



Neutral Citation Number: [2013] EWHC 21 (TCC)

Case No: HT-10-261

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**TECHNOLOGY AND CONSTRUCTION COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL  
Date: 15/01/2013

**Before :**  
**THE HON MR JUSTICE RAMSEY**  
**Between :**

**Mr Christopher Sear**

**Pt 20 Claimant**

**- and -**

**Kingfisher Builders (a Firm)**

**First Pt 20**  
**Defendant**

**-and-**

**Francine Whale**

**Second Pt 20**  
**Defendant**

**Mr Robin Neill (instructed by Morris Goddard & Ward, Devizes) for the Defendant  
and Part 20 Claimant, Mr Sear  
The First Part 20 Defendant, Kingfisher Builders, and the Second Part 20 Defendant,  
Mrs. Whale were not represented**

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**Approved Judgment No 3**  
**(Approved subject to corrections)**

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

.....  
MR JUSTICE RAMSEY

**Mr Justice Ramsey:**

**Introduction**

1. In this judgment I deal with the quantum of the claims by the Defendant/Part 20 Claimant, Mr Sear, against the Claimant/First Part 20 Defendant, Kingfisher Builders and also against the Second Part 20 Defendant, Mrs Whale. This follows my first judgment in which I determined certain liability issues as between Mr Sear and Kingfisher Builders and my second judgment in which I held that Mrs Whale was and is a partner in Kingfisher Builders and also that she was liable to Mr Sear for fraudulent misrepresentation.

**Background**

2. On 30 June 2008 Mr Sear entered into a written agreement (“the Agreement”) with Mr Michael Chudley of Kingfisher Builders for the renovation and extension of Mr Sear’s house in Lammas Lane, Esher (“the Property”). By 3 December 2008 disputes as to payment had arisen between Mr Chudley and Mr Sear. Mr Chudley was seeking further payment from Mr Sear who was saying that he had already paid Mr Chudley any necessary payments for the work which Mr Chudley had carried out. Mr Chudley then left site on 3 December 2008 saying that he had not been paid and Mr Sear proceeded to engage other builders to complete the work at the Property.
3. In December 2008 Kingfisher Builders commenced a claim for payment for building work carried out at the Property in Swindon County Court which was then transferred to this Court in July 2010. In November 2010 it was ordered that there should be a trial of all issues of liability, except the issue as to which party repudiated the agreement and also the issue of what sums had been paid by Mr Sear to or on behalf of Kingfisher Builders for the building work. In my first judgment, handed down on 4 May 2011, I dealt with those issues and, in addition, as requested by the parties, I set out in a separate document certain provisional non-binding views on the state of completion of the work at 3 December 2008, in the hope that the parties could resolve their differences on the remaining issues. That did not prove possible.
4. As a result of the first judgment I dismissed the claim made by Kingfisher Builders against Mr Sear for the additional costs of works carried out developing Mr Sear’s house as, on any view, Mr Sear had paid Kingfisher Builders sums in excess of the sums due to Kingfisher Builders when they ceased work on the Property in early December 2008.
5. Subsequently Mr Sear brought Part 20 Proceedings against Mrs Whale in which he claimed that, together with Mr Chudley, she was and had been a partner in Kingfisher Builders at the relevant time and was therefore liable for the sums claimed. Mr Sear also made a separate claim for damages for fraudulent, alternatively negligent, misrepresentation against Mrs Whale arising out of a visit which Mr Sear had made to Mrs Whale’s property before he entered into the agreement with Kingfisher Builders.

