Case No: HC-2016-001132

Neutral Citation Number: [2018] EWHC 1832 (Ch)

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

The Royal Courts of Justice

Rolls Building, Fetter Lane,

London, EC4A 1NL

Date: 18/07/2018

Before :

MISS AMANDA TIPPLES QC

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Between :

(1) DONDORE INCORPORATED

(2) RICHARD HITT

Clai

- and -

(1) NASSER FETAIMIA

(2) VICTORIA FETAIMIA

Defen

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Mr Christopher Langley (instructed by **Joelson LLP**) for the Claimants

Mr Kevin Pettican (instructed by **Treon Law**) for the Defendants

Hearing dates: 30 April, 1, 2, 3, 4 May 2018

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Judgment

Miss Amanda Tipples QC:

Introduction

1.
Albert Court on Prince Consort Road, London is a mansion block located at the back of the Royal Albert Hall, South Kensington, London. Flat 5A, Albert Court (" **the property** ") is a three-bedroomed basement flat, which is now estimated to be worth in excess of £2.5 million.

2.
The first claimant, Dondore Incorporated (" **Dondore Inc** "), is the registered proprietor of the property (Title No. NGL592569) and is a company registered in the British Virgin Islands. The second claimant, Mr Richard Hitt (" **Mr Hitt** "), holds the share certificate for the entire shareholding in Dondore Inc and is the legal owner of all the shares in the company. He is also its sole director.

3.

The defendants, and their children, are in occupation of the property and, for many years, it has been their home. There is no single document available which records the basis on which they are in occupation of the property.

4.
The defendants maintain they are entitled to live at the property because Mrs Victoria Fetaimia (" **Mrs Fetaimia** ") owns all the shares in Dondore Inc, as she purchased them pursuant to an agreement made with Mr Hitt in respect of which £900,000 has been paid. The claimants dispute the existence of any such agreement, together with the allegation that £900,000 has been paid in respect of the purchase of the shares. The claimants say that any right the defendants have to occupy the property was terminated by notices to quit served in 2015, and they are now entitled to possession of the property.

5.
On the main issue I have decided that the claimants are not entitled to possession of the property. There was an agreement that Mrs Fetaimia would purchase the shares in Dondore Inc from Mr Hitt and Mr Hitt has been paid in full in respect of them. In 2011 Mr Hitt directed Mr Marcel Nasser Fetaimia (" **Mr Fetaimia** ") to pay for the shares by transferring funds to West African Gold Limited (" **WAGL** "). The payment was made in three tranches, on the instructions of Mr Fetaimia, by another company called Waterfront Marine Solutions Limited (" **WMS** ").

The claim and counterclaim

6.
The proceedings for possession of the property were commenced in the Hammersmith County Court on 24 September 2015. In addition to the order for possession, the claimants seek mesne profits, damages for conversion, interest and costs.

7.
The defendants counterclaim for a declaration that the entire shareholding in Dondore Inc belongs to them, for the return of their personal property, for the repayment of £900,000, for £19,000 in respect of an insurance claim, for damages, interest and costs.

The claimants' statement of case

8.
The claim for possession is set out in the Amended Particulars of Claim dated 7 July 2016 in these terms:

"[2]. The Defendants currently occupy the Property and have done since around 2003… [4]. [Dondore Inc] is entitled to possession of the Property by virtue of it being the registered proprietor. Alternatively, if [Mr Hitt] is still the beneficial owner and/or joint legal owner of the Property, then he is entitled to possession of the same. [5]. No rent was payable in respect of the Defendants' occupation. [6]. The Defendants do not have exclusive possession of the Property. [Dondore Inc] allowed the Defendants into occupation on the basis that its director, [Mr Hitt] would be permitted to access and stay in the Property when in London and/or would retain space in the Property for the storage of personal items. [7.] In the premises, the Defendants' occupation of the Property was by way of licence. [8.] Pursuant to his rights, either under the licence as [Dondore Inc's] director or otherwise, [Mr Hitt] did in fact stay in the Property from time to time when he was in London. [9.] On or around 21 September 2015, [Dondore Inc] served a notice to quit on the Defendants, requiring

possession by 22 September 2015. A further notice to quit (without prejudice to the first) was served on the Defendants on 5 October 2015 requiring possession by 6 November 2015."

The defendants' statement of case

9.
The Amended Defence and Counterclaim is dated 19 January 2017 (and signed by both defendants with a statement of truth):

"[10.] Paragraph 2 is admitted save that [Mr Fetaimia] has been in occupation of the Property since 14 December 2004 and the Defendants currently live at the Property with their 3 children ages 12, 9 and 6 born in London and registered at that address.

[11.] Paragraph 4 is denied. The entire shareholding in [Dondore Inc] belongs to [Mrs Fetaimia] and the Defendants are entitled to occupy the Property as they have done since 2004.

[12.] Paragraph 5 is admitted on the premise that [Mrs Fetaimia] is the owner of the entire shareholding of [Dondore Inc] and by arrangement between [Dondore Inc] controlled by [Mrs Fetaimia] and the Defendants, no rent was payable for occupation of the Property.

[13.] Paragraph 6 is denied. The Defendants have and always have had exclusive possession of the Property by virtue of their case pleaded in this Amended Defence. [Mr Hitt's] right to have access to the Property terminated on 19 October 2011 when the entire shareholding was purchased by [Mrs Fetaimia].

[14.] [Mr Hitt] never stayed at the Property during the period it was occupied by the Defendants and any arrangement he may have had for the storage of his personal items was terminated on 11 November 2011, one month after the purchase by [Mrs Fetaimia] of the shares in [Dondore Inc] was completed. [Mr Hitt] is put to strict proof that he stayed at the Property after 19 October 2011.

[15.] Paragraph 7 is denied. In December 2004 [Mr Hitt] agreed to form a company, subsequently [Dondore Inc] and to then sell his shares in that company ([Dondore Inc]) to [Mrs Fetaimia] for £450,000. It was further agreed between [Mr Hitt] and the Defendants that the Defendants may occupy the Property until the purchase of the Property was completed through the incorporation of the company ([Dondore Inc]) and the purchase of the shares in [Dondore Inc] was completed by [Mrs Fetaimia]. The Claimants are put to strict proof of the existence of such a licence.

[16.] Paragraph 8 is denied. [Mr Hitt] never stayed at the Property whilst it was occupied by the Defendants. It is denied that there was a licence conferring any rights for [Mr Hitt] to occupy the Property and [Mr Hitt] is put to strict proof of the existence of any such licence. [Mr Hitt] is further required to identify what other rights he may have had to occupy the Property.

[17.] Paragraph 9 is admitted in that a document dated 21 September 2015 and a further document dated 5 October 2015, both purporting to be a Notice to Quit, were sent to the Defendants, but it is denied that either of those documents are valid and of any effect. The purported notices are not in the prescribed form; and the Claimants have not produce a copy of the alleged licence, and the terms of that licence have not been particularised at all." (underlining added)

10.
The defence does not contain any allegation as to when the defendants say the purchase price of £450,000 was paid. However, the material parts of the counterclaim provide that:

"[29] On 19 October 2011 [Mr Hitt] sold his shares in [Dondore Inc] to [Mrs Fetaimia]. [Mr Hitt] has failed to provide the Defendants with the relevant stock transfer forms and had further failed to record the sale in the records of [Dondore Inc]… [31] Between 2004 and 2011 the Defendants paid [Mr Hitt] in excess of £900,0000 in addition to the cost of the shares in [Dondore Inc]. Full particulars of that payment will be provided. The Defendants require [Mr Hitt] to repay £900,000 (the exact amount will be provided) plus interest." (underlining added)

11.
The defendants therefore allege that they paid Mr Hitt more than £900,000 between 2004 and 2011 in addition to the cost of the shares. In this regard I agree with what was said by Mr Jeremy Cousins QC, sitting as a Deputy High Court Judge, on 2 May 2017 (as recorded in Mr Langley's note of that hearing):

"[6]. It seems to me that taking those words at face value what they indicate is that the [defendants'] case is not only has £900k been paid but that sum over and above payment of costs of shares in [Dondore Inc]. So there was there seems to me [at the] outset an allegation that there had been payment greater than [the] cost of shares, but [the] cost of the shares had indeed been paid."

12.
The claimants did not make any request for further information under CPR Part 18 in respect of the payment alleged by the defendants.

13.
However, in terms of the particulars of alleged payment, the defendants have relied on a two-page document entitled "Wire Transfers to Richard W. Hitt Bank Accounts Matanya Trading & WAGL SARL", which was prepared in August or September 2016. This document contains the particulars alleged in respect of 11 payments and it is said that three of these payments, made on 25 July 2011, 27 July 2011 and 19 October 2011, relate to Dondore Inc and total Euros 1,081,032.25 (said to be worth £940,000) (" **the Defendants' Schedule of Payments** "). The other eight payments formed the basis of the defendants' counterclaim for repayment of £900,000.

14.
The claimants' reply and defence to counterclaim denies the existence of any such agreement and that payment had been made. Further, at paragraph 2 the claimants replied as follows:

"[2.] … the Defendants assert at paragraph 15 that [Mr Hitt] agreed to sell his shareholding in [Dondore Inc] to the Defendants in December 2004. This was four and a half years before [Dondore Inc] was incorporated …".

15.
Further, on this point on the date of the alleged agreement, Mr Fetaimia's first witness statement dated 6 December 2016 said this:

"[32.] I should mention at this stage that there is an error in paragraph 7 of our Amended Defence: the agreement to form an off-shore company was in the summer of 2008 and not in December 2004. I moved into the Property in December 2004 and that has caused the confusion in dates."

16.
However, paragraph 15 of the defendants' defence has never been re-amended to correct the date of the alleged agreement from 2004 to 2008. This is perhaps unsatisfactory, but Mr Langley, counsel for the claimants, made it clear in his opening that the issue I had to determine was whether the alleged

agreement was made in summer 2008. Therefore, nothing turns on this point. Likewise, there was also a discrepancy between the defendants' case that the agreed purchase price was £900,000, whereas the price referred to in paragraph 15 of the Amended Defence and Counterclaim is £450,000. In his skeleton argument for trial, Mr Pettican said that, from the outset, the defendants' position had been that £940,000 was to Mr Hitt in consideration for purchasing the property, and this was set out in the defendants' solicitors letter dated 9 November 2015. He explained that the defendants had sought to correct this point in their Amended Defence and Counterclaim. However, because the defendants were only allowed to make amendments consequential on the amendments to the Particulars of Claim, this amendment to their Amended Defence and Counterclaim had been disallowed by reason of the way the statements of case had been originally formulated. Again, nothing turns on this point.

Procedural history

17.
The proceedings were transferred to the High Court on 7 March 2016, and there was a costs and case management conference before Master Teverson on 7 July 2016.

18.
The trial was first listed for hearing in February 2017. However, it was adjourned very shortly beforehand as Mrs Fetaimia had been hospitalised, and another witness was unable to attend court during the trial window. The trial was then re-listed for hearing in March 2017 and, on 30 March 2017, came before Mr Andrew Hochhauser QC, sitting as a Deputy High Court Judge. The defendants were, by this time, no longer represented by solicitors and counsel, but were in the process of instructing Mr Pettican, who represented them at trial before me. The defendants appeared in person before Mr Hochauser QC. The Deputy Judge decided that it would be better if they were represented at trial, and adjourned the trial to the first open date after 7 April 2017. He did so on the basis that the defendants pay the costs thrown away by the adjournment, together with all outstanding costs orders (which totalled £22,780.60).

19.
The trial was then listed before Mr Jeremy Cousins QC, sitting as a Deputy High Court Judge, on 2 May 2017. At the start of the trial, Mr Langley, as counsel for the claimants, invited the Deputy Judge to rule on the scope of the issues at trial. The Deputy Judge decided that it was open to the defendants "to allege and lead evidence at trial that the alleged purchase price for the shares in [Dondore Inc] was paid as set out in the First Witness Statement of [Mr Fetaimia]" and, at the start of the trial before me, Mr Langley provided me with his note of the Deputy Judge's judgment.

20.
This meant, as Mr Pettican reminded me in closing submissions, that the defendants were entitled to run their case in relation to the payments based on the evidence contained in Mr Fetaimia's first witness statement. The trial in May 2017 could have gone ahead on that basis, but the claimants' wanted to take advantage of the opportunity which the Deputy Judge had given them to answer the evidence contained in Mr Fetaimia's first witness statement. The claimants therefore applied to adjourn the trial. That application was granted and, as a result of that adjournment, the trial was eventually re-listed for hearing before me almost a year later, on 30 April 2018, with a time estimate of 5 days.

