts, as they are understood in common law legal systems, do not exist and cannot be created under the law of Dubai." That is an important difference between the Arab and Islamic law civil tradition, on the one hand, and the English and common law traditions on the other hand, although it has been suggested that our law of trusts may originally have been influenced by early medieval contacts with the Arab world: see Monica Gaudiosi "The Influence of the Islamic Law of Waqf on the Development of the Trust in England: The Case of Merton College" Univ. of Pennsylvania Law Review vol 136(4) pp 1231-1261 (1988); and Ann Van Wynen Thomas "Note on the Origin of Uses and Trusts – Waqfs" 3 Sw. LJ 162, 166 (1949) (cited in John Makdisi "The

Islamic Origins of the Common Law" North Carolina Law Review 77 (5) pp 1635-1740 (1999), at p 1639, which also explores possible relationships between other aspects of English law and procedure and the Islamic world).

149. No-one suggests that the facts of this case created a *waqf* under Dubai or any other law (Al Mulla 1 para 52). That word does not appear in either of Mr Dajani's expert reports, not least (no doubt) because of the common ground that, whatever law applied to the dealings between Mr Dhir and Mr Parente, no express trust was created and there was no charitable element. Rather, I have been invited to consider Dubai laws referring to *amaana* and *wadiya*, which (it is argued) may create fiduciary duties and, therefore, permit equitable remedies, or (putting it differently and in the alternative) may have given rise to a constructive, resulting, *Quistclose* or other implied trust.

150. Mr Dajani emphasised (Dajani 1 para 15.v.) the provision of clause 6 of the agreement stating (in English, the language of this agreement) that any breach of the agreement "will be treated as the breach of trust of the Second Party by the First Party". However, the reference to "breach of trust" in this passage does not appear to me to be a reference to breach of anything that looks like a fiduciary duty to an English lawyer.

151. What clause 6 says "will be treated as the breach of trust" is (a) "In case the First Party defaults with any of the terms and conditions of this agreement" or (b) "fails to pay back the loan amount along with the Profit amount" or (c) "fails to honor the cheques issued as per the clause no 3 of the agreement on the due date". None of these are apt to be obligations within a fiduciary relationship as that term is used in English law. Repayment of a loan, on the due dates, and with interest, does not sound like a fiduciary obligation. Bouncing a cheque does not sound like a breach of fiduciary duty, and the remedy for it, were it to happen in Dubai, was quite different and arguably more powerful than an equitable remedy: namely, imprisonment of Mr Parente in Dubai. The terms and conditions of the agreement (particularly when stripped of the extraneous terms not mentioned in the document which I have found not to have been agreed at all) do not have the character of a fiduciary relationship. It is a contract lending money ("the Loan Amount") on terms that it would be repaid with interest, secured on specific properties and by post-dated cheques. There is no hint of a no-profit rule which would be characteristic of a fiduciary relationship. On the contrary, even the Preambles recognised that Mr Parente might use it "for the purpose of his business activities", which did not bar him from making and keeping as much personal profit as he could. There is no hint of a no-conflict rule either. This was a loan, which Mr Parente was to use for his personal benefit and not for Mr Dhir's. Mr Dhir was to get a fixed return regardless of Mr Parente's success or failure, and no provision of the agreement suggested that Mr Parente was to pursue Mr Dhir's interests rather than his own interests with the money; let alone that he was to pursue Mr Dhir's interests to the exclusion of his own interests.

152. Per Millett LJ in *Bristol and West Building Society v Mothew* [1998] 1 Ch 1 at 18:-

> "A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of

> loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary."

153. Neither clause 6, nor anything else in the October 2015 Agreement, passes that test. Fiduciary duties are not created by buzz-word. The reference to a "breach of trust" in clause 6 is not enough. If an employer or employee can be in breach of the implied term of trust and confidence without there being a fiduciary relationship creating fiduciary duties, as they certainly can, so too could Mr Parente, by breaking the agreement, be committing a "breach of trust" without being subject to fiduciary duties. A proper analysis of the nature of his relationship with Mr Dhir under the agreement, and the nature of his obligations under the agreement, shows that this was not a fiduciary relationship and fiduciary duties were not owed on either side.

154. The laws referencing *amaana* and *wadiya* relied on by Mr Dajani were Article 265 of the Civil Code and Article 404 of the Penal Code. There was also reference to Article 924 of the Civil Code.

