Neutral Citation Number: [2022] EWHC 2395 (KB)

Case No: J90MA001

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 September 2022

**Before** :

**Mr Justice Freedman**

**Between :**

**ANDREW RALPH**

**Claimant**

**- and –**

**JANE GIVEN**

**Defendant**

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**Neil Berragan** (instructed by **Francis George, solicitor-advocate**) for the Claimant
**Ben Harding** (instructed by **JMW Solicitors**) for the Defendant

Hearing date: 10 June 2022
Further joint submission: 15 June 2022
Handed down in draft: 9 September 2022

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# JUDGMENT

**Mr Justice Freedman**

## I Introduction

1. This is a case which arises out of a relationship between two people Andrew Ralph ("the Claimant") and Jane Given ("the Defendant"). They became engaged, but before they got married, the relationship came to an end. They both enjoyed expensive cars. There are disputes between the parties as to what promises or gifts, if any, were made or conferred by the Claimant on the Defendant. There is a complication in that whatever was said and done between the parties, two of the vehicles which are the subject of this action, namely

a new Aston Martin DBX vehicle ("the DBX") and a new Range Rover Sports car ("the new RRS") were, according to the Claimant, leased by finance companies to him. The Claimant therefore says that as a matter of law, however the factual disputes between the parties are resolved, he could not confer legal title on the Defendant.

2. A part of the applications is for summary judgment brought by the Claimant against the Defendant for the delivery up of the DBX and/or damages in lieu of delivery for conversion and/or trespass and in any event for consequential damages. The Claimant submits that the matter turns upon a narrow legal point about the effect of the property in the DBX being in the finance company, and his being incapable of conferring title on the Defendant. There are many controversies of fact between the parties, but the Claimant says that even if they are resolved in favour of the Defendant, there is nothing in the response of the Defendant to the legal point and therefore the Defendant has no defence to the claim for delivery up and damages in respect of the DBX.

3. There are other claims between the parties including:

   (1) other claims by the Claimant in conversion and/or trespass for delivery or damages in lieu of delivery, and in any event consequential damages for
      a. In addition to the DBX, certain Associated Items;
      b. An engagement ring said to be worth over £200,000;
      c. Other personal belongings related to wine: see Particulars of Claim paras. 17-24 and prayer for relief paras. 1-3 and 5.
   (2) A related claim by the Claimant for an indemnity in respect of the monthly payments to the finance company: see Particulars of Claim para. 23d and prayer for relief para. 4.
   (3) Counterclaims by the Defendant in respect of the DBX comprising:
      a. a declaration that the Defendant is an absolute owner of the DBX or entitled in equity to the Claimant's interest in or choses in action in respect of the DBX or the finance agreement relating thereto;
      b. damages for deceit on the basis that the Claimant falsely represented as to his ownership of the DBX and his ability to make an outright gift off the same: see Defence and Counterclaim paras. 45-50 and prayer for relief para. 5.
   (4) A counterclaim by the Defendant that she is the absolute owner of the engagement ring: see Defence and Counterclaim para. 64.

(5) Counterclaims by the Defendant in respect of to the new RRS including similar relief as sought in respect of the DBX and damages in respect of vehicles owned outright by the Defendant (comprising an old RRS and a Porsche) which were entrusted to the Claimant for sale: see Defence paras.27-37 and prayer for relief paras. 1-2.

(6) Other counterclaims in respect of a loan and other personal belongings: see Defence and Counterclaim para. 64.

4. The claim is no longer pursued in respect of the Porsche and the Defendant's personal belongings which had been returned by 27 January 2022. The summary judgment application is made by the Claimant alone, and it relates to parts of the claims and counterclaims only. There will still have to be a trial, absent a compromise, if judgment is given on the entirety of the application: for example, there is no summary judgment claim in respect of the engagement ring and various personal belongings or about the loan.

5. The applications of the Claimant are as follows:

(1) Summary judgment in respect of the claim relating to the DBX and the Associated Items including orders for the delivery up of the DBX and the Associated Items and damages to be assessed/striking out of the defence relating thereto.