21.
The Deputy Judge also:

a.
Gave the claimants permission to rely on further witness evidence dealing with the issue as to whether payments have been made with respect to the alleged purchase price by Mr Fetaimia of the shares in Dondore Inc. This evidence had to be served by 12 June 2017.

b.
Gave (i) the defendants permission to rely on the expert report of Mrs Margaret Webb (" **Mrs Webb** ") dated 27 January 2017 with respect to the signature of Mr Hemant Sanghvi (" **Mr Sanghvi Senior** ") contained in the partnership agreement between WMS and WAGL (" **the Partnership Agreement (1st Version)** "); and (ii) gave the claimants permission to call expert evidence at trial in relation to the signature of Mr Sanghvi Senior.

c.
Gave the parties permission to adduce expert evidence at trial from a forensic document examiner, in the event the authenticity of a document headed "Certificate" dated 7 January 2012 was challenged. This document is referred to later in this judgment as "the Payment Certificate" (see paragraph 34 below).

d.
Ordered the defendants to serve an affidavit of means providing a full explanation as to their ability or otherwise to comply with the outstanding costs orders of £22,780.60.

e.
Gave the claimants permission to apply for an unless order with respect to the outstanding costs orders.

22.
In the light of this Order on 14 June 2017 Mr Hitt served his fourth witness statement, to deal with the payments issue. On 19 July 2017 Mr Justice Morgan gave (i) the defendants permission to serve further witness evidence in response to the issues raised in Mr Hitt's fourth witness statement; and (ii) the claimants permission to serve further witness evidence provided that such evidence "shall deal only with the issue as to whether payments have been made with respect of the alleged purchase by [Mrs Fetaimia] of the shares in [Dondore Inc] and/or any new issues raised by the defendants' responsive evidence".

23.
Mr Hitt served his fourth witness statement on 14 June 2017. Mrs Fetaimia responded to this statement by her second witness statement dated 31 July 2017, and Mr Fetaimia responded by his tenth witness statement dated 2 August 2017. Mr Hitt served his fifth witness statement, in answer to Mr Fetaimia's statement, on 11 September 2017. This witness statement had exhibited to it Exhibit RH7, which contained 40 pages of documents (many of which were new) relating to Mr Hitt's explanation of the alleged payments. Mr Fetaimia responded to this evidence in his eleventh witness statement dated 30 November 2017.

The key issues

24.
The main issue for trial was whether the shares in Dondore Inc are beneficially owned by Mr Hitt or Mrs Fetaimia. That in turn depends on: (1) whether in the summer of 2008, there was an oral agreement between the parties to the effect that Mr Hitt agreed to form a company and to sell the

shares in that company to Mrs Fetaimia (" **the Agreement Issue** "); and (2) whether Mr Hitt has been paid for the shares by, or on behalf of, the defendants (" **the Payment Issue** ").

25.
The following points were not in dispute:

a.
If there was an agreement as alleged, then it was sufficiently certain and complete to be enforceable. Nevertheless, the claimants did take the point that, as the alleged agreement was made between friends, then the court must be satisfied that there is an intention to create legal relations, otherwise the agreement will not be binding (see Heslop v Burns [1974] 1 WLR 1241 and MacInnes v Gross [2017] EWHC 46 (QB) at [77], per Coulson J).

b.
If a creditor requests a debtor to pay the debt to a third party, payment in this way is equivalent to payment direct to the creditor and is good discharge of the debt (Chitty on Contracts (32 nd Edition, 2015) at para 21-043). Therefore, if Mr Hitt requested the defendants to pay the consideration for the shares in Dondore Inc to a third party, such as an off-shore company, and the defendants then made payment to that third party as directed by Mr Hitt, such payment would be equivalent to direct payment to Mr Hitt and good discharge of the debt.

c.
The burden of proof in respect of the key issues in dispute rests on the defendants so that they have to establish, on the balance of probabilities, that there was an agreement as alleged, and that they paid for the shares in full.

Evidence

Witnesses of fact

26.
I heard evidence from four witnesses. Mr Hitt gave evidence for the claimants, but did not call any other witnesses. Mr and Mrs Fetaimia both gave evidence, they also called Mr Stuart Payne (" **Mr Payne** "), a director of Omnijet Europe Limited (" **Omnijet** "). The evidence in chief of all of these witnesses was contained in witness statements, which they were then cross-examined on.

27.
The factual findings the Court is required to make in this case concern an alleged oral agreement made 10 years ago, and the alleged performance thereof seven years ago. The alleged agreement was made between friends, and their relationship continued amicably until it broke down in 2015. In these circumstances:

a.
It is plain that I have to form a view as to the credibility of the witnesses, and decide which of the evidence I have heard is, after such a long passage of time, actually reliable and most likely to be true (see, for example, EPI Environmental Technologies Inc v Symphony Plastic Technologies plc (Practice Note) [2005] 1 WLR 3456, at 3470H-3471C, Peter Smith J).

b.

The most important clues in relation to what did or did not happen are in the contemporaneous emails and other documents. In this case there are still several documents available which pre-date the dispute.

c.
It is necessary to consider whether the witnesses can actually remember what happened 10 years ago and, to the extent they can recall what happened, whether that recollection is, or is likely to be, true.

d.
The arrangements in place after 2008, and which took effect between the parties in the seven years or so before there was any dispute between them, may shed some light on what, if anything, was actually agreed in 2008.

28.
I did not find Mr Hitt to be a truthful witness. There are several important features of his evidence which are untrue. First, he did not decide to transfer the property into Dondore Inc for reasons of "estate planning" for his children. There is no support for this evidence in any of the contemporaneous documents, and it is fabrication on the part of Mr Hitt. Second, his evidence that Mr Fetaimia was destitute when he arrived in London in 2004 is false. Third, Mr Hitt said in a conversation which took place in April 2015, when Mrs Fetaimia was asking where the money paid to WAGL had gone, that he was conducting an investigation into the affairs of WAGL. That again is untrue. Mrs Fetaimia was asking all the questions of Mr Hitt, and that is obvious from reading the transcript of the conversation. Fourth, Mr Hitt's evidence that WAGL entered into a partnership agreement with WMS is also false. There was no such agreement, and the two versions of the partnership agreement produced in support of it are not genuine. This means that I am unable to accept Mr Hitt's evidence unless it is supported by the contemporaneous documents (provided there is no issue as to the authenticity of these documents).

29.
Mr Fetaimia was at times argumentative and he was mistaken in relation to some aspects of his evidence, for example as to whether the second and third payments in the Defendants' Payment Schedule were the same payment. However, on assessing Mr Fetaimia's evidence overall, I am satisfied that he was trying to assist the court and tell the truth. Further, I do not consider the few areas where he was mistaken undermine his overall credibility. Where there is a dispute between the evidence of Mr Fetaimia and Mr Hitt, I have no hesitation in preferring the evidence of Mr Fetaimia.

30.
Mrs Fetaimia was a very animated witness and also, at times, argumentative and angry. That was, in my view, a consequence of her sense of frustration caused by these proceedings, and the nature of Mr Hitt's case against her and her husband. However, I am satisfied that Mrs Fetaimia was trying to assist the court and tell the truth. Where there is a dispute between the evidence of Mrs Fetaimia and Mr Hitt, I have no hesitation in preferring the evidence of Mrs Fetaimia.

31.
Mr Payne was a careful witness, and I am quite satisfied he gave truthful answers to the questions he was asked, and I accept his evidence. However, Mr Payne was criticised by the claimants for (i) attending at court with Omnijet's bank statements (which were disclosed for the first time on 3 May 2018), and (ii) not producing invoices, aircraft accounts and so on to corroborate the evidence he gave in cross-examination. Mr Payne was a witness called by the defendants. If the claimants had wanted Mr Payne to produce any documents then they could have written to him requesting him to produce

documents and, if necessary, have served a witness summons on him. However, they did not do that, and it was unfair to criticise Mr Payne on the basis that he failed to produce documents.

Expert evidence

32.
There was expert evidence in relation to two documents, which were alleged to be forgeries.

33.
First, a three-page document in French headed "Convention de Partenariat" dated "le … 2011", which is referred to as the Partnership Agreement (1 st version) above. The defendants' case was that Mr Sanghvi Senior's signature on this document was a forgery. The defendants relied on the report of Mrs Webb, a certified document examiner, dated 28 July 2017. Mr Hitt relied on the report and oral evidence of Mr Robert Radley, a registered forensic practitioner (specialising in the examination of handwriting and documents).

34.
Second, a certificate on headed paper for "West African Gold Limited" dated "the 7 th January 2012" (" **the Payment Certificate** "). Mr Hitt's case was that this document was a forgery. Mr Hitt relied on the report and oral evidence of Mr David Richard Browne (" **Mr Browne** "), the Senior Associate in the Forensic Department of Diligence International. Mr Browne has considerable experience of examining stamps, and forged stamps, from the 21 years he worked at HM Immigration Service. The defendants relied on a separate report from Mrs Webb dated 27 January 2017.

35.
Mr Browne was careful and clear in his evidence, and steadfast in his opinion that there was strong evidence that the Payment Certificate was false. In his report he explained that "strong evidence satisfies the requirements of the civil court; based on the balance or probabilities. Strong evidence does not by itself satisfy the criminal burden of proof and will always need corroborative evidence."

36.
Mr Radley also gave careful evidence. In his opinion it is impossible to tell whether the signature of Mr Sanghvi Senior on the Partnership Agreement (1 st Version) is genuine. This is because the comparison material was limited to three signatures of Mr Sanghvi Senior, and that is insufficient (15 to 20 comparison signatures are ordinarily required). I am also satisfied that Mr Radley's evidence, and his opinion, was not coloured by the views he holds in relation to Mrs Webb's expertise.

37.
Mrs Webb did not attend the trial to give evidence and be cross-examined. In emails to the defendants' solicitors she said she was unable to do so because she was too unwell. However, it was unclear why Mrs Webb was unwell. Shortly before the trial on 24 April 2018 she emailed the defendants' solicitors and informed them that "signs of a stroke were picked up when I had a brain scan end of 2017, last year when I was very unwell. It is the after effects that have caused mobility problems, worsening diabetes, and hearing loss." She said that she had had to give up document examination as a result. Mrs Webb then said that "I will ask my GP to write a short note when I see him shortly". The defendants' solicitors pressed Mrs Webb to obtain a doctor's report. Mrs Webb told the defendants' solicitors that she had an appointment with her GP on 2 May 2018 and, later the same day, Mrs Webb emailed them to say that "my doctor has agreed to write a paragraph or two on my medical condition and why he thinks I should no longer attempt at giving evidence in Court in the

future". However, notwithstanding the defendants' solicitors' chasing emails, Mrs Webb never provided a short note from her GP actually explaining why she was unable to attend court.

38.
In these circumstances, I do not consider that I can attach any weight to the views expressed in the two reports produced by Mrs Webb. This is because:

a.
There was no medical evidence to show that Mrs Webb was unwell and could not therefore attend court.

b.
Mrs Webb could not be cross-examined. This was particularly unsatisfactory as there was an issue between the parties as to her expertise. Mr Radley's evidence was that Mrs Webb is a graphologist, which is very a different field of study to forensic examination of documents. This means that she was not properly qualified to give any evidence in relation to the signature on the Partnership Agreement (1 st Version).

Findings of Fact

Mr Hitt

39.
Mr Hitt is a pilot. For 25 years, until his retirement in November 2012, he was the pilot for Blaise Compaoere, the President Burkino Faso. This meant he would regularly fly between Burkino Faso, the USA, France and England. Mr Hitt is a US citizen and is now 71. Mr Hitt also has two children from his first marriage, Pamela and Peter. Pamela and Peter are now aged 45 and 40 respectively.

The purchase of the property

40.
At the start of the 1990s Mr Hitt's first marriage had ended, and he was in a relationship with Mrs Gillian Barnes (" **Mrs Barnes** "). In 1992, Mr Hitt and Mrs Barnes had a daughter together called Olivia. Olivia is now aged 26.

41.
Mr Hitt and Mrs Barnes purchased the property, which is a 125-year lease from 25 March 1976 and dated 19 May 1987 (" **the Lease** "), pursuant to a transfer dated 4 December 1991. The purchase price was £180,000 and £135,000 was provided by a mortgage from the Abbey National Plc (" **Abbey National** "). Mr Hitt and Mrs Barnes were registered as the proprietors of the property with title absolute on 7 February 1992. Further, on 24 March 1992 Mr Hitt and Mrs Barnes executed a deed of trust pursuant to which:

"[1.] Mr Hitt and Mrs Barnes hereby declare that they hold the property in trust for Mr Hitt and hereby agree that they will at the request and cost of Mr Hitt sell the property to such person or persons at such time or times and in such manner or otherwise deal with the same as Mr Hitt shall direct or appoint and will execute and do all such documents acts and things as may be necessary to give effect to any such sale or if so required to enable the interest of Mr Hitt to be protected. [2.] Mr Hitt hereby covenants with Mrs Barnes to discharge all outgoings of or in any way relating to the property including all payments under the Mortgage and to indemnify Mrs Barnes as aforesaid from

and against all actions costs claims and demands provided that she has acted in a legal and proper manner."

42.
Mr Hitt's evidence was that he purchased the property as a long term investment with the purpose of residing there whenever he was in London on business. He said that was for about two months of the year, on average. He stayed there either on his own, or with Mrs Barnes. However, his relationship with Mrs Barnes ended in 1994, and she did not use the property after that.