The Civil Code

155. I have already quoted Article 265 of the Civil Code, because of its application to the interpretation of contracts (para 135 above). It provides, as I have said, as follows:

> **Article 265**
>
> (1) If the wording of a contract is clear, it may not be departed from by way of interpretation to ascertain the intention of the parties.
>
> (2) If there is scope for interpretation of the contract, an enquiry shall be made into the mutual intentions of the parties without stopping at the literal meaning of the words, and guidance may be sought in so doing from the nature of the transaction, and the trust [in Arabic, *amaana*] and confidence which should exist between the parties in accordance with the custom current in dealings.

156. However, I have already explained why I do not accept that an expectation of trust and confidence should be equated with the creation of a fiduciary duty, as illustrated by *University of Nottingham v Fishel* [2000] ICR 1462. Article 265 is not referred to in the October 2015 Agreement and it is an article dealing with the construction of contracts. To the extent that is suggests that, in *any* contract, "trust and confidence… should exist between the parties in accordance with the custom current in dealings", this falls short of implying what we would recognise as fiduciary duties into all such

contracts. That will depend on the particular terms of the contract and of the relationship in each case.

157. Article 924 of the Civil Code was not mentioned by Mr Dajani in his original report, but in his second report he said "Having considered the matter further, the Trust Contract which best fits the relationship between Mr Dhir and Mr Parente is Agency" and, by the end of the evidence, it had emerged that by this he meant to refer to Article 924. Article 924 of the Civil Code provides (Whelan translation, 2010):

> **Article 924**
>
> Agency is a contract whereby the principal puts another person in the place of himself in an ascertained, permitted dealing.

158. I see no basis for construing Mr Parente as Mr Dhir's agent, whether under Article 924 or on the ordinary construction of the October 2015 Agreement. He was borrowing money. He was going to use that money for his own purposes. Mr Dhir had no interest in those purposes and had nothing to do with them. In pursuing his own business, Mr Parente was not in any sense Mr Dhir's agent. In spending the money, he was not Mr Dhir's agent. Even in investing the money, he was not Mr Dhir's agent, because Mr Dhir's right was merely to be repaid the money on the due dates with the agreed "profit" or interest, without reference to Mr Parente's success or failure with the money. If he failed to repay, there was no reference in the October 2015 Agreement to Mr Dhir having any right to enforce over whatever Mr Parente had spent the money on, even if it was property (and, as I have found, no side-agreement or prior agreement to that effect either). Mr Dhir's security was a power of attorney over other properties offered as security at the outset, and the post-dated cheques. Clause 6 referred to enforcement against "the Properties (provided as security)"; not to enforcement over the proceeds of the loan, whether they were invested in real property or not. In fact, the nature of the "flip" which was described to me in evidence was that Mr Parente would not retain any real property or ever become the registered owner of it: he would use a power of attorney to make a quick turn between the original seller and the ultimate buyer. He would take profit from the difference between the former's sale price and the latter's buying price which he could immediately pocket in cash. But clause 6 of the agreement said nothing about enforcing against that.

159. Dr Al Mulla also rejected the agency analysis, and I preferred his evidence on this point to that of Mr Dajani.

The Penal Code

160. The heart of the claimant's fiduciary duty case, as advanced by Mr Dajani, was that Mr Parente's breach of the October 2015 Agreement engaged Article 404 of the Penal Code.

161. Article 404 of the Penal Code is in Arabic and, unlike the Whelan translation of the Civil Code, I was not presented with a single widely accepted translation of it. I was offered a translation by Dr Al Mulla ("Al Mulla"), a translation from Westlaw Middle East ("Westlaw"), a translation in Mr Dajani's first report which (see p 5 footnote 2) he had taken from an article on the internet ("Dajani 1") and a translation annexed to

his first report headed "Judicial Department – Legislation Series in English" ("Judicial Department"). In the absence of an agreed translation, all four combined provide, by their different language for the same Arabic original, a layered sense of the meaning, and I will set them out with emphasis on the phrase around which the expert debate particularly revolved.

Article 404 – Al Mulla

> Shall be punishable by confinement or by a fine any individual who embezzles, uses or dissipates funds, instruments or any other movables, in such a manner as to cause prejudice to persons having title thereto, whenever such funds, instruments or movables were committed to him **by way of bailment** [in Arabic, *wadiya*]**, lease, possessory pledge, loan for use or agency.**
>
> For the application of this stipulation, shall be considered as good as an agency, any partner in a joint property, any agent of necessity with respect to the property of the concerned party and any person to whom an object is committed to be used for a specific matter for the benefit of its owner or of another.