6. On 29 July 2011 I gave directions leading to a hearing to determine the issue of whether Mrs Whale was a partner in Kingfisher Builders and whether she made the alleged misrepresentation to Mr Sear. In a second judgment I held that Mrs Whale was a partner in Kingfisher Builders from at least March 2008 and was a partner until the end of 2009 and still remained one. I also found that Mrs Whale made a fraudulent misrepresentation to Mr Sear when he visited her house on 25 May 2008. She failed to disclose her relationship with Mr Chudley and Kingfisher Builders but deliberately gave the impression that she was an independent third party for whom Kingfisher Builders had carried out work. She failed to disclose that Mr Chudley had a conviction for fraud and had been made bankrupt.
7. I found that her failure to disclose those matters when providing a reference to Mr Sear as to the good standing and abilities of Mr Chudley and Kingfisher Builders, amounted to a misrepresentation. I also found that Mrs Whale acted fraudulently by participating in the charade and giving the appearance of being an independent third party speaking about the good standing and abilities of Mr Chudley and Kingfisher Builders when, in fact, Mr Chudley was living in her house and she was closely involved in the business of Kingfisher Builders and, as I found, a partner in that partnership. I held that the misrepresentation was made intending it to be relied upon, as it was, by Mr Sear in entering into the contract with Kingfisher Builders in June 2008. I therefore held that Mrs Whale was liable for fraudulent misrepresentation and made an order for damages to be assessed. Directions were then given for a hearing to determine the quantum of the claims by Mr Sear against both Kingfisher Builders and against Mrs Whale.
8. A Joint Expert, Mr J A Sullivan BSc QS MRICS ACI Arb of Adair Associates was appointed to deal with matters relating to quantum. He produced an expert report dated 25 June 2012. He was asked to answer a number of questions. Attached to his report are full appendices which detail the basis on which he has come to his conclusions. In the event, Mr Sear relied on that report and no submissions were received from any other party seeking to put questions to him. I have considered that report and find that the conclusions are well supported by the documentation and I accept his findings as single joint expert.
9. Originally a hearing was set for 23 July 2012. On 2 July 2012 the solicitor who had acted for Mr Sear since January 2009, Mr James Ward of Morris, Goddard and Ward was shot by a gunman at his offices in Devizes. On 22 July 2012 Mr Ward died. The police have arrested and charged Mr Chudley with his murder. Given those circumstances I adjourned the hearing of quantum.
10. I re-fixed the hearing and gave liberty to apply to the Part 20 Defendants to apply. Mr Chudley wrote a letter in which he sought the adjournment of the hearing until after his trial for murder. In circumstances where Mr Chudley has provided no substantive response to the quantum and where the trial should have taken place on 23 July 2012, there was no good reason for quantum not to be dealt with following the hearing.
11. I therefore now deal with the necessary findings in relation to the quantum of Mr Sear's claims in these proceedings.

**The claims against Kingfisher Builders**

12. As I have stated, I held that Kingfisher Builders were not entitled to any further sums from Mr Sear and an interim payment of £35,000 and costs were ordered arising from the first judgment in May 2011. Neither sum has been paid.
13. In paragraph 26 of the Amended Particulars of Claim, Kingfisher Builders pleaded that on or about 3 December 2008 because of Mr Sear's refusal to pay the sums due, they withdrew from the Property and accepted Mr Sear's non-payment as terminating the Agreement. In paragraph 40 of the Amended Defence and Counterclaim Mr Sear pleaded that he accepted Kingfisher Builders' cessation of work and withdrawal of labour as a repudiation of the Agreement and denied there was any repudiatory breach by him.
14. As confirmed by the evidence of the Joint Expert at paragraph A.10 at the date of termination the value of the work which had been completed by Kingfisher Builders was £186,613.31 whilst as stated in paragraph 29(3) of my first judgment Mr Sear had paid Kingfisher Builders £243,524.80. As I have stated, I accept the evidence of the Joint Expert and it therefore follows that there had been an overpayment of £56,911.49 by Mr Sear in respect of the work carried out by Kingfisher Builders up to 3 December 2008. In those circumstances Kingfisher Builders' withdrawal from the Property on the basis of non-payment was not justified and that conduct amounted to a repudiation of the Agreement with Mr Sear.
15. As stated in Keating on Construction Contracts (Ninth edition) at paragraph 6-075: "*An abandonment of the work before it is substantially completed, without any lawful excuse, is a repudiation.*" In this case, Kingfisher Builders' abandonment of the work on 3 December 2008, before it was substantially completed, was a repudiation of the Agreement as there was no lawful excuse for Kingfisher Builders to do so. Their stated ground for leaving site was underpayment by Mr Sear but this has been shown to be incorrect. In those circumstances, Mr Sear accepted Kingfisher Builders' repudiation as terminating the Agreement and employed others to complete the work.
16. As a result the claim against Kingfisher Builders by Mr Sear for repudiation of the Agreement succeeds and I consider that Mr Sear is entitled to damages under two principal heads. First, he is entitled to the return of monies which were overpaid at the date of the repudiation. Those sums amount to £56,911.49, as set out above, based on the evidence of the Joint Expert and my previous finding as to the sums paid by Mr Sear.
17. Secondly, Mr Sear is entitled to the additional costs of completing the works. Again, this has been the subject of investigation by the Joint Expert who has stated at paragraph A11 of his Report that Mr Sear incurred £77,313.30 in completing the work under the Agreement, as varied, but excluding the construction of the garage and installation of the solar panels which had originally been included in the Agreement.
18. From those two claims, it follows that the total sum paid by Mr Sear for the work which was to be carried out by Kingfisher Builders under the Agreement consists of two figures. There is the figure of £186,613.31 which is the sum properly due up to