43.
In October 2000 Mr Hitt married Ms Frederique Laroche (" **Ms Laroche** "). Their matrimonial home, which was purchased in 2000, was in Paris at Le Mont de Po, 10 Avenue Francois Mathet, 6070 Gouvieux. This was a large house in Chantilly, Paris with 12 bedrooms. The fact that Mr Hitt had a wife in Paris, together with such a large home there, meant that he no longer had any interest in living in London. Therefore, by 2000, he was hardly using the property at all and it was empty most of the time.

44.
In 2004 or 2005 Mr Hitt purchased a house in Provence, France. It was about this time that Mr Hitt moved some of his furniture out of the property, as he needed it for one of his houses in France.

45.
Mr Hitt's marriage to Ms Laroche ran into difficulties in 2008 and they separated. They were divorced in 2012. Mr Hitt kept the house in Paris as part of the divorce settlement, and his evidence was that in 2012 he paid Ms Laroche nearly £1 million in respect of this.

2003: Mr Hitt's decision to sell the property

46.
By a letter dated 5 January 2003 Mr Hitt's solicitors wrote to Mrs Barnes regarding the property. Mrs Barnes responded by a letter dated 6 February 2003 stating that Mr Hitt had failed to pay recent child maintenance payments and "when the maintenance payments are resumed and [Mr Hitt] settles the six months arrears in full, then I will be in a position to instruct my solicitor regarding the property".

47.
Mr Hitt was asked about this letter from Mrs Barnes in cross-examination. It was put to him that the reason his solicitors had written to Mrs Barnes was because he wanted to sell the property and, in order to so, he needed her co-operation. Mr Hitt did not accept this. Rather, he maintained that "it was not in anticipation of selling the flat. It was basically tidying up – getting her off the property, the mortgage…". However, as mentioned above, in January 2003 Mr Hitt had a wife and a large home in Paris. He had been separated from Mrs Barnes for over 9 years, and he no longer had any need for a home, or indeed a property, in London. In these circumstances, there was no reason for Mr Hitt to contact Mrs Barnes out of the blue, unless he wanted to do something with the property.

48.
The obvious inference is that in January 2003 Mr Hitt's solicitors wrote to Mrs Barnes because he wanted to sell the property, and the purpose of that letter was to ask for her co-operation because she was still registered as a proprietor of the property. The purpose of the letter was not, as Mr Hitt said in cross-examination, some form of house-keeping exercise in relation to the property. Rather, it was because by January 2003 Mr Hitt had decided to sell the property.

49.
Further, following Mrs Barnes' letter it is clear that there were issues that needed sorting out in respect of the maintenance payments for Olivia. However, Mr Hitt's evidence was that he did not pay maintenance and those issues were not resolved. In 2008 Olivia turned 16 and reached the age of majority.

Friendship between Mr Hitt and Mr Fetaimia

50.
Mr Fetaimia was born in Algeria and moved to the United States when he was 18. His first language is French. He made a new life in America, and in 1993 married his first wife, Jana Zeeb. They had two children together, and Jana had two children from her first marriage. In 1985 he opened up a flying school in Dallas, Texas, which he ran as a successful business until September 2011, when he had to close it down following "9/11". The flying school was Mr Fetiamia's only source of income at the time. However, his wife had an income as she worked for Pepsi Cola.

51.
In the mid-1990s Mr Hitt was a student at the flying school and Mr Fetaimia trained him for his corporate jet licence renewal. It was through this that they got involved in doing business in West Africa relating to the chartering of aircrafts, and they became close friends. Mr Fetiamia also met Mrs Barnes, as she came to Dallas with Mr Hitt.

52.
Through his friendship with Mr Hitt, Mr Fetaimia had stayed at the property in the 1990s. This was because Mr Hitt had told Mr Fetaimia that London was a good place "to do aviation business" and, as he did not use the property very often, Mr Fetaimia could stay there.

53.
In 2003 Mr Fetaimia left the United States. He had to do so, otherwise he would have been forced to leave by the American authorities. He went first to Algeria to sort out his visas, and he then went to his mother's home in Cannes, France. The situation he found himself in was, he said, a disaster for him. This was particularly so as he had left his wife and children behind in the United States. However, he still had his aircraft, a Citation II, which was worth about US$2 million, and he started a flying school in Cannes where he was able to train many of his existing students who mainly came from Africa and the Middle East. He said he invested about US$150,000 in this business and, throughout this time, he kept in contact with Mr Hitt. I accept this evidence from Mr Fetaimia.

54.
Mr Fetaimia separated amicably from his first wife, Jana Zeeb, in the autumn of 2005, shortly after he had met Mrs Fetaimia.

2004: Mr Fetaimia's move to London

55.
In 2004 Mr Fetaimia flew his own private jet, the Citation II, from France to the UK, and at the end of 2004 he was in London. In his tenth witness statement dated 2 August 2017 Mr Fetaimia explained that:

"It was Mr Hitt who suggested that I should come over to the UK and start a new aviation business here. I told him that it would take a few months to wind down my business in Cannes and that I would

look into buying an apartment in the UK. He then told me he wanted to sell the property for personal reasons (his matrimonial difficulties) and I met him at the property in December 2004."

56.
Mr Hitt had already decided by January 2003 that he wanted to sell the property. However, his desire to do so was being held up because Mrs Barnes would not co-operate so long as there were maintenance payments outstanding for his daughter, Olivia, and which he was refusing to pay. I therefore accept Mr Fetaimia's evidence that Mr Hitt told him that he wanted to sell the property. I do not believe Mr Hitt's evidence that, although he accepted discussing selling the property with Mr Fetaimia, he told him it was not for sale. That is simply not true.

57.
Mr Fetaimia's reference to "matrimonial difficulties" being the reason Mr Hitt want to sell the property is wrong. It may be that Mr Fetaimia was confused and is using this as "shorthand" to refer to the problem Mr Hitt had in that his former partner, Mrs Barnes, was on the title to the property (and this is what I understood him to be saying in cross-examination). Alternatively, Mr Fetaimia is simply mistaken, as a result of the passage of time. In any event, the reason Mr Hitt wanted to sell, was because he did not need a property or home in London. His marriage to Ms Laroche did not run into difficulties until 2008.

58.
On 14 December 2004, Mr Fetaimia moved into the property. The property was, by that time, being used very infrequently by Mr Hitt and, in effect, had been vacant for a number of years. The property was dusty and dirty and needed cleaning. This took several days, and I accept Mr Fetaimia's evidence that he stayed in a hotel when this was being done.

59.
In cross-examination Mr Fetaimia further explained that:

"A: I met with Mr Hitt – Mr Hitt, he comes to London always during Christmas on his way to the United States to go visit his parents, so he stopped in London around Christmas time in December 2004, we started talking, over a glass of wine, we had a good dinner together, and I said I like the property, you know, even though I had – took me two weeks just to get it cleaned, you know, let's make a deal. He said, well --- …

Q: … So you then said you have had your dinner, this is after you have moved in?

A: This is like two weeks after I moved in.

Q: Right. So two weeks after you moved in?

A: Not even two weeks. Ten days. Somewhere around there. I mean, I was just fresh there.

Q: Two weeks you have moved in, you have your dinner and you say to Mr Hitt, "I would like to buy the property?"

A: I am interested in the property, yes… So we talked, and I said I'm interested. You know, he said, you know, we can make a cash deal. I said, not a problem, then he replied to me, he said: "I have to reply to the [Gillian] Barnes issue". I said, "Take your time. No rush." That was our – the content of our conversation.

Q: Is that what you say is your gentleman's agreement?

A: No, it was not an agreement. It was a discussion, I should say.

Q: Right.

A: I mean, we talked over the years.

Q: Did you discuss a price over dinner?

A: Not on that day.

Q: No?

A: Not in December 2004. We didn't discuss any money. All we discussed, I'm interested in the flat, okay, and he will resolve [Gillian's] problem

….

A: … So in 2004, in our dinner, we discussed – we did not discuss the price. We did not have an exact price. However, during that period the flat was worth around £450,000. It was valued during that period around £450,000. [Dondore Inc] was not around in 2004."

60.
Mr Fetaimia said the discussion which took place face to face in London was "a continuation of our prior telephone calls we had", and those conversations had been taking place even before he went to France. He said it was Mr Hitt who was "pushing" him to move into the property, although he was not that interested to start with. Mr Fetaimia said that Mr Hitt wanted to make a deal, as the property had been empty for five years. They had been friends for a long time, and this had been a "continuous conversation". Mr Fetaimia said that, in the end, he agreed to move in and take care of the property, and they could "work out" the deal, which was a deal between friends, later. There was no rush for them to do so. Further, Mr Fetaimia's evidence in cross-examination was that he did not discuss the price of the property with Mr Hitt until 2005. I accept this evidence from Mr Fetaimia.

61.
Therefore, in December 2004, Mr Hitt had a property in London on his hands that he wanted to sell, but he could not do so because Mrs Barnes would not co-operate (as a result of his own failure to pay maintenance). The property was empty, and his very close friend, Mr Fetaimia, had, at his suggestion, moved to London. Mr Fetaimia was, in the eyes of Mr Hitt, a potential purchaser of the flat and, because he was a friend, Mr Fetaimia would not mind waiting to purchase the property until the situation with Mrs Barnes had been resolved, and the property could then be sold. The reason no rent was payable by Mr Fetaimia was because he had agreed to purchase the property from Mr Hitt. Likewise Mr Fetaimia did not need to look at buying any other properties as his home London, as he was going to buy the property from Mr Hitt, which Mr Hitt was very keen to sell.

62.
Mr Fetaimia's evidence was that Mr Hitt spoke to his lawyer and, as a result, produced a one-page agreement which they both signed. His evidence in cross-examination was that Mr Hitt produced this document around Christmas time, when he was on his way to the United States. It was therefore produced shortly after he had moved into the property. The document no longer exists. However, from recollection, Mr Fetaimia's evidence was that the document recorded that (i) he would buy the property at a price between £400,000 and £500,000; (ii) no rent was payable; (iii) he would be responsible for the outgoings in respect of the property; (iv) he would have to re-furbish the property at his own expenses, and (v) any furniture in the property which belonged to Mr Hitt could be

removed. I accept Mr Fetaimia's evidence that there was an agreement which he and Mr Hitt signed. However, in the light of his other evidence, and the chronology, I think he is mistaken that this document recorded the price agreed for the property. This is because he was clear in his oral evidence that the discussions in relation to price did not take place until a later stage in 2005, although he could not recall precisely when.

63.
I should make it clear that I do not accept Mr Hitt's evidence that, when Mr Fetaimia arrived in London, in 2004 he was "practically destitute". This is untrue. Mr Fetaimia arrived in London, having wound down his flying business in France. He arrived in his own aeroplane (which was valued at US$2.5 million in 2004 or thereabouts), which he used to generate an income from. He paid for hotels in London to stay in whilst the property was being cleaned, together with his other living expenses. Further, based on the information he had provided to HSBC Bank Plc (" **HSBC** "), by September 2005 he had been offered a mortgage of £1,063,000, subject to obtaining a valuation of the property concerned.

2005: Purchase price agreed for the property

64.
I accept Mr Fetaimia's evidence that, in 2005, he agreed a purchase price of £450,000 for the property with Mr Hitt. Mr Fetaimia could not remember when this figure was agreed. However, it seems to me that it must have been before September 2005, which was when he obtained a mortgage offer from HSBC Bank Plc of £1,063,000.

65.
In cross-examination Mr Fetaimia was asked why he did not just pay the money to Mr Hitt for the property. Mr Fetaimia said that HSBC would not pay the money off-shore (which is what Mr Hitt wanted), so the mortgage offer was no use for paying Mr Hitt. Mr Fetaimia then said he had £400,000 in cash funds he could have used, but the problem was that Mr Hitt was not in a position to transfer the title, because of the continuing issue with Mrs Barnes. That was not resolved until 2008 and, by 2009, Mr Fetaimia did not have the cash funds to pay for the property. This was because at that time he had suffered a considerable loss in one of his business transactions and he then became embroiled in litigation.

October 2005: Mr Fetaimia meets Mrs Fetaimia

66.
Mr Fetaimia met Mrs Fetaimia on 22 October 2005. Mrs Fetaimia has three degrees, including one in law. Mrs Fetaimia was born in Russia and her first language is Russian. On 31 December 2005 Mrs Fetaimia moved into the property as her home with Aurelia, her young daughter from her first marriage. She was, by then, pregnant with her son, Adam, the first child of her relationship with Mr Fetaimia. Adam was born on 16 August 2006.

67.
Mrs Fetaimia assumed the property belonged to Mr Fetaimia, although that was not something they discussed at the start of their relationship. Mrs Fetaimia's evidence, which I accept, was that the property was in poor condition and had a damp problem. Some work had been done before she moved in, but once she was living there she started carrying out refurbishment works and improvements to the property. The defendants did so on the basis it was their home.