Article 404 – Westlaw

> Shall be punishable by confinement or by a fine any individual who embezzles, uses or dissipates funds, instruments or any other movables, in such a manner as to cause prejudice to persons having title thereto, whenever such funds, instruments or movables were committed to him in a fiduciary character **by way of trust** [in Arabic, *wadiya*]**, lease, mortgage, loan for use or proxy**.
>
> For the application of this stipulation, shall be considered as good as a proxy, any partner in a joint property, any agent of necessity with respect to the property of the concerned party and any person to whom an object is committed to be used for a specific matter for the benefit of its owner or of another.

Article 404 – Dajani 1

> Whoever embezzles, uses or dissipates funds, securities or any other moveable property, with the intention to prejudice the interests of the rightful owner, whenever such property was committed to the offender [in a fiduciary character – gloss] **by way of trust** [in Arabic, *wadiya*]**, lease, mortgage, loan for use, or proxy**, shall be punished by detention or a fine.
>
> In the application of this provision, a proxy shall be considered to be any partner in joint property, any agent of necessity with respect to the property of the concerned party and any person to

> whom anything is committed to be used for a specific matter for the benefit of its owner or for the benefit of another.
>
> **Article 404 – Judicial Department**
>
> Shall be sentenced to detention or to a fine, whoever embezzles, uses or dilapidates amounts, bills or any other movable property to the prejudice of those entitled whenever the said movable property are delivered to him **on bases of deposit** [in Arabic, *wadiya*]**, lease, pledge, loan for consumption or proxy**.
>
> In the application of this provision shall be considered as a proxy, the partner in a joint property, the officious on the property of the interested owner and whoever received something to be used in a specific matter for the benefit of its owner or of others.

162. The Westlaw and Judicial Department versions also include a translation of the heading of Chapter 3 of the Penal Code, of which Article 404 forms the first article, as follows:

> Chapter 3 - Breach Of Trust [in Arabic, *Amaana*] And Matters Related Thereto (Westlaw translation)
>
> Chapter Three - Breach Of Trust [in Arabic, *Amaana*] And Related Matters (Judicial Department translation)

163. The suggestion was that the English phrase "the breach of trust" in clause 6 of the agreement may have been intended to invoke the criminal sanctions of Article 404 of the Penal Code, although Dr Al Mulla (who considered this a likely explanation of the use of that phrase, based on his knowledge of commercial practice in Dubai) was of the view that, even if this was intended, Article 404 was not, in fact applicable.

164. I have already given my reasons for rejecting Mr Dajani's final position that Mr Dhir and Mr Parente were in a position of agency (Al Mulla translation), or proxy (in the other translations of Article 404). The words of Article 404, however they are translated, do not alter the question. Mr Parente was not Mr Dhir's agent or his proxy when borrowing the money from him, or when spending it. Nor (as I have found) was he entrusted with the money for any specific purpose, and the words of the Preambles, which were not part of the substantive agreement, but provided background, did not limit his freedom to use the money in any way he wished. His duty to Mr Dhir was, under the terms of the agreement, only to repay the money with interest on the due dates, to provide power of attorney over the Security Properties (not the properties which might be bought with the money) and to clear those properties of any other mortgage, charge or outstanding loan amount.

165. Neither expert suggested that this was a case of *wadiya* within the meaning of Article 404, variously translated as "bailment" (Al Mulla), "trust" (Westlaw and Dajani 1) or "deposit" (Judicial Department). This was apparently because what passed under the October 2015 Agreement was money, rather than an object, although Mr Dajani

raised similar ideas in connection with the later Article 404 reference to "loan for use" or "loan for consumption" (discussed below).

166. Nor did either of the onshore Dubai law experts suggest that this was a case either of Article 404 "lease" (all translations) or of what was variously translated in Article 404 as "possessory pledge/mortgage/pledge". Mr Parente did not breach the provisions of the October 2015 Agreement relating to the provision of his own properties as security and, in any event, no proceeds from those securities were gambled by Mr Parente with Paddy Power.

167. I also reject Mr Dajani's original analysis (Dajani 1 paras 17-18) that the October 2015 Agreement was an Article 404 "loan for use" (all translations except Judicial Department) or "loan for consumption" (Judicial Department) which, in any case, neither he nor the claimant's closing argument maintained. He accepted, after the meeting of experts, that his "loan for use" analysis was more appropriate to the loan of moveable assets rather than money (Dajani 2 para 5), and therefore moved to his favoured position of agency, although he did not formally abandon the former.