the date of termination and there is the sum of £77,313.30 which represents the costs which Mr Sear reasonably incurred in completing the works after termination. Those sums come to a total of £263,926.61.

19. Secondly, that has to be compared with the sum which Mr Sear would have had to pay to Kingfisher Builders had they properly completed the works. The Joint Expert has set out in paragraph A12 of his report that the total sums would have been £269,365.00. That sum included sums for the garage and the solar panels which were not carried out. From the documents it is apparent that, within the Agreement, an allowance of £3,500 was made for the solar panels and £12,000 for the garage. Accordingly the sum of £15,500 should be deducted from the sum of £269,365.00 which would otherwise have been due to Kingfisher Builders leading to a figure of £253,865.00 as being the total figure which Mr Sear should have paid Kingfisher Builders.
20. It therefore follows that Mr Sear has paid a total of £263,926.61 in relation to the cost of completing the works which Kingfisher Builders were to carry out under the Agreement. Had these works been carried out by Kingfisher Builders, Mr Sear would have paid them a sum of £253,865.00. Accordingly Mr Sear is entitled to damages arising from the repudiation of the Agreement to put him into the position he would have been in if Kingfisher Builders had completed the works. That figure is represented by the difference between what Mr Sear spent and what he would have spent, which is the difference between the above two figures amounting to £10,051.61.

**Summary of claims against Kingfisher Builders**

21. Mr Sear is therefore entitled to £66,963.10 from Kingfisher Builders calculated as follows:
- |   |                   |
|---|-------------------|
| (1) Overpayment to Kingfisher Builders:                 | £56,911.49        |
| (2) Additional costs to complete works at the Property: | <u>£10,051.61</u> |
| Total:  | £66,963.10        |

**Interest**

22. Mr Robin Neill who appears on behalf of Mr Sear submits that as a further head of damages Mr Sear is entitled to the cost of financing the additional payments following the decision of the House of Lords in Sempra Metals v Inland Revenue Commissioners [2008] 1 AC 561 at [92]. He submits that such loss would naturally arise from any overpayment or need to finance completion costs after a repudiation and therefore would be claimable as damages for breach of contract under the first limb of Hadley v Baxendale (1854) 9 Ex 341. On this basis Mr Neill submits that Mr Sear is entitled to the additional costs of financing the work represented by interest on personal loans of £25,000 and £10,000 which were taken out by Mr Sear on 26 November 2008 and 9 February 2009, respectively, to finance the overpayment and the cost to completion. In my judgment these rates of interest of 9.9% and 13.12% would, in order to be recoverable, have to come within the second limb of Hadley v Baxendale as such interest would not arise naturally from the breach.