68.
Mrs Fetaimia did not meet Mr Hitt until 2006. Mr Hitt was very rarely in London. I accept Mr Fetaimia's evidence, that by 2006, Mr Hitt only came to London for two reasons. First, to catch a connecting flight to the United States. Second, to use Metropolitan Safe Deposits in Knightsbridge, when he was bringing the aircraft used by the President of Burkino Faso to England for maintenance. If Mr Hitt was in London then he would see Mr Fetaimia and, if he needed somewhere to stay, then he would stay at the property, provided there was room. This was not possible if, for example, Mr Fetaimia's children from the United States were there. Mr Hitt only came to the property if he had contacted Mr Fetaimia first and, if he wanted, he picked up a duplicate set of keys from the porter in order to get access. He moved all his personal belongings out of the property and left some furniture and belongings (that he did not need). From then on, the defendants bought some new items of furniture and they used Mr Hitt's furniture less and less, and they lived in the property as their home and as if it belonged to them.

69.
I should also mention that by December 2005 the defendants had a joint bank account together at HSBC, and their address at the bank was that of the property. There are various bills and cheques in the papers. These show, for example, that in September 2006 Mrs Fetaimia paid £2,557.00 to Stiles Harold Williams, managing agents for the landlord, Albert Court (Westminster) Freehold Co. Ltd, and its related company, Albert Court (Westminster) Management Co. Ltd. This payment related to a half yearly provision for major works, together with the half year service charge (in advance). In January 2007 Mrs Fetaimia paid the Council Tax bill of £330 for the property. Further, Mr Fetaimia's evidence, which was not challenged in cross-examination, was that he paid all the service charges and ground rents for the property from 2005 to 2010. He produced, in a schedule to his tenth witness statement dated 2 August 2017, a list of 18 specimen payments the defendants had made in respect of the property in the period 23 August 2005 to 10 May 2010. The total sum paid amounted to £22,547.35.

70.
Further, I accept Mr Fetaimia's evidence that the defendants paid for all the utilities in respect of the property, and they paid Mr Hitt in cash or into his account, in respect of the water bills and TV Licence (which Mr Hitt had wanted to keep in his name, for "KYC" purposes).

2007 and 2008: Events leading up to the transfer of the property to Dondore Inc

71.
Mr Hitt maintains that in 2008 he did not discuss the sale of the property at all with the defendants and, if there had been any discussion, he never changed his position that the property was not for sale. Further, it is Mr Hitt's case that the idea of transferring the property to an off-shore company first came about as a result of advice from his attorney in Dallas for the purposes of estate planning. He said this in evidence:

"Because I'm 70 years old and I have three children and I have to anticipate how my estate will be divided when I die, and I had recommendations from [my] estate attorney in the United States that properties are more easily transferred to multiple children when they are not put into the names of the children individually, that there is actually a company, and then they can negotiate how to – if they wanted to keep or sell their shares or what they wanted to do with the properties. He recommended that the properties be in a company where the children could buy and sell shares between them at my death."

72.

Mr Hitt could not remember the attorney's name, although apparently he was also his father's estate attorney. He said the advice was given orally, and was not recorded in writing. He said the advice was given to him in 2005, so at a time when he was 57 or thereabouts and, having received such advice, he did nothing about it at the time. I do not believe Mr Hitt's evidence that it was his idea to transfer the property to an off-shore company, or that he decided to do for the purposes of "estate planning". This is because this evidence is inconsistent with the contemporaneous documentation which is available, and which all points towards it being an idea that originated from Mrs Fetaimia in order to give effect to an agreement that she would acquire the property through an off-shore company. I turn to this correspondence next, which it is necessary for me to consider in some detail.

73.
I accept Mrs Fetaimia's evidence that, when she met Mr Hitt in October 2006, she discussed purchasing the property from him. At that time she was planning on having another child with Mr Fetaimia, and she told Mr Hitt that she wanted the property to be her home.

74.
By a letter dated 27 November 2007 Mr Brian Harris (" **Mr Harris** ") of Brian Harris & Co, solicitors, wrote to Mrs Fetaimia in these terms:

"Dear Viktorija

Trusts and Associated Matters

I was very pleased to have the opportunity of meeting with you today. Having discussed matters with you it is quite clear that you have only recently become a resident for tax purposes in the UK and that you retain your non-domicile status.

You have assets in Europe and Eastern Europe and in England and you want to protect those assets for the benefit of your infant children. Your son is now aged one and his father is your partner. Your daughter is three and a half years of age and you are in the process of divorcing her father who "went missing" approximately four years ago.

The intention is for you to establish an overseas discretionary trust which would be under the law of Jersey (Channel Islands) but would be administered out of Zug in Swizerland. <u>You'd like the trust known as the "Victorian and Albert Trust" and the Trustees will also establish an offshore company (probably a British Virgin Island Company) which will have transferred to it 5A Albert Court [the property] which is currently being held by nominees to your order</u> .

You will need to meet with the trust company and particularly with the principal of that company ie Mr Hans Schibli in Zug and I now know that he is available on Monday 10 December [2007] and I can also attend with you or meet you in Zug on that date…" (<u>underlining</u> added)

75.
This email contains the first mention of the property being transferred to an off-shore company and the idea appears to have originated from Mrs Fetaimia. Further, on 27 November 2007, Mrs Fetaimia instructed Mr Harris, as her solicitor, that the property was "being held by nominees to your order". The nominees, who Mrs Fetaimia understood were holding the property to her "order", must have been Mr Hitt and Mrs Barnes, as the registered proprietors of the property.

76.

Indeed, Mr Langley asked Mrs Fetaimia about this particular sentence of Mr Harris' email in cross-examination:

"Q: You say [the property] is currently being held by nominees to your order?

A: Yes.

Q: That is what you told Mr Harris, isn't it?

A: That was already arranged with Richard [Hitt].

Q: That is what you were telling Mr Harris.

A: That was already arrangement. Done. It is already 2007. Look yourself.

…

Q: Mrs Fetaimia, are you saying at this time in 2007, 27 November you already had an agreement with Mr Hitt.

A: Yes. Yes. Absolutely. As soon as Adam was born, I had agreement, and I --."

77.
I accept Mrs Fetaimia's evidence that, by 27 November 2007, Mr Hitt had agreed to transfer the property to her using an off-shore company. This evidence is entirely consistent with Mr Harris' email, which was based on her instructions. It had therefore been suggested to Mr Hitt that the property should be transferred into Mrs Fetaimia's name before 27 November 2007. He had agreed to that course, and he had also agreed that the property should be transferred into an off-shore company. The discussions, and agreement with Mr Hitt about these matters, were some time before 27 November 2007. However, there were no further discussions as to the price of the property at this time, and these discussions did not take place until 2008.

78.
On 18 December 2007 the Land Registry sent Mr Hitt and Mrs Barnes, as the registered properties of the property, notice that the application to discharge Abbey National's mortgage had been completed. The purpose of discharging the mortgage, must have been so that Mr Hitt was in a position to transfer the property to the off-shore company, which he had already agreed to do with the defendants.

79.
In January 2008 (about 14 January) Mr Harris emailed Mrs Fetaimia and said this:

"My apologies for not having replied to your email dated 20 December at an earlier date. I have been abroad and have only just returned. Through Mr Hitt it appears that you do have your own connections in Geneva and if that is right then I rather suspect that the individuals who you want to consult in Geneva can deal with trust and transfer of shares etc. If I am wrong please let me know. I am informing my colleague in Zug that we will not be meeting with him…".

80.
Mrs Fetaimia responded on 15 January 2008 to Mr Harris and said this:

"No I don't know anybody in Geneva to help me with my trust, so that's why I want you to help me here. Mr Hitt has a bank account there so that was the reason to go there rather than Zug, but if it's not convenient for you I suppose we shoud (sic) do it in Zug then. All I need is to do it this month,

because then Mr Hitt will be gone. Ideally I would like to know how much is to put appartment (sic) on a trust in Mr. Hitt's name, which by spring time we can transfer to my trust and all other assets (houses, shares and ectr.,) on mine now. Thank you and wait for your prompt answer …".

81.
The reference to Mr Hitt being "gone" was because, in February, he would return to Burkino Faso, and not be back until later on in the year. The evidence was that Mr Hitt came through London at Christmas time, on the way to see his parents in the USA.

82.
Further, I do not accept Mr Hitt's evidence that Mrs Fetaimia was involved in this because he had requested her advice about transferring the property to an off-shore company. The reason Mrs Fetaimia was involved was because it had already been agreed between Mr Hitt and Mrs Fetaimia, that Mr Hitt would be transferring the property to an offshore company for her benefit.

83.
It appears that Mr Harris responded to Mrs Fetaimia's email on 15 January 2008, and that response was then forwarded by Mr Fetaimia to Mr Hitt. Mr Hitt received that email. Mr Harris said this to Mrs Fetaimia:

"You tell me that time is very short. I would have been happy to deal through Zug but that would require you going to Zug and setting up the Trusts there. I have a very practical alternative. I today met with Richard Baldock who is the Director at Rothschild Trust Corporation. He is a very experienced solicitor and he heads the Trust Department of Rothschild. He was located in Zurich but is now in London and can deal with all matters from London but on the basis that the Trust would be operated out of Zurich. He is available to meet with you on 21 January at 4pm or 24 January at 3pm. I think that Richard will suit you perfectly and any actual legal work required will be channelled through my firm but you can see him alone which will avoid unnecessary expense…".

84.
In January 2008 Mr Hitt met with Mr Andrew Penney (" **Mr Penney** ") at Rothschild, and Mrs Fetaimia also met with Mr Penney. This meeting was to discuss the establishment of a trust, and lasted about 10 minutes. Mr Hitt's evidence was that this was a short meeting because he terminated it as soon as Mr Penney brought up the sale of the property. He said he "hit the roof" when that point was raised, as he did not want to sell the property. This evidence from Mr Hitt is untrue. The reason the meet was so short, was because Mr Penney advised there was no need to establish a trust, and there was nothing else Mr Hitt needed to discuss with Mr Hitt, and I accept Mrs Fetaimia's evidence about this.

85.
In July 2008 the defendants contacted Mr David Risbey (" **Mr Risbey** "). Mr Risbey managed an off-shore trust company in Switzerland, and the defendants asked him to set up an off-shore company to own the property. Mr Fetaimia's evidence, which I accept, was that Mr Risbey suggested that the company should be owned by Mr Hitt until the purchase price for the property had been paid and, once that had happened, the shares in the company would then be transferred to Mrs Fetaimia. Mr Risbey provided a few suggested names for companies. Mrs Fetaimia chose Dondore Inc, as the name of the company that would own the property, which she then told Mr Hitt.

86.

In mid-July 2018 Mr Fetaimia introduced Mr Hitt to Mr Philip Saunders (" **Mr Saunders** "), who was a partner in a firm of solicitors known as Saunders Bearman. Mr Fetaimia knew Mr Saunders because in 2008 Saunders Bearman acted for Link Aviation LLC (" **Link Aviation** "). Mr Saunders was then jointly instructed by Mr Hitt and Mr Fetaimia in relation to the transfer of the property to an off-shore company, and Mr Hitt paid Mr Saunders for the work that he did. The fact that Mr Hitt, together with the defendants, were jointly instructing solicitors to give effect to the transaction disposes of the claimants' suggestion that there was no intention to create legal relations, as this was an arrangement between friends. There was plainly an intention to create legal relations between the parties, and that was why solicitors were jointly instructed to give effect to the transaction.

87.
On 25 July 2008 Mr Saunders, by his secretary, sent an email to Mr Saif Durbar, who was an associate of Mr Fetaimia (" **Mr Durbar** "). According to Mr Hitt, Mr Durbar was involved in "international business" and had "done some aviation affairs". He had also been to Burkino Faso, to visit the Minister of Mines. Mr Saunders' email said this:

"Dear Saif,

I refer to the papers you handed to me yesterday. The Declaration of Trust made 24 March 1992 declares that Richard Hitt and Gillian Barnes hold the property in trust absolutely for Richard Hitt and those Trustees will transfer the property as Richard Hitt shall direct. He could of course therefore direct that the property be transferred immediately to the off shore company that Nasa [Mr Fetaimia] could acquire. The object of the exercise is achieved. How do we move to the next step?

Kind regards etc" (underlining added)

88.
It is clear to me that the "object of the exercise" referred to in this email was for Mr Hitt to divest himself of the entirety of his beneficial ownership of the property, by directing the trustees of the property (ie Mr Hitt and Mrs Barnes) to transfer the property to a corporate vehicle, which Mr Fetaimia could acquire. The purchaser of the property would therefore be a company, which would be owned, or become owned, by Mr Fetaimia (or Mrs Fetaimia). The object of the exercise was not for Mr Hitt to transfer his entire beneficial ownership in the property to an off-shore company owned by him, or to be acquired by him. Mr Saunders' email to Mr Durbar is, of course, based on the joint instructions given to him by Mr Hitt and Mr Fetaimia, and therefore reflect what had been agreed between Mr Hitt and the defendants. However, Mrs Fetaimia's evidence was that the shares in the off-shore company were going to be registered in her name, as she was "the owner of all of [Mr Fetaimia's] assets", including his aircraft.

89.
Further, Mr Fetaimia must have given the papers to Mr Durbar, including the Declaration of Trust which was a document executed by Mr Hitt and Mrs Barnes, so that he could give them to Mr Saunders, who, by then, was instructed to give effect to the transaction.