168. On "loan for use", I accept and agree with Dr Al Mulla's evidence that a distinction is to be drawn between the Dubai onshore law applicable to the handing over of what we might call a chattel, and the handing over of what we might call a fungible, such as money. It seems from the evidence of Dr Al Mulla that onshore law in Dubai draws this distinction as the common law does and with the same result: namely, that whereas a chattel might be handed over on terms that ownership remains with the consignor, in a money transaction, because the money is represented by value and not a physical object, even if it is denominated in precious metal or banknotes, the only remedy is essentially one of account or debt or compensation or repayment in the sense that the money value must be restored, but without the payer retaining ownership over the money over the period between it being entrusted to the other person, and it being reclaimed from or repaid by him. I accept the evidence given by Dr Al Mulla in cross examination as follows (Day 5 pp 136-137):

> "Q. Because there is a dispute between you and Mr Dajani as to whether or not money -- and we are not talking about money for display -- whether or not money can be the subject of a "loan for use". Mr Dajani's point is that it is perfectly possible to have a sum advanced as a "loan for use" in, say, US dollars, and the onshore courts of Dubai, the Emirati courts, rather than requiring the return of the very same US dollars, would make an award, if the "loan for use" had been breached, in dirhams. Is that something you accept?
>
> A. No, I don't. And that is, as you say, the point of disagreement. "Loan for use" is never used for monies or funds. All the examples that have been given under "loan of use" is where, for example, I give you my car so that you can use it and then return it back. First of all, one of the main features of "loan for use" is that there should be no fee for giving that loan. If a fee is being charged, it becomes a rental agreement, it does not become a loan for use. So, for example, if I give you my car to use it, and then I charge you, it has become a rental

> agreement and not a loan for use. None of the scholars who have discussed this article has said that this "loan for use" can be done when it comes to money. It always has to be something that is -- like laptop, car, some kind of an asset. And the second reason why it cannot apply with money is that money is consumable. And one of the conditions for "loan of use" is that the item has to be the same item that is being returned. So if I'm giving money to a person under the term of "loan of use" he cannot use it, because if he uses it, it becomes a loan, it doesn't become a loan for use."

169. Since I have rejected the application of Article 404 of the Penal Code to this transaction, I do not have to consider whether the effect of Article 404 of the Penal Code would have been to impose a fiduciary obligation if it did apply. My view, however, is that it would not, because Article 404 imposes penal sanctions under the criminal law, rather than creating or imposing a fiduciary duty in the sense recognised in English law.

170. In any event, Mr Parente did not steal Mr Dhir's money. He failed to repay it. That is quite a different thing.

Conclusion under onshore Dubai law

171. I therefore agree with Dr Al Mulla in rejecting the arguments of Mr Dajani and the claimant that the October 2015 Agreement, properly construed, created a relationship between Mr Dhir and Mr Parente recognised by onshore Dubai law "as a fiduciary relationship or akin to a fiduciary relationship [which] should be given effect to as a fiduciary relationship under English law" (claimant's closing para 27). In my judgment, on the evidence, including the expert evidence, it created a relationship which was neither equivalent nor akin to a fiduciary relationship. It had none of the key characteristics of a fiduciary relationship in English law.

Final comment on Amaana and Trust

172. Before leaving this question, I will mention an intriguing point, not explored before me, arising from Dr Al Mulla's explicit statement (para 54 of his first report) that the Arabic word "*amaana*", although often translated as "trust" in English, does not have the same connotations as "trust" in English law. He quoted James Whelan (the unofficial editor and translator of the Dubai Civil Code in English) saying that, although he translates *amaana* as 'trust' and 'trustworthiness in a moral sense',

> "The root meaning of the word is safe/safety. **Care should be taken not to confuse it with trust/trustee in the English law sense.** It usually imports a duty of care over another's goods, arising usually out of a contract, such as bailment, loan or lease." (emphasis added).

173. The English common law had nothing to do with supervising or enforcing the trust, because the essence of the trust was an absence of legal obligation or relationship, but when, in the fulness of time, courts of equity began to get involved, the standards imposed on trustees became very strict indeed.