23. In this case there is no evidence to support a finding that Mr Sear made known to Mr Chudley the way in which he would be financing this project or that it could require personal loans. The basis on which the work was to be financed was by way of tracker mortgages at low rates of interest. It follows that I do not consider that the financing costs arising from the personal loans are recoverable from Kingfisher Builders as damages for breach of contract. Instead, I consider that the appropriate way of dealing with interest is to provide for interest under Section 35 of the Senior Courts Act 1981. In relation to the overpayment of £56,911.09 the latest date from which interest should start to run is 3 December 2008 and, at the hearing, Mr Sear accepted that starting date. In relation to the additional costs of £10,051.61, being the additional payment to complete the works, the latest date from which interest should start is 1 May 2009 when those works were complete and Mr Sear also accepted this as the starting date.
24. So far as the rate of interest is concerned, the Court generally looks to a rate of interest which reflects the rate at which a party like Mr Sear could, in general, borrow money: see Tate and Lyle Food and Distribution Limited v Greater London Council [1982] 1 WLR 149 at 154 to 155. For commercial enterprises the presumption had been that the rate would be 1% or 2% above base but, as the Admiralty and Commercial Courts Guide states at paragraph J14.1, the previous presumption of 1% over base is no longer necessarily the correct presumption to apply.
25. I consider that the best evidence I have of the rate of interest at which people like Mr Sear could borrow is the evidence of the borrowing which Mr Sear was able to take out with Bank of Scotland in April 2009 where the fixed rate was 5.19%. At that stage the base rate had dropped to 0.5% on 5 March 2009. Whilst I also have the evidence of the high rates of interest which would have been charged on personal loans, I consider that those should not be used to give a rate at which people in Mr Sear's position would generally be able to borrow money. It follows that I am persuaded that Mr Sear should be entitled to interest at 5.19% albeit that it represents something like 4.7% above base rate. That I consider represents the appropriate rate of interest which householders such as Mr Sear who have to borrow money to carry out building works.
26. Accordingly I award £14,091.34 interest at 5.19% as follows:
- |     |   |                  |
|-----|---|------------------|
| (1) | On £56,911.49 from 3 December 2008 to 15 January 2013<br>being 4 years 42 days: | £12,154.70       |
| (2) | On £10,051.61 from 1 May 2009 to 15 January 2013<br>being 3 years 260 days:     | <u>£1,936.64</u> |
|     | Total:  | £14,091.34       |

**Claim for VAT**

27. Mr Sear also claims in respect of VAT rebates that he contends should have been credited to him by Kingfisher Builders.
28. The Agreement between Mr Sear and Kingfisher Builders, originally in the sum of £218,000 but, as varied, excluding the garage and solar panels was £253,865. The agreement was silent as to VAT. In general where there is an agreement between a

builder and a private individual, the prices are deemed to be inclusive of VAT: Franks and Collingwood v Gates (1983) 1 Con LR 21. In those circumstances what happened to any VAT on sums expended by Kingfisher Builders was a matter for them. They were entitled to include the relevant VAT in the input and output calculations on their VAT return.

29. In the event, HMRC accepted that the building works should be treated as zero rated for VAT purposes given that the remaining walls were to be demolished under the varied works. This led to VAT rebates being made to Mrs Whale, who was registered as Kingfisher Builders for the purpose of VAT and obtained the VAT rebate to the bank account which she set up for Kingfisher Builders. That, however is not a matter which gives rise to a claim by Mr Sear. Kingfisher Builders were entitled to retain any rebate, and if the work had not been zero rated for VAT would have been liable to account for VAT within the contract price under the Agreement.

**Summary of claim against Kingfisher Builders**

30. Accordingly, Mr Sear is entitled to a total payment of £66,963.10 and total interest of £14,091.34, giving an overall total of £81,054.44, as against Kingfisher Builders.

**Principles of damages for fraudulent misrepresentation**

31. The claim against Mrs Whale is based on damages for fraudulent misrepresentation. As stated in Chitty on Contracts (30th edition) at 6-049, it was held by the Court of Appeal in Doyle v Olby (Ironmongers) Limited [1969] 2 QB 158 that damages for fraudulent misrepresentation were designed to put the innocent party in the position he would have been in if the representation had not been made. In this case, on the basis of Mr Sear's evidence, had Mrs Whale not fraudulently misrepresented the good standing and abilities of Mr Chudley and Kingfisher Builders, Mr Sear would not have entered into the Agreement. I accept that evidence and it follows that, as the editors of Chitty on Contracts (31st Edition) state at paragraph 6-054, Mr Sear is entitled to be awarded "*Such damages as will put him back in the financial position he was in before the contract was made.*"
32. As Lord Denning made clear in Doyle v Olby at page 167, in a passage which was cited with approval in Smith New Court v Scrimgeour Vickers [1997] AC 254, whilst in contract damages are limited to what may reasonably be supposed to have been in the contemplation of the parties, in fraud they are not so limited and Mr Sear is entitled for damages for all actual losses directly flowing from the fraudulent misrepresentation, even if those damages could not reasonably have been foreseen.
33. However, there is a limit on the damages recoverable. The losses have to be based on the actual loss directly flowing from the fraudulent inducement. This was the principle stated by Lord Atkin in Clark v Urquhart [1930] AC 28 at 68, referred to and adopted by Lord Denning MR in Doyle v Olby at 167 which was then approved by the House of Lords in Smith New Court.