90.
On 28 July 2008 Mr Saunders, by his secretary, sent an email to Mr Risbey entitled "Mr Richard Hitt, Flat 5A Albert Court". The purpose of this email was to introduce Mr Hitt to Mr Risbey and said this:

"I want to introduce to you a Mr Richard Hitt who wishes to acquire a BVI company from you. I have certified his passport and utility bill. He will take Dondore Inc. The company is being employed to take

the legal estate in 5A Albert Court, Prince Consort Road, London, SW7 2BH which is held on a lease for a term of 125 years from the 25th March 1976. Can you please let me have a copy of the Certificate of Incorporation…"

91.
On 30 July 2008 Mr Hitt and Mrs Barnes executed the TR1 thereby transferring the registered title in the property to Dondore Inc (" **the Transfer** "). On 1 August 2008 Dondore Inc was registered with HM Land Registry as the proprietor of the property. Mr Saunders informed Mr Hitt of this by email on 4 August 2018, and also that:

"the company employed on your behalf is Dondore Incorporated and its registered office is at Akara Building, 24 de Castro Street, Road Town, Tortola, British Virgin Islands. However, the administrative office is at Baarerstrasse 10, 6300 Zug, Switzerland. I also attach an email I sent to David Risbey of FCI in Zug from whom the company has been acquired and who will administer it for you. I will ask him to correspondence directly by this new email address".

Events after the transfer of property to Dondore Inc on 1 August 2008

92.
On 12 August 2008 Mr Saunders, by his secretary, emailed Mr Durbar in relation to the property and informed him that on 4 August 2008 the registration in the name of Dondore Inc had been completed, and he attached the entries from the Land Registry showing Dondore Inc as the owner of the property.

93.
On 15 August 2008 a Mr James MoManus of Wetherell wrote to Dondore Inc, c/o 94 Mount Street, Mayfair, and also to Mr Fetaimia of Kruger Brent UK Ltd, also of 94 Mount Street. The letter provided "marketing advice prior to a possible sale" of the property, but was not a formal valuation. The property had not been inspected by Wetherell but, on the assumption it was "in fair condition, approximately 1,000 square feet, on the Lower Ground Floor, and has a 900 year lease and a share of freehold", the recommendation was for "an asking price of £900,000 with a view to settle at a price of £850,000 upwards". Therefore, looking at the date of this document, it appears that the revised price for the property of £900,000 was not agreed until after the property had been transferred to Dondore Inc. The agreement in relation to the new price of £900,000 was reached as a result of various lengthy discussions between Mr Hitt and Mr Fetaimia. Mr Hitt had wanted to re-negotiate the price as the property was worth a lot more in 2008, than it was in 2005, and I accept Mr Fetaimia's evidence in this regard. Mrs Fetaimia was not involved in these discussions or negotiations.

94.
I also accept Mr Fetaimia's evidence that it was agreed with Mr Hitt that, when he had paid Mr Hitt for the property, the shares in Dondore Inc would be transferred to Mrs Fetaimia. However, Mr Hitt was happy to wait for payment until Mr Fetaimia had "the liquidity" to pay for the property. Further, it is clear that Mr Fetaimia understood that the shares in Dondore Inc would not be transferred to Mrs Fetaimia until Mr Hitt had been paid the purchase price in full. Mr Hitt and Mr Fetaimia both signed a hand-written note prepared by Mr Hitt to confirm this agreement. I accept Mr Fetaimia's evidence that Mr Hitt wanted this document signed, as he told Mr Fetaimia he needed it to show to his lawyer in France, in the context of his divorce from Ms Laroche.

95.
On 15 September 2008 Mr Saunders emailed Mr Risbey in relation to Mr Hitt, and attached a number of documents relating to Mr Hitt and the property. The email concluded by Mr Saunders informing Mr

Risbey that “this property is presently where Nasser [Mr Fetaimia] lives. I am not entirely sure of the set up.” This is an email that the claimants’ relied on to support their case that there was no agreement between the parties. However, it does not help them. This is because (i) in the context of the other emails set out above, it is clear that the property was transferred to Dondore Inc, pursuant to the agreement made between Mrs Fetaimia and Mr Hitt; and (ii) in this email the point Mr Saunders is making is that he was not sure of the “set up” in terms of occupation of the property.

96.
On 8 January 2009 Mr Saunders emailed Mr Hitt asking for a copy of the lease in respect of the property, as he had received a letter from landlord’s solicitors and a formal notice of assignment was required. The email recorded that Mr Saunders’ “brief of course was simply to transfer title in the property out of joint names into your name solely”.

97.
By a letter dated 9 January 2009 HM Revenue & Customs sent a standard form letter to “The Occupier” of the property requesting a return of rent for the year ended 5 April 2008. The letter identified that the information requested was required by Section 19(1)(a) and (b) of the Taxes Management Act 1970. This form was completed by Mrs Fetaimia and she signed the declaration on front that to the best of her knowledge and belief the particulars given on the form are correct and complete. She stated that she was an interpreter and her business address was the property. Section B of the form was only to be completed by the occupier of the property, if the occupier is not the owner of the property. Mrs Fetaimia identified that she was the occupier and Dondore Inc was identified as the landlord, and its address in the BVI was provided. Question 4 in section B was this: “If the rent is not paid direct to the landlord given the name and address of the agent or person to whom the rent is paid.” The answer provided by Mrs Fetaimia was that “no rent has been paid because I have a pre-purchase agreement”. That document was, of course, prepared and signed by Mrs Fetaimia more than six years before this dispute arose. The basis on which Mrs Fetaimia has explained she is in occupation of the property is, of course, entirely consistent with the agreement that the defendants had reached with Mr Hitt, that she would be purchasing the property, and I accept its contents are true.

2009: Incorporation of Dondore Inc

98.
On 29 January 2009 Mr Fetaimia sent an email to an address in the BVI asking for “document verification” in respect of Dondore Inc. By 23 March 2009 Mr Hitt was chasing Mossack Fonseca & Co BVI Ltd (“ **Mossack** ”) for an invoice in respect of annual fees for “your services and any correspondence related corporation updates to [the property]”. By April 2009 Mr Hitt was aware that Dondore Inc had not in fact been incorporated, and he sent a letter to Mr Hernandez of Mossack stating that he would like to form a BVI company in the name of Dondore Inc. By an email dated 9 June 2009 Mossack informed Mr Hitt that “I have the pleasure of confirming [to] you that Dondore Incorporation (sic) is available and has been approved until 23 June 2009”.

99.
On 16 June 2009 Dondore Inc was incorporated in the British Virgin Islands as a BVI Business Company. The first meeting of the Board of Directors took place on 26 June 2009 in Lisbon, Portugal and, as a result of the resolutions passed, Mr Hitt became the sole director of Dondore Inc and the entire share capital was transferred to him. On the same day Mr Hitt was registered as the proprietor of 50,000 fully paid shares of par value of US$1 in Dondore Inc.

100.
On 27 September 2010 Mr Fetaimia emailed Mr Hitt enclosing a copy of the entries from HM Land Registry in respect of the property which had been updated with an address for Dondore Inc at the property, together with Mr Hitt's email address (richardhitt@ymail.com). Mr Fetaimia also said to Mr Hitt: "let me know if you want me to contact Stiles to change the management contract name to Dondore".

2006-2011: Link Aviation and Omnijet

101.
Mr Fetaimia was the managing director of a company called Link Aviation, which is an American company. Mrs Fetaimia, according to her evidence, was also a director of Link Aviation, and its sole shareholder. It was through this company that Mr Fetaimia operated his business of leasing aircraft. In 2006 Link Aviation acquired a "Falcon 900" (" **the Falcon** ") and, by 2011, Link Aviation owned another aircraft, known as a Challenger.

102.
In 2008 Mr Fetaimia met Mr Payne. In September 2010 Mr Payne became the sole director of Omnijet. Mr Payne and Mr Fetaimia have, since then, "conducted numerous business transactions" together. Omnijet was responsible for managing and chartering the Falcon from London Biggin Hill Airport. Mr Payne's evidence was that he would collect the money from the charters and account to Mr Fetaimia for the net balance of that money. The income that could be generated from the Falcon was substantial.

103.
Mr Payne's relationship with the Tata Group began in 2010 when they commissioned him to purchase a Gulf Stream 4SP aircraft for them. He then started looking after and managing this aircraft.

104.
Mr Fetaimia is very well connected in West Africa. This was clear from Mr Payne's evidence, which I accept. Mr Payne said that he "knew of [Mr Fetaimia's] influence and his ability to open doors for people in Africa" and, when asked what that meant, Mr Payne explained: "… [Mr Fetaimia] could put you in front of very senior government officials at very short notice, if the potential was there for investment in that country, and which he actually proved he could do".

105.
At the start of 2011 Mr Fetaimia was looking for someone to finance his business interests in Africa, and Mr Payne was aware of this. It was in this context that Mr Payne introduced Mr Fetaimia to Mr Sanghvi Senior. In March 2011 Mr Payne and Mr Sanghvi Senior were in Accra, Ghana. Mr Sanghvi Senior was "flying the Tata [Group] flag in a big way out there". Mr Fetaimia flew in to meet them and, before long, Mr Fetaimia and Mr Sanghvi Senior were talking about an aluminium smelting project and "huge operations" beyond anything Mr Payne had been involved in. Then, within two days of Mr Fetaimia's arrival in Accra, Mr Fetaimia had arranged a meeting between the President of Ghana and Mr Sanghvi Senior. This lead to Mr Sanghvi Senior and Mr Payne setting up a new company in Ghana called Omnijet Euro Limited (" **Omnijet Euro** "), which had sterling, Ghanaian cedi and US dollar accounts. Mr Payne explained that, in relation to these accounts, they were set up under the instructions of Mr Sanghvi Senior, and then continued as follows:

"I was grateful to be involved in, you know, in whatever small way in what they were doing out there, and I was asked by the powers that be in that organisation if I would – I am an expatriate … I was

brought up in Africa, although I was born in the UK we moved there when I was two years old so I have a working knowledge of the region quite well, so I was asked to go along and shepherd [Mr Sanghvi Senior] and help him, really, to set up opportunities there, knowing that I had Mr Fetaimia as a large piece of ammunition to try and open up opportunities for him which we did."

106.
Thereafter Mr Payne and Mr Sanghvi Senior spent two years together in Africa. They became very close friends and Mr Payne said they were "almost attached at the hip for nearly two years". I accept Mr Payne's evidence that Mr Sanghvi Senior speaks English and Hindi. He does not speak French. Mr Sanghvi Senior reported to Mr Dilip Thacker, who was based in Mumbai and the representative of Shapoorji Pallonji.

WMS

107.
WMS is a company which was incorporated in the Seychelles, and has a bank account in Hong Kong. I do not know who the shareholders in WMS are, and there was no evidence about this. Mr Bhoumick Sanghvi (" **Mr Bhoumick Sanghvi** "), is a director of WMS. Mr Bhoumick Sanghvi is an accountant, and he is also the son of Mr Sanghvi Senior.

108.
However, the "boss" of WMS is Mr Dilip Thacker. Mr Fetaimia's evidence, which I accept was:

"Mr Dilip is the boss, is the number one – how should I put this – is the boss of WMS. Is the boss of Hemant Sanghvi [Mr Sanghvi Senior]. He is the one I negotiate with. Hemant, just the front. Mr Dilip is the one who makes the decision, who decides where to invest in, where to buy, where not to buy, and Mr Dilip used my aircraft. 95% of the users of my aircraft was by Mr Dilip and his family… He is based in Mumbai …".

109.
WMS is, according to Mr Payne, "a Tata company affiliated to another company called Shapoorji Pallonji, who agreed to finance Mr Fetaimia's operations in Africa which included various investments and also enter (sic) into joint ventures with Mr Fetaimia in a number of business transactions for his company and its affiliates."

110.
In any event, the introduction of Mr Fetaimia to Mr Sanghvi Senior led to Mr Fetaimia suggesting that companies within the Tata Group should charter aircraft from Omnijet. The aircraft chartered was Link Aviation's Challenger. This aircraft had a range of 3,500 miles and could therefore travel from Europe "well into Africa without stopping". The Challenger would be chartered for 400 to 500 hours a year, at a rate of US$8,000 to US$10,000. Omnijet were then, as with the Falcon, responsible for managing the aircraft by providing crew, flight planning and maintenance, and collecting the charter fees due in respect of the use of the aircraft, which were paid into Omnijet's dollar client account, or the account of Omnijet Euro. Omnijet charged a management fee for this service of about US$15,000 per month, and Link Aviation would be invoiced in respect of this by Omnijet. These arrangements were not recorded in writing. This was because Mr Dilip Thacker and Mr Sanghvi Senior told Mr Payne that they would not enter into a written agreement with Omnijet. Mr Payne accepted this at the start of their business relationship, and that was how it proceeded thereafter.

111.