174. By contrast, Frank E. Vogel and Samuel L. Hayes suggest a different approach being taken in Islamic law systems, in their Arab and Islamic Laws Series monograph on *Islamic Law and Finance* (The Hague, 1998):

> "**Risk of Loss (*Daman*) versus Trust (*Amana*)**
>
> A second principle of Islamic contract law fixes the relationship of the contracting parties to any object involved in the contract, particularly as to liability for loss or damage to that object. Islamic law contemplates only two possible such relationships: a party holds the object either as a "trust-worthy person" or "trustee" (amin), or as a "guarantor" (damin). If the former, the party is not held liable at all for injury to the object, unless shown to be in breach of trust. A breach of trust is an act that is Islamically illegal, meaning ordinarily a breach of contract or a negligent or intentional tort. **The law tends to favor the trustee in contests with an owner, since it was the owner who chose the trustee and entrusted the object to him.**"
>
> (pp 112-113, emphasis added)

In a footnote, they add: "Note the inversion from Western law of fiduciaries, which holds trustees to a stricter standard than that applied to one acting in one's own interest."

175. It seems, therefore, that the Arab and Islamic law concept of *amaana* may have developed in an opposite direction to English and common law traditions (or, to be precise, the traditions of our courts of equity) in relation to people given a "trust". In their view, having decided to trust a person, you took the risk as to whether that trust was well-placed; whereas, in our legal history, courts of equity (courts of conscience, as opposed to law) became increasingly willing to intervene, eventually culminating in the fusion of law and equity. The Islamic law "trustee" was liable only if he broke the law, whereas the trustee in a court of Chancery was constrained and coerced well before that point.

Quistclose

176. That brings me, finally under this heading, to the claimant's case based on a constructive, resulting, *Quistclose* or other implied trust. In para 13 of the Re-Amended Particulars of Claim it is put in this way:

> "On a true construction of the Agreement and pursuant to the contemporaneous oral discussions between the Claimant and AP [i.e. Mr Parente] which took place over a period of time leading to the conclusion of the Agreement by which AP represented and agreed that the transferred funds would be used for the purpose of investment in the property market in Dubai and no other purpose and thus being invested the monies would remain the Claimant's monies, the transferred sums were held by AP on trust for the Claimant to be used in accordance with the terms of the Agreement. Such trust was either an express

> trust on the terms of the Agreement or was an implied trust arising by operation of law, in which case it took effect as a resulting trust (on *Quistclose* principles) or a constructive trust, based on the mutual agreement or understanding between the Claimant and AP or the representation referred to below that the transferred funds would be used on the property market of Dubai and for no other purpose and/or that the Claimant retained an interest in the transferred funds and acting to his detriment the Claimant advanced the transferred funds to AP in reliance on such representation, mutual agreement or understanding such that it would be inequitable to permit AP to resile from the same."

177. However, I have found as a fact that there was no agreement that the Loan Amount would be "used for the purpose of investment in the property market in Dubai and no other purpose". I have also decided that it was neither agreed nor, as a matter of Dubai law, the case that "thus being invested the monies would remain the Claimant's monies" or that that they "would remain the Claimant's monies" even if not so invested. This was a straightforward loan agreement, and the obligation was to repay the loan. Mr Dhir did not retain ownership of the money he lent; nor was the money held on trust by Mr Parente for Mr Dhir. Mr Parente was not constrained in the use he made of the money lent, once he had received it.

178. The plea therefore fails on its factual basis, in accordance with the authorities on the *Quistclose* trust conveniently summarised by the Court of Appeal in *First City Monument Bank plc v Zumax Nigeria Ltd* [2019] EWCA Civ 294 at paras 19-24.

179. This is a case to which the dictum of Lord Millett in *Twinsectra Ltd v Yardley* [2002] 2 AC 164 at para 73 is particularly applicable:

> "A *Quistclose* trust does not necessarily arise merely because money is paid for a particular purpose. A lender will often inquire into the purpose for which a loan is sought in order to decide whether he would be justified in making it. He may be said to lend the money for the purpose in question, but this is not enough to create a trust; once lent the money is at the free disposal of the borrower. Similarly payments in advance for goods or services are paid for a particular purpose, but such payments do not ordinarily create a trust. The money is intended to be at the free disposal of the supplier and may be used as part of his cashflow. Commercial life would be impossible if this were not the case."