**The claim in this case**

34. As explained by Mr Sear in his witness statements and oral evidence, which I accept, the effect of the overpayment to Kingfisher Builders and the need to pay additional sums to complete the works was that Mr Sear had to find additional sources of finance. He already had two HSBC lifetime transferable tracker

mortgages which were at a very advantageous rates in 2009, having been taken out in 2007 at 0.54% above base (then at 5.5%) and on 2008 at 0.79% above base (then at 4.50%). Mr Sear's evidence is that HSBC declined to make any further advance and he had no alternative but to seek to re-mortgage the property to raise the additional sums needed to finance the overpayments to Kingfisher Builders and the cost of completion, all caused by the repudiation of the Agreement by Kingfisher Builders. This is supported by the evidence that he took out short-term personal loans at high interest rates in November 2008 and in February 2009. The need to re-mortgage meant that he had to move from rates of interest which, at a 0.5% base rate, would have been 1.04% for £250,000 and 1.29% for £150,000 to a rate of interest of 5.19%. Had Mr Sear not entered into the agreement with Kingfisher Builders he would not have been put in the position where he had to carry out that additional finance.

35. Kingfisher Builders commenced proceedings against Mr Sear, as I have said, in December 2008. During 2009 Mr Sear therefore had to incur legal costs. He says that, as a result of the substantially increased mortgage payment and the costs of the litigation, he decided he had to sell the Property in Lammas Lane quickly to reduce his financial exposure. His mortgage payment was £2,153.02 per month for the £500,000 mortgage compared to £377.92 for the total of the two tracker mortgages of £400,000.
36. I accept Mr Sear's evidence that he intended to stay at the Property on a long-term basis having moved up the property ladder from a flat in Wimbledon. At earlier hearings Mr Chudley submitted that Mr Sear was, in effect, a property developer who was developing properties in order to make a profit. I do not accept that this properly represents Mr Sear's position. I consider that Mr Sear would not have had to sell the Property at Lammas Lane had he not entered into the agreement with Kingfisher Builders. I consider therefore that he is entitled to recover the costs of the estate agent and solicitor involved in selling the Property, the redemption penalty which he had to pay on reducing his mortgage for £500,000 to £325,000 when moving to a smaller property.
37. I also accept that he is entitled to recover for the loss in value which I accept he suffered because of having to arrange the sale of the property quickly to overcome his financial difficulties. Mr Sear is entitled to be put him back in the financial position he was in before the contract was made. He had a valuable property which he intended to modernise and live in. But instead he had to sell it because of the fraudulent inducement and suffered loss in doing so. In my judgment this compensates Mr Sear for his negative interest not his positive interest arising from the Agreement, as explained by Lord Steyn in New Smith Court. It compensates Mr Sear for the position as it became after the fraudulent misrepresentation. Those sums are pleaded in Schedule 5 to the Amended Counterclaim and I accept that they have been established on the documents provided to the court.
38. As he sold the Property in Lammas Lane before he purchased another property there was a period when he had to put his furnishings and possessions in storage between 19 November 2009 and 18 December 2009 and I consider that those storage charges would not have been incurred had he not entered into the contract with Kingfisher Builders. He then purchased 9 Old Farmhouse Drive, Oxshott. I



consider that he is entitled to recover the costs of purchase in relation to legal costs and disbursements, stamp duty and the mortgage fee arising on the move. Again, all the relevant sums are evidenced by documents and I accept that they represent the loss suffered by the fraudulent misrepresentation.