In June 2011 Mr Fetaimia was appointed as a non-executive director of Omnijet, as a result of the "considerable additional business" that he had introduced to the company. Further, according to the evidence in Mr Payne's witness statement:

"[6.] Omnijet would pay Mr Fetaimia his fees as a non-executive director and also for the charter of his aircraft . Omnijet would also, often, pay WMS via bank transfers for the benefit of Mr Fetaimia. I can confirm that during the year 2011 Omnijet transferred in excess of US$3 million to various bank accounts on the assigned (sic) by Mr. Fetaimia." (underlining added)

112.
In cross-examination Mr Payne explained that the reference to "his aircraft" was to Link Aviation's aircraft. In terms of how payments were made to Omnijet, Mr Payne said that there were aircraft accounts specific to a particular aeroplane, so accounts were prepared for Link Aviation's Challenger aircraft. Those accounts for each aircraft contained a complete record of all the expenses had been paid, all the income that had been received, together with "what we had been instructed to send back out again and the balance thereof". Mr Payne then explained that, in respect of WMS, it has started out as Omnijet's jet fuel company, and then it "asked if we would make – start to make payments to Hong Kong and we said yes we would, no problem, and that is how it started, and then it escalated from there".

113.
As to the sum of US$3 million, that money was all derived from the operation of the Challenger aircraft until July 2011, when the aircraft was taken. However, the money was paid out of the Omnijet client account, and also the Omnijet Euro account. In cross-examination Mr Payne accepted that, in the usual course, the charterer would account to Link Aviation, as the aircraft owner, in respect of the net proceeds of the charters. However, that would not be the position if the charterer was instructed otherwise, and that was what happened here. Omnijet never paid Link Aviation any money. This was because, on the instructions of Mr Fetaimia, the money went from Omnijet (and Omnijet Euro) either to WMS in Hong Kong or to Mr Fetaimia or Mrs Fetaimia. These payments were recorded in the aircraft accounts. Mr Payne did not keep a record of the purpose of the payments made on the instructions of Mr Fetaimia. He said he could not do so, as it was not his money and it was not for him to ask. Mr Payne's evidence was that the first payment made by Omnijet to WMS on behalf of Mr Fetaimia was in March 2011, and I accept this evidence.

2010 and 2011: Establishment of, and trading by, WAGL

114.
From 2005 Mr Hitt and Mr Fetaimia regularly talked about developing business interests beyond the aircraft industry, which included discussions about becoming involved in gold trading in Africa. These conversations took place in London, Paris and Burkino Faso, and over time Mr Fetaimia acquired a very detailed knowledge of gold trading and the gold market.

115.
In any event, on 24 February 2010 WAGL, was incorporated by Mr Hitt in Burkino Faso. Mr Hitt is the only shareholder and director of WAGL. WAGL did not, according to Mr Hitt, have any "official employees". This company did not start trading until 2011. I accept Mr Fetaimia's evidence that WAGL only started trading when he "started sending money to Mr Hitt's companies, though WMS" and that it was on Mr Fetaimia's direction that WMS transferred money to WAGL.

116.

Mr Hitt also had another company called Mantanya Limited (" **Mantanya** "), in which he had a business partner called Mr Omar Traore (" **Mr Traore** "). Mr Traore was a shareholder in Mantanya. Mr Fetaimia's evidence, which I accept, is that Mr Hitt and Mr Troare were, in addition to gold trading, doing other business, such as meat exportation, dealing in seafood and so on. However, these business interests did not come to fruition and they asked Mr Fetaimia "for money to help them invest in other companies, also some of the money was supposed to go to gold, but never has been" and it is this complaint which forms the basis of the defendants' counterclaim.

117.
On 20 April 2011 Mr Hitt sent Mr Fetaimia by email two documents relating to WAGL. First, a "Certificat D'Immatriulaton", which was WAGL's Certificate of Incorporation. Second, WAGL's bank account details at Coris Bank International in Ouagadougou. The last four digits of the bank account were 4101. I accept Mr Fetaimia's evidence that Mr Hitt assured him, that he was the only signatory on WAGL's bank account. The reason Mr Hitt provided WAGL's bank account details to Mr Fetaimia was so that Mr Fetaimia could arrange for payments to be made to WAGL. I accept Mr Fetaimia's evidence that Mr Hitt was fully aware that Mr Sanghvi and Mr Bhoumick Sanghvi (who he referred to as "the Indians") were sending money to WAGL on his behalf, as Mr Hitt provided Mr Fetaimia with the bank details of WAGL, Mantanya and La Routiere.

2011: Transfers from WMS to WAGL

118.
In relation to the payments made thereafter by WMS to WAGL, Mr Fetaimia's first witness statement dated 6 December 2016 says this:

"[17.] From July 2011 to October 2011 [I] arranged for 3 payments to be made to Mr Hitt's African company, [WAGL] through [WMS] with whom I was involved in various businesses. The payments made were - £180,000 (Euro 207,682) on 25 July 2011, £430,000 (Euro 492,350) on 27 July 2011 and £330,000 (Euro 381,000) on 19 October 2011, making a total of £940,000. Although the purchase price agreed was £900,000, I paid an extra £40,000 on account towards domiciliary fees, ongoing service charges and council tax as Mr Hitt wanted some time to arrange the transfer of the shares in [Dondore Inc] to my wife because of his ongoing divorce in 2011. I made various other payments to Mr Hitt as set out in the list of transfers [MNF1/8]. It will be noted that apart from the payments for the purchase of the Property (£940,000) I made further payments of £932,000 for business purposes which I seek the return of as set out in my counterclaim."

119.
The list of transfers referred to is the Defendants' Schedule of Payments (see paragraph 13 above). Mr Fetaimia explained in his oral evidence that this document:

"has come from my wire transfer records which are emails – mostly I – because since my file disappeared, I had to go and research all my emails to Mr Hitt, because every time I sent a wire to him, I forwarded to him – I forward to him a copy of the wire, as per my emails, so I reconstructed all the payments myself with the help of my wife, and then I confirmed this with Mr Bhourmick Sanghvi."

The reference to the file disappearing was to Mr Fetaimia's case that Mr Hitt took documents from the property in September 2015, which I accept for the reasons set out below.

120.
Further, later in the course of Mr Fetaimia's evidence he said this:

“Let me – just before we go any further, my Lady asked me how did I come up with this list. I told you earlier I referred to my old emails to reconstruct these payments, okay, because Mr Hitt removed all the originals from my place, so whatever – I disclosed every document from him, from WMS, and I reconstructed the wire transfer to Richard Hitt, okay? I never said I was an accountant, so whatever you see in here, it matches what I have found through my emails, going through my emails five years back.”

121.
The Defendants’ Schedule of Payments lists, in addition to the payments which Mr Fetaimia says relate to Dondore Inc, eight payments, and the purpose of each payment was explained by Mr Fetaimia in his oral evidence. These payments were all transfers made from the bank account of WMS. The eight payments, which form the basis of the defendants’ counterclaim, are as follows:

a.
28 June 2011 : USD 138,000. Payee : Matanya. Purpose : To buy refrigerated truck.

b.
23 July 2011 : USD 300,000. Payee : WAGL. Purpose : Gold deal.

c.
11 August 2011 : EUR 225,000. Payee : La Routiere. Purpose : Gold deal.

d.
19 August 2011 : USD 20,000. Payee : Matanya. Purpose : Meat or Food Transaction.

e.
2 September 2011 : EUR 225,000. Payee : WAGL. Purpose : Gold deal.

f.
30 September 2011 : USD 100,000. Payee : Matanya. Purpose : Meat or Food Transaction.

g.
19 October 2011 : EUR 38,200. Payee : Matanya. Purpose : Meat or Food Transaction.

h.
19 October 2011 : EUR 76,800. Payee : Matanya. Purpose : Meat or Food Transaction.

122.
It is the defendants’ case that these eight payments, which total £932,000 in sterling, were sent to WAGL, La Routiere and Mantanya by WMS on behalf of Mr Fetaimia for business purposes, including to purchase gold for trading purposes. The defendants say that Mr Hitt failed to purchase the gold and/or to account to Mr Fetaimia for what has happened to the money, and Mr Fetaimia is entitled to have it returned. However, none of the payments were made personally by Mr Fetaimia or indeed Mrs Fetaimia.

The first payment: 23 July 2011

123.
On 23 July 2011 Mr Bhoumick Sanghvi emailed Mr Fetaimia to inform him that: “Please be advised that we have today instructed our Bank remit USD300,000 in equivalent Euros to West African Gold SARL’s Account with Coris Bank International”. I accept Mr Fetaimia’s evidence that he instructed Mr

Bhoumick Sanghvi to transfer the money from WMS to WAGL, and Mr Bhoumick Sanghvi did what he was asked. The reason for the payment is not explained in the telegraphic transfer application form.

124.
Then, two days' later, on 25 July 2011 Mr Bhoumick Sanghvi emailed Mr Fetaimia to inform him that "Please be advised that our bankers have effected transfer of USD 300,000/- equivalent to Euro's 207,682.25 (Ex Rate 1 Euro = USD 1.4445144) to West African Gold SARL account with CORIS Bank International value dated 25/07/2011. Please find swift copy attached. Kindly confirm safe receipt of funds your end". This money was received into WAGL's bank account on 28 July 2011.

125.
This payment of USD300,000 is in fact the same as the second payment on the Defendants' Schedule of Payments, which Mr Fetaimia said in cross-examination related to gold payments. Mr Fetaimia was criticised for this in the course of his evidence, as he had identified that the third payment in the Defendants' Schedule of Payments related to the payment for the shares in Dondore Inc, yet the two payments were one and the same. It seems to me that Mr Fetaimia made a mistake in drawing up the Defendants' Schedule of Payments. Mr Fetaimia drew the schedule up reconstructing information from his emails, and he did so more than 5 years after the payments were made. There was only one payment of USD300,000 and, taken together with the contents of the Payment Certificate, I am satisfied that it related to Dondore Inc, and I accept Mr Fetaimia's evidence in this regard.

The second payment: 27 July 2011

126.
On 27 July 2011 Mr Bhoumick Sanghvi on behalf of WMS instructed its bank to transfer Euro 492,350 to WAGL's account at Coris Bank International. The reason for the transfer is not explained in the telegraphic transfer form. I accept Mr Fetaimia's evidence that he instructed Mr Bhoumick Sanghvi to transfer the money from WMS to WAGL, and Mr Bhoumick Sanghvi did what he was asked. The money was received into WAGL's account on 28 July 2011.

127.
On 2 September 2011 Mr Bhoumick Sanghvi emailed Mr Sanghvi Senior (email addresses – Alpineship-VSNL and Alpineship-Hotmail) and Mr Fetaimia stating: "Please be informed that we today instructed TT transfer of Euro 225,000/- to West African Gold Limited SARL with all bank changes for remittance to brone (sic) by us. Routing is HSBC HK to HSBC London to Societe General, Paris to Coris Bank international which is same as per previous 2 remittances…". The reference to the previous two payments, were the payments on 25 July 2011 and 27 July 2011. In cross-examination Mr Fetaimia was asked how this payment could relate to gold trading, when the first two payments related to Dondore Inc. His evidence, which I accept, was that Mr Bhoumick Sanghvi did not know the purpose of the payments that WMS made to WAGL and explained that:

"He has no idea, Mr Bhoumick, what the money was going to be used for, either the flat or I was giving this money to charity. All he wanted to do is pay his bills. There is no reference, and also, offshore, I don't know whether if you are familiar with taxes and offshore, there is no references. Bank references, they have been – they came in, in fact, even in this country, not until two years ago. Before that references were not required on bank. I never put in my -- you know, they were not required as they are now. In Hong Kong, doesn't have regulation or rule whereby you have to put a reference on the shipment, but knowing Bhoumick, knowing his character, you know, Bhoumick manages 550 ships. He has almost US$10 million in and out of his bank account every hour. His last thing in his mind, okay, is 300 or 400,000 he is wiring me."

The third payment: 19 October 2011

128.
On 12 October 2011 Mr Fetaimia emailed Mr Bhoumick Sanghvi and said this: “Further to our conversation with Mr Dillip and your dad, I’m sending you the breakup for the transfers whenever the funds are sent to you from Mumbai”. I accept Mr Fetaimia’s evidence that, in this email, he was giving Mr Bhoumick Sanghvi instructions in relation to the transfers to be made by WMS, once funds were received by WMS from Mumbai. I accept Mr Fetaimia’s evidence that the funds which was being transferred to WMS from Mumbai was money that was owed to him (or perhaps more accurately to Link Aviation) by the Tata Group, Shapoorji Pallonji or Mr Dilip Thacker.

129.
Then, on the 17 October 2011, Mr Fetaimia sent Mr Bhoumick Sanghvi “all the bank’s details and the amounts for tomorrow morning wire transfers”. By an email dated 19 October 2011 Mr Bhoumick Sanghvi informed Mr Fetaimia that WMS’s bank had been instructed to transfer Euro 381,000 to WAGL’s bank account. The telegraphic transfer does not identify the reason for the transfer. This money was received into WAGL’s bank account on 4 November 2011.

130.
The transfer was confirmed in a letter of the same date from WMS to Mr Fetaimia which said:

“Please be advised that we have effected TT transfer of Euro 381,000 value today 19/10/2011 to “West African Gold Limited SARL” for credit to their account with CORIS BANK INTERNATIONAL Burkina, based on the information from the previous TT wire transfers you provided to us for the Dondore Incorporated BVI…” (underlining added).