180. Another difficulty is that there is no such thing as a *Quistclose* trust under the applicable law, which was the onshore law of Dubai. Article 12(1) of Rome I provides that the applicable law will govern, not only interpretation and performance, but also "within the limits of the powers conferred on the court by its procedural law, the consequences of breach" (Article 12(1)(c) of Rome I). On the face of it, that means a remedy not available under the applicable law should not be awarded by this court as the *lex fori*. That is consistent with the view expressed, albeit tentatively, in *Dicey,*

Morris & Collins on the Conflict of Laws (15th edition) at para 32-155 and, if necessary, I would apply it to this case.

(iv) Can Mr Dhir trace the money he gave to Mr Parente into the hands of the defendant?

181. The claimant's case is that Mr Parente held the sums advanced to him under the October 2015 Agreement by Mr Dhir as a fiduciary, or subject to a *Quistclose* trust, with the result that Mr Dhir is entitled to maintain his claim over those funds against Paddy Power despite the fact that (on his case) Mr Parente mixed them with his own money in bank accounts, and from those mixed accounts placed bets and made losses with Paddy Power (citing *Tilley's Will Trusts* [1967] Ch 1179). While recognising that Mr Parente's mixing makes it impossible to match debits and credits and so trace or follow in a formal sense, the claimant submits that I can and should apply a presumption that any identifiable assets emerging from the mixed fund were assets of Mr Dhir as beneficiary of the trust or fiduciary duty, citing *Sinclair Investments v Versailles* [2012] Ch 453 CA per Lord Neuberger MR at paras 138-141. The claimant recognises that the evidence in this case is very far from complete, but argues that I can be satisfied on the balance of probabilities that one asset represents another and that I can and should draw inferences in Mr Dhir's favour, citing *El Ajou v Dollar Land Holdings* [1994] BCC 143 per Nourse LJ at 148A-H.

182. As Lord Millett explained in *Foskett v McKeown* [2001] AC 102 at 128D-E:-

> "Tracing is… neither a claim nor a remedy. It is merely the process by which a claimant demonstrates what has happened to his property, identifies its proceeds and the persons who have handled or received them, and justifies his claim that the proceeds can properly be regarded as representing his property. Tracing is also distinct from claiming. It identifies the traceable proceeds of the claimant's property. It enables the claimant to substitute the traceable proceeds for the original asset as the subject matter of his claim. But it does not affect or establish his claim. That will depend on a number of factors including the nature of his interest in the original asset. He will normally be able to maintain the same claim to the substituted asset as he could have maintained to the original asset…."

183. For the claimant to succeed in this case, he has to clear three hurdles.

i) First, Mr Dhir must show that he had an enforceable, proprietary claim over the money in Mr Parente's hands. He must show that the money was, in that sense, still Mr Dhir's money. It was for this reason that I was asked to decide questions about trust and/or fiduciary duty in respect of the money Mr Dhir advanced under the October 2015 Agreement.

ii) Second, he must show that the money gambled and lost by Mr Parente with Paddy Power was still Mr Dhir's money (that is where the tracing exercise comes in) or (to put it less crudely and more accurately) money in respect of which he had an interest.

iii) Third, he must show that he has an enforceable claim over the money that ended up (assuming successful tracing) with Paddy Power (which he does through his unconscionable receipt and/or unjust enrichment claims against them). Any such claim may be subject to a number of defences.

184. As to the first hurdle, I have by my answers to previous questions found that, once Mr Dhir advanced money to Mr Parente, he ceased to have any interest in it. It belonged entirely to Mr Parente. Mr Dhir's rights were limited to a right to be repaid, establishing nothing more than a creditor-debtor relationship between him and Mr Parente. I have rejected the case that there was a fiduciary relationship, or that there was any form of trust. It follows that the tracing exercise is pointless, having failed at the first hurdle.

185. For completeness, however, I will state my conclusions on the second hurdle, because I heard evidence, including expert evidence, on it.

186. Per Lord Steyn in *Foskett v McKeown* [2001] AC 102 at 113B-C: "In truth tracing is a process of identifying assets: it belongs to the realm of evidence."

187. The main difficulty faced by Mr Dhir in jumping the second hurdle is a lack of evidence.

188. The mathematics of the claimant's expert accountant, Mr Rolliston, were impeccable and his spreadsheets were complex and thorough, if a little unstable as changes had to be made in the light of points, such as disclosure by Mr Dhir of his settlement with Ladbrokes, which had not originally been taken into account. But Mr Rolliston frankly admitted that they were entirely based on Mr Parente's best recollection of the sources and movements of money in his hands (often in cash) over a period of years, for which there was absolutely no independent corroboration or audit verification, for example in any bank records. This was not a case in which there were gaps, to be filled by inferences. It was a case entirely built on the recollection and oral evidence of a single witness, Mr Parente. Without that, there was nothing at all for Mr Rolliston, or the court, to go on.