39. After moving into that property in December 2009 the cost of these proceedings added to the sums overpaid and paid to complete the property at Lammas Lane meant that Mr Sear's financial position deteriorated. He was concerned at the outcome of the litigation and decided to sell the property at 9 Old Farmhouse Drive, Oxshott and move into rented accommodation. The property was put on the market in August 2010 and the sale was completed on 29 October 2010. By that stage the property had increased in price from the purchase price of £830,000 to sale price of £910,000.
40. However, by this stage I do not consider that Mr Sear's predicament can be said to have been caused by the fact that he had been induced to enter into the Agreement with Kingfisher Builders. The causative link between entering into the Agreement and Mr Sear having to move from the house in Lammas Lane to a smaller house, in my judgment, effectively came to an end with that first move. I consider that, as illustrated in Downs v Chappell [1977] 1 WLR 426, there comes a stage where the causative effect of the fraud is exhausted. Whilst it is clear that consequential loss is, in principle, recoverable as demonstrated by the decision of the Court of Appeal in Doyle v Olby [1969] 2 QB 158 at 167, I consider that the general applicable test of causation means that there may come a point where the damages are no longer recoverable because they can no longer sensibly be said to have been caused by the original fraudulent inducement to enter into the Agreement.
41. In this case I do not consider that Mr Sear can continue to claim for loss based on the need to move because he could not cover his outgoings and therefore decided to make another move. Those losses were not, in my judgment, losses based on the actual loss directly flowing from the fraudulent misrepresentation.
42. It follows that I do not consider that Mr Sear can recover for the costs of the sale of 9 Old Farmhouse Drive or the penalty which was applied by the mortgagee on the mortgage redemption or the cost of storage when he moved into a two bedroom rented accommodation and placed the bulk of his furniture and personal effects into storage.
43. In relation to Mr Sear's mortgage, I consider that any costs of mortgage payments on Lammas Lane in excess of the sums he would have paid on the two tracker mortgages which lasted until 2023 and 2028 respectively are recoverable to put Mr Sear into the position he would have been in had he not entered into the Agreement with Kingfisher Builders. Once Mr Sear moved to 9 Old Farmhouse Drive, I do not consider that the additional mortgage costs of that house over the two tracker mortgages are recoverable as flowing directly from the fraudulent inducement to enter into the Agreement. By then, I consider that the causative effect of the fraudulent inducement had been spent.
44. Mr Sear also claims two heads of loss relating to future losses. First, he says that he will continue to suffer the increased cost of accommodation because the current

rental costs exceed the sums that he would have been paying under the tracker mortgage had he continued to live at the Property in Lammas Lane. Secondly, he also claims the continuing storage charges whilst his furniture and possessions are stored in a lock-up garage until he is in a position to purchase an alternative property to live in. He says that it will take six months for him to find that alternative property and claims charges for six months at £697.08 giving a total of £4,182.48. For the reasons set out above, I do not consider that these costs are recoverable.

45. In any event, in relation to the claims for additional mortgage payments or additional rental cost, whilst Mr Sear may have to pay more in terms of mortgage or rent on property, his overall expenditure on the smaller property for council tax, electricity, heating and other household bills will be lower on a two bedroom flat than the property at Lammas Lane. In this way, Mr Sear has successfully mitigated the overall loss arising from the fraudulent misrepresentation and, even if the claims had been recoverable, I do not consider that it is appropriate to pick one head of expenditure which has increased without taking into account other heads of expenditure which have decreased.
46. Similarly, I do not consider that Mr Sear can recover in relation to his claims for the continuing loss of benefit of the two HSBC tracker mortgages which he had at Lammas Lane. His claim is for loss, on a discounted basis, of £34,908.00 for the first mortgage and £23,796.00 for the second mortgage, giving a total of £58,704.00. He calculates his claim on the basis of the difference between the two tracker rates and a current tracker mortgage rate for a property with a 65% loan-to-value and says that if he were to purchase a further property he would have to pay more over the period to 2028 in order to finance the same mortgage. That, in my judgment, is a claim which cannot be said to flow directly from the fraudulent inducement. Nor can Mr Sear recover for the costs of purchase, at a future date, of a further new home which also forms part of his claim.