(2) Reverse summary judgment on the Counterclaim in respect of the DBX and the Associated Items and on the Counterclaim in deceit/striking out of the defence and counterclaim relating thereto.

(3) Reverse summary judgment on the Counterclaim in respect of the new RRS and in respect of the old RRS and the Porsche and the Defendant's personal belongings /striking out of the defence and counterclaim relating thereto. Since the claim is no longer pursued as regards the Porsche and the Defendant's personal belongings, the summary judgment application is otiose in that regard.

6. Whilst the Claimant submits that it is possible to decide this matter by reference simply to the facts as alleged by the Defendant (because it ultimately turns upon points of law), it will be necessary to consider carefully whether the point of law is such that the different factual accounts have no relevance to the outcome. The facts are particularly about the circumstances in which the Defendant came to be in possession of the DBX vehicle and the Defendant came to entrust in the Claimant her old RRS and the basis on which the new RRS was acquired.

## II The facts of the case

7. The Claimant and the Defendant started a relationship in February 2018. The relationship was put on hold for a period in August/September 2019 (the Defendant says it was because the Claimant had been seeing a former fiancée); the Claimant and the Defendant then resumed their relationship. In December 2019, the Claimant and the Defendant went on holiday to Barbados. During that holiday on 19 December 2019 (the Claimant's case is not clear whether it was 18th or 19th), the Claimant proposed marriage and the Defendant accepted. They intended to marry in October 2020. The wedding was postponed owing to the pandemic, but in the event did not take place as the Defendant ended the relationship on 12 December 2020.

### (a) The DBX

8. On 16 December 2019, prior to the engagement, the Defendant's case is that the Claimant told the Defendant that he wanted to buy her an Aston Martin DBX as a gift, so that they could have matching cars (he already had an Aston Martin DBX Superleggera), and in matching colours. The Defendant was very pleased and says that she accepted this.

9. Following the engagement, the Claimant asked the Defendant to choose a private number plate for the car as a Christmas present. She chose J15 DBX, J standing for Jane, 15 for her date of birth which was 15 September; and DBX being the model of the car. Her case is that this was to be her car to use when she was in the UK. At the time, she also had a house and a car in Spain, a Porsche Cayenne.

10. The Claimant denies that he said he wanted to buy a DBX as a gift or that he told her this. In his witness statement of 6 April 2022 at paras. 32-33, the Claimant said that he did not have the funds to purchase such an item for her, and it was always going to be on finance, and the Claimant knew this. On the contrary, they discussed spending money on a bigger house in Alderley Edge. He was intending to stay at the Defendant's house until they married. He says that the Defendant knew of his financial circumstances.

11. A DBX was then ordered, though the timings are not clear. The Claimant says he paid a £20,000 deposit on 19 December 2019. In the Particulars of Claim, he said that he "*had ordered*" the DBX on 19 December 2019 (para.10); but in the Reply that he ordered it on 24 January 2020 (para.6.6.9). The Claimant referred to a new Vehicle Order Form dated

24 January 2020 showing a total price of £202,115.03, but also to another version dated 17 October 2020 showing a total price of £193,893.04.

12. The Claimant said that the acquisition of the DBX was financed by a hire-purchase agreement with BMW Financial Services (GB) Limited t/a Aston Martin Financial Services. He has disclosed various documents in this regard, as described in the witness statement of Stephen Morris for the Defendant at para.13. Where these are dated, they are dated 22 October 2020. There has not been produced a version of the agreement signed by both the Claimant and the finance company and containing all the terms referred to in the Claimant's second witness statement para.16. He says that he does not recall receiving the terms and conditions at the time he received the agreement. The Particulars of Claim (para. 11) refers to a term on an explanatory note to an agreement.