189. As Mr Rolliston put it (Report, paras 4.5-4.6):-

> "The payments from the Claimant to AP totalling AED6.1m under the October 2015 Agreement plus an extra AED1.5m that the Claimant paid to AP [Mr Parente] on 25 April 2016, being together the subject matter of this Claim, were all made in cash. Other than the documents headed "Receipt Acknowledgment" (Appendices 5 to 9), I have not been provided with any supporting records regarding the receipt and application of the AED6.1m and AED1.5m (i.e. apart from AP's Witness Statement). As such, I have been unable to provide a reconstruction of AP's bank accounts and personal spending in the Relevant Period by reference to bank/credit card statements, other third-party documentation, or cash records.
>
> Consequently, and as instructed, I have necessarily relied on the evidence of AP as set out in his Witness Statement and

> reconstructed a schedule of his personal receipts and payments accordingly. The accuracy of my reconstruction therefore relies on the accuracy of the information provided in AP's Witness Statement."

190. One cannot make bricks without straw. I am not aware of any reported case, or indeed any case from my own experience, in which the tracing claim was built on such weak foundations. Even in *El Ajou v Dollar Land Holdings* [1994] BCC 143, which the Court of Appeal seems to have regarded as borderline, the conclusions drawn by the judge were based mostly "on documentary evidence and undisputed events" (148G).

191. I accept the evidence of the defendant's expert accountant, Mr Lindsay, that it is impossible to perform a tracing exercise in this case on the basis of the information provided. Mr Lindsay is experienced in tracing cases, having been engaged in them for 30 years, including (he told me) between 7 and 10 in which the tracing exercise loomed particularly large, and another 10 in which the tracing element was less controversial. I asked him to give me a sense of the level of uncertainty in this case compared with the others from his experience, and he said that the confidence level in those cases was of the order of 95%-100%, whereas he put it in the present case at 5%-10%, "because of the lack of… documentation for a vast majority of the relevant period". He also pointed out that such documents as do exist had not been used by Mr Rolliston as a check against his speculative exercise.

192. Mr Rolliston, as well as making the adjustments to which I have already referred when new material was put to him, admitted in cross-examination that his reconstruction was, not only unreliable, but implausible.

> "Q. …you're of the opinion that, by 3 October 2016, Mr Parente had almost £750,000 of unspent money and no documentary evidence has been disclosed to substantiate this very significant figure, and you agree that?
>
> A. Yes.
>
> Q. Standing back, Mr Rolliston, as I'm sure, as an expert, you would do, does it seem to be at all likely or indeed, credible, that Mr Parente, who had fled Dubai because of the fear of being imprisoned because his cheques were going to bounce and he'd not be able to satisfy his creditors, would, in October 2016, have £750,000 worth of surplus funds?
>
> A. It seems unlikely, but I never asked Mr Parente for any explanation."

193. Mr Parente was an unreliable witness and I cannot accept an exercise which depends exclusively on his completely uncorroborated testimony. I have explained my concerns about Mr Parente's honesty, and there would in any event be a question mark over his reliability in matters of detail relating to historic and multiple financial transactions. I am completely unpersuaded on the balance of probabilities that the transactions took place in the manner suggested by Mr Rolliston. There is no fall-back

position. The claimant's tracing claim is entirely speculative. On the evidence, I find that it has not been made out at all.

194. This makes it unnecessary for me to consider various technical and legal objections to the claimant's tracing case which were raised by the defendant.

(v) Was Tony Carroll the defendant's agent?

195. The claimant having failed to scale the first and second hurdles, he has not reached the third hurdle, but I will briefly say what my findings were on the last four issues, which relate to the third hurdle.

196. The first of this last set of issues is whether Tony Carroll was the defendant's agent, this being relevant to whether what Tony Carroll knew about Mr Parente is to be taken as known, through him, by Paddy Power.

197. Tony Carroll was his wife's disclosed principal under the Carroll Agreement (para 82 above). The Carroll Agreement claimed not to create an agency relationship with Paddy Power (clause 3.1, clause 17, para 81 above).