**Summary of claims against Mrs Whale**

47. Mrs Whale was and is a partner in Kingfisher Builders and therefore is liable for the sums awarded to Mr Sear against Kingfisher Builders.
48. Those sums would also form part of the loss which has been suffered by Mr Sear because of the fraudulent inducement. In addition, Mrs Whale is liable to Mr Sear for the following sums as set out in Schedule 5 to the Amended Counterclaim:
  - (1) Additional costs of borrowing by Mr Sear:
    - (a) HSBC loan of £25,000 at 9.9%  
from 26 November 2008 to 3 November 2010: £7,871.60.
    - (b) Egg loan of £10,000 at 13.12%  
from 8 February 2009 to 25 March 2010: £1,325.10.
    - (c) Cost of remortgage of tracker mortgage: £11,649.60
  - (2) Sale of 24 Lammas Lane:
    - (a) Estate agents fees: £13,843.12
    - (b) Solicitors' fees: £1,765.37
    - (c) Mortgage redemption penalty: £8,737.45

(d) Reduced sale price of the Property	£170,000.00
(3) Storage of furniture and personal effects from 19 November 2009 to 18 December 2009:	£449.08
(4) Cost of Purchase of 9 Old Farmhouse Drive:	£36,830.14
(5) Increased mortgage payments:	£ nil
(6) Sale of 9 Old Farmhouse Drive:	£ nil
(7) Storage charges from November 2010 to June 2011:	£ nil
(8) Additional cost of rented accommodation:	£ nil
(9) Storage charges June 2011 to December 2011:	£ nil
(10) Loss in earnings - no longer pursued:	£ nil
(11) Future losses:	
(a) excess of rent over mortgage:	£ nil
(b) storage charges:	£ nil
(12) Loss of benefit of HSBC tracker mortgages:	£ nil
(13) Purchase of new property:	<u>£ nil</u>
<b>Total:</b>	<b>£ 252,471.46</b>

49. In addition there is interest applicable at 5.19 % on the following sums calculated by using a date representing approximately a mid-point to start the interest, as follows:

(1) Additional costs of borrowing by Mr Sear:	
(a) HSBC loan of £25,000 on £7,871.60 for 3 years 61 days from 15 November 2009 to 15 January 2013:	£1,294.07 .
(b) Egg loan of £10,000 on £1,325.10 for 3 years 136 days from 1 September 2009 to 15 January 2013:	£1,750.38 .
(c) Cost of remortgage of tracker mortgage on £11,649.60 for 3 years 157 days from 10 August 2009 to 15 January 2013:	£2,073.90
(2) Sale of 24 Lammas Lane: On estate agents' fees (£13,843.12), solicitors' fees (£1,765.37), mortgage redemption penalty (£8,737.45) and reduced sale price of the Property (£170,000.00), being a total of £194,345.94 for 3 years 57 days from 19 November 2009 to 15 January 2013:	£31,834.82
(3) Storage of furniture and personal effects on £449.08 for 3 years 43 days from 3 December 2009 to 15 January 2013:	£72.66
(4) Cost of Purchase of 9 Old Farmhouse Drive on £36,830.14 for 3 years 28 days from 18 December 2009 to 15 January 2013:	<u>£5,881.08</u>
Total Interest	<u>£42,906.91</u>

50. As a result Mr Sear is entitled to recover from Mrs Whale the sum of £, in addition to the sum of £81,054.44 which is payable by Kingfisher Builders:
- |                                     |                   |
|-------------------------------------|-------------------|
| (1) Damages:                        | £252,471.46       |
| (2) Interest up to 15 January 2013: | <u>£42,906.91</u> |
| Total                               | £295,378.37       |

**Summary**

51. Accordingly, Mr Sear is entitled to recover from Mrs Whale £376,432.81 as damages for fraudulent misrepresentation, including interest up to 15 January 2013:
- |   |                    |
|---|--------------------|
| (1) Sum payable by Kingfisher Builders: | £81,054.44         |
| (2) Additional sums:                    | <u>£295,378.37</u> |
| Total                                   | £376,432.81        |

**Conclusion**

52. In summary I find that Mr Sear is entitled to the following sums, including interest to 15 January 2013:
- (1) £81,054.44 from Kingfisher Builders, being Mr Chudley or Mrs Whale, as partners in Kingfisher Builders;
  - (2) Alternatively, £81,054.44 from Mrs Whale for fraudulent misrepresentation; and
  - (3) £295,378.37 from Mrs Whale for fraudulent misrepresentation.
53. Having now determined all matters of liability and quantum between the parties, I invite submissions as to the appropriate order for costs in these proceedings. This can be dealt with by way of written submissions.
54. This judgment has been handed down without being circulated in draft. It is therefore approved but is subject to any editorial or arithmetical corrections notified by 4:00pm on 17 January 2013.