131.
The letter is signed by Mr Bhoumick Sanghvi, and is stamped with a WMS seal. Given Mr Fetaimia’s evidence was that Mr Bhoumick Sanghvi did not know the purpose of the payments made by WMS to WAGL, it might be thought unusual that Dondore Inc is mentioned in this letter. However, there was no suggestion, let alone evidence, that this letter might be a forgery, and I accept it is a genuine document. This letter is obviously an important document as it refers to “the previous TT wire transfers [Mr Fetaimia] provided to [WMS] for the Dondore [Inc] …”. That, of course, corresponds with Mr Fetaimia’s evidence that before 19 October 2011 there had been earlier transfers of money from WMS to WAGL in respect of Dondore Inc. I accept Mr Fetaimia’s evidence that those transfers were the two payments which were made on 23 July 2011 and 25 July 2011.

132.
The purchase price for the property was therefore paid in full on 19 October 2011. Having completed payment of the purchase price, the defendants then arranged to send Mr Hitt’s furniture to his home in Paris. This included a double bed, cabinet, 4 bed tables, an oval dinner table with 4 chairs, two couches and an arm chairs. The defendants asked Mr Hitt to transfer the shares to Mrs Fetaimia, but he said he was “reorganising his life after the bitter divorce”. They agreed to wait for a while in order for the shares to be transferred to Mrs Fetaimia.

Mr Hitt’s case on the Payment Issue is untrue

133.
Mr Hitt’s case is that the three payments made by WMS and WAGL, totalling 1,081,032 Euros in value, were in fact part of an intended gold transaction in Africa. This, he says, was an entirely

separate business transaction or series of transactions undertaken between WMS and WAGL, and had nothing to do with Dondore Inc.

134.
At the heart of this part of Mr Hitt's case is that WAGL entered into a partnership agreement with WMS for the purchase of gold, and that WMS acted as a financial partner to WAGL "and undertook to provide funds for WAGL to comply with the relevant international rules and regulations for the export of gold". Mr Hitt therefore says that the payments made by WMS to WAGL were in connection with this partnership agreement relating to the trading of gold, and he relies on two versions of a written partnership agreement (which are in French) in support of this contention.

135.
Mr Hitt explained the partnership agreement in these terms in his fifth witness statement:

"[20.] Exhibited at [5-10] [Convention de Partenariat [the Partnership Agreement (1 st Version)] and [11-13] [Convention de Partneariat] are two versions of a Partnership Agreement between [WAGL] and [WMS]. The first version is dated 2011, and signed by myself and Mr Sanghvi [Senior]. The second version is dated 2 June 2011, and is signed by Mr Sanghvi [Senior]. It is a scanned copy that Mr Sanghvi [Senior] sent me by email. He will hold the other counterpart of the agreement, signed by me and which I sent to him by email. The second version of the agreement contained what I regarded to be relatively insignificant amendments, required by Mr Sanghvi [Senior].

[21.] The Partnership Agreement was drafted by WMS, and sets out the basis of the relationship between WMS and [WAGL] ie namely that WMS will provide funds for the export of Gold from Burkino Faso and [WAGL] will use those funds for that purpose. As the agreement contained nothing controversial, I was happy to sign it."

136.
On the evidence I have heard, I am quite sure that there was no partnership between WMS and WAGL, and the versions of the partnership agreement produced by Mr Hitt are not genuine documents. There are a number of reasons for this:

a.
I accept Mr Payne's evidence that Mr Sanghvi Senior never signed any contracts. Mr Payne knew Mr Sanghvi Senior very well, and he gave evidence of two occasions when he had actually seen Mr Sanghvi Senior refuse to sign a contract. Mr Radley was unable to say whether, in his opinion, this was Mr Sanghvi Senior's signature on the Partnership Agreement (1st Version). In the light of Mr Payne's evidence, I am satisfied that the two versions of the partnership agreements in the bundle, were not signed by Mr Sanghvi.

b.
It is unbelievable that WMS would have drafted the written contract, let alone one written in French. This is because, according to the evidence, WMS did not enter into written contracts.

c.
It does not make any sense for the partnership agreement to be written in French. Mr Sanghvi Senior did not speak or read French, and French was not Mr Hitt's first language (although he said he could read French better than he could speak it).

d.

The terms of the partnership agreement do not make any sense. There is an English translation in the papers, and what is striking is that Article 4 provides that "[WAGL] undertakes to reimburse [WMS] for all the funds made available to it". That is a bizarre provision to include in a partnership agreement, and Mr Hitt was unable to explain it in cross-examination. He was also unable to provide any satisfactory explanation of the "research phase" said to be the first phase of the partnership agreement under Article 1.

e.
I do not understand, and Mr Hitt was unable to explain, why there were two versions of the partnership agreement, one which was undated and one which was dated 2 June 2011. This version, dated 2 June 2011, was not considered in the expert reports as it was only disclosed by Mr Hitt after the expert reports had been prepared.

f.
On 26 September 2017 Mr Fetaimia sent Mr Sanghvi Senior the partnership agreements and, amongst other things, Mr Fetaimia asked him to provide a witness statement setting out his position. Mr Sanghvi Senior responded saying "I have seen your email. I have never done any business with [Mr Hitt]. I don't know anything about partnership with him. I have not sent him any money for any gold business. You asked me to send him your money directly please see our old emails or ask Stuart for Omnijet bank statements." Mr Sanghvi Senior did not give evidence, and this statement is hearsay. However, it is consistent with the other factors identified above which all point to the two versions of the partnership agreement not being genuine documents.

137.
Having reached this conclusion, it seems to me that Mr Hitt's case that the three payments made by WMS and WAGL, totalling 1,081,032 Euros in value, were part of an intended gold transaction in Africa, falls away. Some of the other documents produced by Mr Hitt may be genuine documents relating to gold transactions. However, I am sure they have nothing whatsoever to do with the payments by WMS to WAGL totalling 1,081,032 Euros, which were payments for the shares in Dondore Inc made on the instructions of Mr Fetaimia to WMS at the request of Mr Hitt.

138.
The second reason I do not believe any of Mr Hitt's evidence that the three payments totalling 1,081,032 Euros related to an intended gold transaction is because he did not mention any of these points when he was questioned by Mrs Fetaimia in April 2015. I accept Mrs Fetaimia's evidence about what happened on this occasion, which I shall set out next.

139.
In mid-April 2015 Mr Hitt contacted Mr Fetaimia in order to meet up with him in London. Mr Hitt was in Paris at the time. Mrs Fetaimia took the opportunity to speak to Mr Hitt and expressed her concern that the shares in Dondore Inc had still not been transferred to her, although payment had been made some years earlier. Mr Hitt told Mrs Fetaimia that he was travelling to London in a couple of days, and they all arranged to meet at the property on the afternoon of 20 April 2015. Mrs Fetaimia explained in her evidence that, having caught up with Mr Hitt about his retirement and life in Paris, she asked him if he had resolved his personal problems which he had given as the reason for not transferring the shares in Dondore Inc to her. She told him that she was concerned and annoyed that it had taken such a long time, and Mr Hitt apologised. He again blamed the delay on this personal difficulties. Mrs Fetaimia was not happy with that, but at that stage gave him the benefit of the doubt.

140.

Then, at paragraphs 7 and 8 of her second witness statement dated 31 July 2017, Mrs Fetaimia explained (and again this is evidence I accept):

"[7] I invited Mr Hitt to say for early dinner, which he did. During dinner, I again raised the Dondore [Inc] shares issue and Mr Hitt changed his attitude from being apologetic to being dismissive and shrugged the issue off by saying he was not aware of any money for the shares that had come into any of his various bank accounts. This was a novel excuse. I told Mr Hitt that [Mr Fetaimia's] business partners, Waterfront Marine (WMS) had transferred a lot of money to him on [Mr Fetaimia's] instructions and Mr Hitt claimed that he did not personally deal with WMS who he referred to as the "Indians".

[8] After we finished dinner, [Mr Fetaimia] left the dining room to make a few calls and look after the children. I showed Mr Hitt some of the HSBC bank transfers [p. 513A] of the monies that WMS had sent to Mr Hitt's companies on [Mr Fetaimia's] behalf. He became a little agitated but I retained my composure and started to record our conversation on my iPhone."

141.
Mrs Fetaimia produced a transcript of the conversation she had with Mr Hitt on 20 April 2015. Mr Hitt accepts that the transcript records what was said. It is quite clear that Mrs Fetaimia is asking questions of Mr Hitt. Mr Hitt's evidence that this was a "company investigation" on this part, because he knew "there was malfeasance within my company" was fabrication on his part, and untrue. There are a number of interesting points about what Mr Hitt said to Mrs Fetaimia, which included the following:

a.
Mr Hitt said that he had no idea where the money went. He said he was not "involved with any of these transfers from the Indians to the bank account …". This is untrue as the money was transferred into WAGL's bank account at Mr Hitt's request.

b.
He said that Omar Traore set up a second account for WAGL at the bank using a forged document. Mr Traore then told Mr Fetaimia to transfer "the money to that account and then he [Omar Traore] transferred out of that account", and that he had been deceived by Mr Traore. This was a very different version of what Mr Hitt said happened, to the case he then advanced at trial.

c.
WAGL was solely Mr Hitt. This is correct.

d.
Mr Hitt did not mention that he was in partnership with Mr Sanghvi Senior or WMS.

142.
Mr Hitt was unable to explain in cross-examination why there was no mention of the alleged partnership agreement, or indeed the gold transactions he now seeks to rely on, in the course of his discussions with Mrs Fetaimia in April 2015. The reason is that it is a story that Mr Hitt has since invented, and that is why he did not mention it in 2015.

143.
That is also the reason why there is a very stark difference in relation to what Mr Hitt says about the intended gold transaction in his fourth and fifth witness statements. In his fourth witness statement dated 14 June 2017, Mr Hitt said that, although he was the managing director of WAGL, he was "not

involved in the day-to-day running of [WAGL] as this was in the hands of Mr Omar Traore who arranged the transactions. Aside from the documents I have managed to obtain, I knew nothing of the transactions " (underlining added). However, having said he did not know anything about the transactions, Mr Hitt then produced a detailed explanation of the transactions in his fifth witness statement dated 11 September 2017. His explanation was based on documents produced by a Mr Stefan Yarabanga who, according to Mr Hitt, had been able to "track down further documentation relating to the specific gold transaction to which the Payments relate". Although, at one point in cross-examination Mr Hitt described some documents as having been "made up in Ouagadougou" by Mr Yarabanga. I do not accept Mr Hitt's evidence about the intended gold transaction set out in his fourth and fifth witness statements. Mr Hitt was the sole director of WAGL and it is incredible to have said in his fourth witness statement that he knew nothing of the transactions and then, some four months' later, to provide a detailed critique of the transactions in his witness statement. The correct explanation of these very different accounts, is that they are not true. Otherwise, they simply do not make any sense.

January 2012: The Payment Certificate was given to Mr Fetaimia

144.
I accept Mr Fetaimia's evidence that Mr Hitt asked for the payment of £900,000 in respect of the shares in Dondore Inc to be paid off-shore. Further, it was Mr Hitt who asked Mr Fetaimia to pay the money to WAGL, and that was why Mr Hitt provided him with WAGL's bank details in April 2011. Therefore, when Mr Fetaimia gave instructions to Mr Bhoumick Sanghvi to transfer funds from WMS to WAGL, he was arranging for money to be transferred to Mr Hitt, and that is how Mr Hitt was paid, and the consideration due in respect of the shares in Dondore Inc paid. It was not necessary for him to know what WAGL, or indeed Mr Hitt, would be doing with the money, once it had been received into WAGL's bank account.

145.
It is Mr Fetaimia's evidence that on or about 7 January 2012, whilst he was with Mr Hitt in Ouagadougou, Mr Hitt gave him an original certificate to confirm that he had received the money for the shares in Dondore Inc. This document has been defined above as the Payment Certificate.

146.
The Payment Certificate was on paper headed "West African Gold Limited", and read as follows:

"CERTIFICATE

I, Richard W. HITT holder of passport No D1009277 issued on 23 February 2007 in Ouagdougou, Burkino Faso.

Certify having received on 19 th October 2011 from Nacer Marcel FETAIMIA passport No 01568547 issued in Warsaw, Poland a monetary value and the last instalment totalling [Euro] 1,081.032 in reference to Dondore Incorporated.

In witness whereof. I issued this certificate to serve and to assert that right.

Ouagadougou, the 7 th January 2012

Richard W. HITT "

147.

The Payment Certificate is then stamped with a circular seal, which says “West African Gold Ltd.” around the circumference. The words “Director General” appear in the centre of the seal. There are a number of dots above the words “Richard W. HITT”. However, it is not possible to see a signature on this part of the document (which is where one would expect to see a signature).