198. The Carroll Agreement provided for Paddy Power to pay continuing commission at the rate of 25% of Mr Parente's losses, backed up by a monthly retainer (clause 4, para 81 above). Mr Parente knew Paddy Power were paying Mr Carroll, but not how much. Mr McDermott's evidence was that it was unusual to pay a retainer to introducers, and he could not say why an exception was made for Mr Carroll.

199. After Mr Carroll had introduced Mr Parente to Paddy Power (which was the only service required by the Carroll Agreement), Paddy Power continued to rely on Mr Carroll to manage its relationship with Mr Parente. When it was chasing up source of wealth and source of funds information from Mr Parente, it did so through Mr Carroll. Mr Carroll was active in fixing up hospitality for Mr Parente at sporting events which Paddy Power paid for as part of its active efforts to encourage Mr Parente's gambling with them. Mr Carroll also took cash from Mr Parente and deposited it with Paddy Power as gambling money.

200. Paddy Power's internal documents show they saw him as their agent, not Mr Parente's. An internal email of 6 October 2016 from Mr McDermott looked back and said "Further to our conversation here are my thoughts for Anthony Carroll situation. As we all know he became an agent with us…", and then referred to the Carroll Agreement.

201. Mr Carroll was working for Paddy Power on a continuing basis and he was being paid a retainer by them. He was their agent.

(vi) What did the defendant know when it took money from Mr Parente? What ought it to have known?

202. I will not impute to Paddy Power everything that Mr Carroll knew about Mr Parente before he had signed up with Paddy Power. Before the introduction, Mr Carroll was not Paddy Power's agent.

203. However, Paddy Power knew from its own monitoring of Mr Parente that he was gambling like a problem gambler with an unhealthy and unsustainable gambling addiction on an escalating and desperate scale. Paddy Power knew that his losses were unsustainable on his known income and assets. Paddy Power knew that when they tried to get information from him to show source of wealth and source of funds, they failed. The information he provided did not suggest that he could afford to gamble on this scale, or that he had legitimate sources of wealth from which to fund it. I have made specific findings about Paddy Power's knowledge in para 110 above. They do not depend on what Mr Carroll knew. Paddy knew quite enough without him.

204. They knew all this, but they continued to accept his stakes and, indeed, by providing gambling bonuses and lavish hospitality, to encourage him to gamble more. It stopped only when he stopped it himself by self-exclusion.

(vii) Can Mr Dhir claim the money from the defendant on the basis of knowing or unconscionable receipt?

205. There are three essential requirements for a successful claim of knowing or unconscionable receipt, which were summarised by Hoffmann LJ in *El Ajou v Dollar Land Holdings plc* [1994] BCC 143 at 154H:-

> "…the plaintiff must show, first, a disposal of his assets in breach of fiduciary duty; secondly, the beneficial receipt by the defendant of assets which are traceable as representing the assets of the plaintiff; and thirdly, knowledge on the part of the defendant that the assets he received are traceable to a breach of fiduciary duty."

206. Mr Dhir has failed to show a disposal of his assets in breach of fiduciary duty.

207. Mr Dhir has failed to show the beneficial receipt by Paddy Power of assets which are traceable as representing the assets of Mr Dhir.

208. Consequently, questions of knowledge do not arise and this claim has not been established.

(viii) Can Mr Dhir claim the money from the defendant on the basis of unjust enrichment?

209. Both parties referred to *Menelaou v Bank of Cyprus* [2016] AC 176 for a recent summary of the elements of a claim for unjust enrichment. Lord Clarke of Stone-cum-Ebony said at para 18:

> "In *Benedetti v Sawiris* [2014] AC 938 the Supreme Court recognised that it is now well established that the court must

> ask itself four questions when faced with a claim for unjust enrichment. They are these: (1) Has the defendant been enriched? (2) Was the enrichment at the claimant's expense? (3) Was the enrichment unjust? (4) Are there any defences available to the defendant?"

210. Lord Clarke endorsed an earlier suggestion "that the four questions were no more than broad headings for ease of exposition, that they did not have statutory force and that there may be a considerable degree of overlap between the first three questions" (at para 19).

211. It is common sense, and was common ground before me, that question (2) makes it essential for Mr Dhir to succeed in his tracing exercise if he is to succeed in his unjust enrichment claim against Paddy Power. Tracing is a necessary although not sufficient element of his unjust enrichment claim.

212. Mr Dhir has lost his case on the tracing exercise and, consequently, he must also lose the unjust enrichment claim.

Conclusion

213. For these reasons, there will be judgment for the defendant.