148.
Mr Hitt’s case is that the Payment Certificate is a forgery, and he never gave the original document to Mr Fetaimia in Ouagadougou in or about 7 January 2012. In support of this, Mr Hitt maintains that the Payment Certificate was not written on the correct version of WAGL’s headed notepaper, and has been stamped with the wrong company seal. Mr Hitt also relies on the expert evidence of Mr Browne. Mr Browne makes a number of points about this document:

a.
The Payment Certificate is a copy document. It was prepared using a computer driven word-processing system. The left margin is clearly set; although the signature block (the underlined Richard W. HITT) has been typed to the left of that margin by approximately 1.5mm. The significance of this, as Mr Browne explained in his oral evidence, is that it could mean “the document has been through the printer twice”. This is because the printed text is usually aligned on the left hand margin, and there will be a reason why that part of the text is mis-aligned. However, as Mr Browne accepted, this assumes that all the text was properly aligned on the left-hand side in the first place and, in this case, it is not known how the original Payment Certificate was first produced.

b.
The signature - purportedly Mr Hitt’s - is barely identifiable. However, Mr Browne tracked a line connecting the dots, which were visible, and the result appears to be similar to Mr Hitt’s signature. However, in his oral evidence, Mr Browne explained that if the document was actually signed by Mr Hitt, then he did not see how it could have faded, without affecting the rest of the document.

c.
The stamp on the Payment Certificate has poor lettering and “irreconcilable application pressures”. These are evidence that the stamp or endorsement are not genuine. However, Mr Browne also explains in his report that from a copy of the Payment Certificate “it is not possible to establish exactly how it was produced”.

149.
Mr Fetamia’s evidence is that Mr Hitt gave him this certificate in January 2012 in Burkino Faso. He said he was in Burkino Faso for all of January 2012, and Mr Hitt gave it to him when he came to have dinner with him. He could not remember the exact date but it was around 7 January 2012. Further, Mr Hitt accepted, although his flight log showed he was flying in Burking Faso on 7 January 2012, that did not preclude him from having signed the Payment Certificate.

150.
I have concluded that Mr Hitt did give Mr Fetaimia the original Payment Certificate in Burkino Faso on or around 7 January 2012. This is because I accept Mr Fetaimia’s evidence that that is what happened. I reject Mr Hitt’s allegation that the Payment Certificate is not written on note paper that he was using as a director of WAGL in 2011 or 2012. That is because there are other examples of documents in the bundles with the same heading, signed by Mr Hitt (eg the Procuration dated 16 May 2011). I accept that there are a number of peculiarities about the Payment Certificate that Mr Browne has identified in his evidence. However, there is no evidence as to how the Payment Certificate was actually produced. In these circumstances, the Payment Certificate must have contained all those

peculiarities, when it was given by Mr Hitt to Mr Fetaimia on or about 7 January 2012. Further, by giving Mr Fetaimia the Payment Certificate, Mr Hitt confirmed that he had received payment in full in respect of his shares in Dondore Inc. There was no more money to be paid to him by the defendants.

151.
Mr Fetaimia says that, once he received the Payment Certificate, he took copies of it. He kept the original at the property, and the copies were kept in his office in Accra, Ghana. I accept that the original Payment Certificate was one of the documents that went missing when Mr Hitt was at the property in September 2015. It was for that reason that only a copy of the document was available at trial.

2013: Mr Hitt makes contact with Mr Saunders

152.
From about 2013 to May 2015 Mr Fetaimia was in Africa. In 2013, shortly after Mr Fetaimia had left for Africa, Mrs Fetaimia became anxious that the shares had not been transferred to her, and she started chasing Mr Hitt. Mr Hitt always made excuses, but he always assured Mr Fetaimia that he would arrange a transfer of the shares to Mrs Fetaimia. Mr Fetaimia continued to do business with Mr Hitt, and had a very good relationship with him. He accepted the assurances Mr Hitt gave him. Interestingly, on 10 May 2013 Mr Saunders emailed Mr Risbey the following message in relation to "Dondore Incorporated 5A Albert Court":

"In or about August/September of 2008, I introduced you to one Richard Hitt (this was indirectly through Saif) who took Dondore Incorporated from you. Could you look into your records and let me know whatever happened. He has now come back to me as he wants me to sort something out for him. He is in fact nothing to do with Saif not Fatamia (sic). I would really like to know what happened."

153.
It is possible that, in May 2013, Mr Hitt got back in touch with Mr Saunders in order to sort out the transfer of the shares in Dondore Inc. However, Mr Hitt was not asked about this, so I do not know what it was that Mr Hitt wanted Mr Saunders to sort out for him, but it seems to me that it may well have been to transfer the shares in Dondore Inc to Mrs Fetaimia.

2014: Mrs Fetaimia's insurance claim

154.
In January 2014 there was a leak at the property. The defendants made an insurance claim in respect of damage to the property, and also to their carpet, bath and personal belongings. On 3 April 2014 Mr Murray the Building Manager at Albert Court agreed to pay "the owner of the flat", Mr Hitt, £15,700 to settle the insurance claim made in respect of the property, and the money was sent to Mr Hitt, which he has kept. The claimants' defence maintains that Mr Hitt was entitled to this payment, as the nominee of Dondore Inc. However, given that the shares in Dondore Inc were paid for by the defendants in 2011, and it was their items that were damaged, there is no basis for Mr Hitt to keep the money for himself. He must account to the defendants for £15,700 and pay them this sum, together with interest thereon.

July 2015: The parties fall out

155.
In July 2015 Mr Hitt, with the permission of Mr Fetaimia, stayed at the property. Mrs Fetaimia's evidence was that he slept on a folding bed in the room where the defendants kept their documents.

On the last day of his stay, she returned home and she found him going through the defendants' documents. She started videoing him on her phone, and he then left. Mrs Fetaimia believed that he took some documents with him. However, she could not tell what documents he had taken with him. It was at that point that Mrs Fetaimia's told Mr Fetaimia that Mr Hitt should never be allowed in the property again.

September 2015: Mr Hitt in the property unannounced

156.
On 19 September 2015 Mr Fetaimia was in Lithuania. Mrs Fetaimia telephoned him and told him that, when she arrived home after a hospital appointment, and found that someone had been in the property and had been through their belongings and papers, as a couple of confidential files had been left open on the desk in the room where they kept their computer. Mr Fetaimia said he recalled Mrs Fetaimia telling him that "someone had vandalised our flat". He advised her to contact the police, which she did.

157.
It turned out that it was Mr Hitt who had been in the property. This was because a couple of hours later Mrs Fetaimia telephoned her husband again to say that Mr Hitt was trying to get into the property. However, he was unable to do so as Mrs Fetaimia had bolted the door. Mrs Fetaimia contacted the police again and a PC Brooks then attended the property. PC Brooks did not let Mr Hitt into the property. Rather, PC Brookes entered the flat, and looked around for items which belonged to Mr Hitt. The only item he found was a small carry-on suitcase, which was returned to Mr Hitt there and then. There were no other belongings of Mr Hitt left in the property and, on 21 September 2015, Mrs Fetaimia sent at email to Mr Hitt's solicitors informing them of this.

158.
Mr Fetaimia said that, a couple of hours after that, Mrs Fetaimia telephoned a third time, and said that some of her papers were missing including some bills for the property, together with important documents in two cases that she was involved in, and some of their children's photographs and memorabilia. She also told Mr Fetaimia that files containing papers had been left open and had been clearly gone through.

159.
Mr Fetaimia's evidence was that when he returned from Lithuania he checked his files, and found that a lot of his papers relating to the business he was involved in Africa were missing. He said that also missing were many bills, payment slips of money that the defendants had paid into Mr Hitt's accounts, and other similar papers. He said that there were a lot of personal documents that had been removed. I accept that these documents which belonged to the defendants were missing when Mr Fetaimia returned from Lithuania.

160.
This evidence is set out in Mr Fetaimia's first witness statement, and in Mrs Fetaimia's first witness statement she repeats what her husband set out and explained, and confirmed that evidence was true. I accept the defendants' evidence. I do not accept Mr Hitt's evidence that he was at the property on 19 September 2015 in order to carry out extensive repair works to the property, including damp proofing. Rather, he thought the defendants, and their family, were abroad in Lithuania, and he took the opportunity to get the key to the property from the porter, and in order to enter the property and search for documents he wanted to find. That is what then happened and that is why when Mrs Fetaimia got home on 19 September 2015 she found confidential files left open. It is also why Mr

Hitt's small suitcase was left in the flat. He left the suitcase there when he went out, and he must have thought he would return to an empty property and then finish whatever he was up to. However, that was not possible as Mrs Fetaimia was still in London, and she got back to the property before he did. It was then that Mrs Fetaimia discovered all the mess Mr Hitt had caused searching for documents.

September 2015: Service of notices to quit

161.
What happened at the property on 19 September 2015 led to Dondore Inc serving notices to quit on the defendants. By a letter dated 21 September 2015 Joelson Wilson, as solicitors for Dondore Inc, wrote to Mrs Fetaimia stating that they had been instructed that she did not pay, and had never paid, any rent in return for her occupation of the property. The letter then said:

"However we are instructed that since Saturday 19 September you have been in unlawful occupation of the property and are therefore a trespasser. In the light of your conduct in returning to the property without consent or licence, any licence you may have had to occupy the property is hereby being terminated forthwith and we enclose, by way of service upon you, a Notice to Quit. You will note that your occupation of the property must cease by no later than 22 September 2015. Please note that if you do not vacate the property by the date specified above, our client will be required to commence possession proceedings against you to remove you from the property.

162.
The notice to quit, enclosed with the letter, gave Mrs Fetaimia one day's notice to leave the property, which had been her home for almost 10 years. Mrs Fetaimia's immediate response to this letter was set out in an email to Dondore Inc's solicitors saying:

"By English law – you are harassing me tonight at home, which is my residence for [t]he last 10 years, where I live with little children! … Mr Hitt has never lived here with me, he is a USA citizen and a resident in France. Dondore Incorporated is offshore company that I personally formed it. Mr Hitt is not the rightful sole owner of this apartment or legitimate director of that company. He was paid 4300 000$ in sole account abroad. The documents he showed you are made up … It is him who is trespassing my residence …".

163.
Then, under cover of a letter dated 5 October 2015, a further notice to quit was served on "the current occupiers" of the property by Dondore Inc, which said this:

"We, Dondore Inc, give you notice that we require you to give vacant possession of the Property by 6 th November 2015, notwithstanding that it is Dondore Incorporated's contention that any licence you may have had to occupy the property terminated on 22 September 2015".

164.
Proceedings were then issued against the defendants on 24 September 2015.

Conclusion

165.
Mrs Fetaimia is the beneficial owner of the shares in Dondore Inc, and Dondore Inc is the registered proprietor of the property. Mr Hitt agreed to sell the shares in Dondore Inc to Mrs Fetaimia for £900,000. The purchase price for the shares has been paid in full because, at the request of Mr Hitt,

in 2011 Mr Fetaimia arranged for three payments totalling Euro 1,081,032 to be paid by WMS to WAGL, Mr Hitt's company in Burkino Faso. Further, the fact that Mr Hitt has received payment in full for his shares in Dondore Inc was acknowledged by the Payment Certificate which he personally gave Mr Fetaimia in Burkino Faso on or around 7 January 2012. In these circumstances:

a.
The claimants claim for possession and mesne profits, and a declaration as to ownership of the property, is dismissed.

b.
The defendants are entitled to a declaration on their counterclaim that the entire shareholding in Dondore Inc is held by Mr Hitt for Mrs Fetaimia, together with an order for payment of £15,700, together with interest thereon, in respect of the insurance claim.

166.
The defendants did not keep any of Mr Hitt's personal items in the property on 19 September 2015 and thereafter fail to return them to Mr Hitt. The claimants' claim for damages of £1,077 for conversion is dismissed.

167.
There were no payments that Mr Fetaimia, or indeed Mrs Fetaimia, made personally to Mr Hitt or WAGL for so called business purposes. The payments were all made by WMS, a company. In addition to that it was unclear why WMS should be entitled to repayment in respect of eight further payments it made to WAGL, La Routiere and Matanya, and in cross-examination Mr Hitt was not asked any questions about these payments. In these circumstances, the counterclaim for repayment of £900,000 is hopeless and is dismissed.

168.
Mr Hitt did remove documents which belonged to the defendants from the property on 19 September 2015. However, from the evidence available it is impossible to be precise about the documents were removed and, having been removed, it would appear they no longer exist. In these circumstances I am unable to make an order for the return of documents, and the counterclaim for the return of any other personal property is dismissed.

169.
If my conclusion as to the possession claim is wrong, then I would still have dismissed the claimants' claim for possession and mesne profits. This is because the two notices to quit dated 21 September 2015 and 5 October 2015 are invalid. The defendants were in occupation of the property paying a substantial part of the outgoings in respect of the property including the service charge and ground rent, and the fact they did so was agreed with Mr Hitt. This arrangement was a licence which had been granted for money or money's worth. This is not an excluded licence under Section 3A of the Protection from Eviction Act 1977 and, in order for the claimants to determine the licence by a notice to quit, the notice to quit (i) must be in writing and contain the information prescribed by The Notices to Quit etc (Prescribed Information) Regulations 1988, and (ii) be given not less than 4 weeks before the date on which it is to take effect (see section 5(1) of the 1977 Act). Both notices were invalid as they did not contain the prescribed information. The first notice was also invalid as it only gave one day's notice to quit.