13. In any event, there were various WhatsApp messages which are said to be informative of the intention of the parties. The Defendant relies upon them as evidence of an absolute gift. For example, on Monday 19 October 2020 with pictures of the car, the Claimant wrote *"It's your car! Xx"* and *"Just enjoy your holiday and ill* (sic) *have it on the drive for your return" and "Amazing wedding pressie and amazing timing so pleased x"* (with emojis). There were further messages on the same day including *"Matthew Davenport-Simpson has just said that your DBX is the most stunning he's seen and he loves the interior"* and *"a beauty for a beauty-perfection."*

14. The DBX was first delivered to the Defendant's home address in Alderley Edge, Cheshire on 2 November 2020. It was returned to rectify some faults and redelivered on 25 November 2020 (Defence para.6.14). The keys were provided to the Defendant.

15. After the DBX was delivered, the Claimant and the Defendant took it on a trip to Tunbridge Wells, during which the Claimant told some friends of his and his mother that he had bought it for D as a gift (Defence para.7.4.3). The Claimant denies that he said the DBX was a gift for her and claims rather to have talked about a wedding gift for the Claimant and the Defendant to enjoy after their marriage (Reply para.7.4.3)

16. The Claimant says that the vehicle registration document for the DBX was put in his name rather than the Defendant's. The Defendant recalls that the Claimant said he wanted to do this for tax efficiency, at the same time putting an Aston Martin he was buying in Portugal in the Defendant's name (Defence para.7.6). The Defendant says that the Claimant also referred to the DBX having been purchased on a hire purchase basis, but

the Defendant did not understand that this affected the ownership of the DBX or the Claimant's ability to give it to her as he had said (Defence para.7.7).

**(b) The end of the relationship**

17. Not long after redelivery of the DBX the relationship came to an end on 12 December 2020 during a holiday to Madeira. The Defendant says that the Claimant had become abusive, but the Claimant denies this, and, through his solicitor, alleges that the relationship came to an end once *"those expensive items were within her reach"*: see letter of 21 July 2021.

18. In early correspondence after the break up in December 2020, the following was written:
    (1) In a WhatsApp, the Claimant wrote within hours of the Defendant leaving him: *"I'm booked to land Friday and will collect my car, my things and take back the ring so it can be sold. As a gentleman I will give you half the money (which pays for school fees) and the £80k back. Good night."*

    (2) On 15 December 2020, the Claimant announced by email to the Defendant that he would be attending her home in the UK to take the DBX and he said: *"DBX – this had intended to be a wedding gift. There has and will not be a wedding and the car is in my name and so remains mine. I will collect it on Saturday…"*. He also claimed the engagement ring, saying that he would split the proceeds as a goodwill gesture. He referred to other items. The Defendant through her solicitors told the Claimant not to attend and that the items were in dispute. She also subsequently raised that the Claimant still had some possessions of items of hers.

    (3) On behalf of the Defendant by solicitors on 23 December 2020: *"With regard to the DBX car, we are informed your client had this built for her and presented it to her as a gift, complete with registration number J13NES (Jane's). The engagement ring was also gifted to our client."* [The registration number was as noted above J15DBX. This was corrected in subsequent correspondence.]

(4) On behalf of the Claimant by solicitors on 23 December 2020: *"Whilst the vehicle was intended to be a wedding gift, the reality is that the wedding did not take place. In the circumstances, the vehicle was never gifted to your client."*

19. On 7 January 2021, Mr Davenport Simpson of Aston Martin wrote an email to the Claimant, saying:

> *"We were so sorry to hear your news, especially when I remember how emotive Jane was on the phone about unexpectedly getting photos of her anticipated DBX wedding present on the day you had originally booked to married in October.*
>
> *As per our call, the car was only fully delivered on 5 December. So the sooner we can get it back in the condition it was delivered and with as little miles as possible, the better so that we can achieve its best in the sale price."*

20. The above is a summary of the accounts of the parties as regards the DBX. It forms part of a wider story and controversy.

**(c) The engagement ring**

21. During the holiday in Barbados the Claimant gave the Defendant an engagement ring, which she accepted. The Claimant says he bought the ring for £206,000 but it was worth £295,000.

22. The Claimant pleads that it was expressly and/or impliedly agreed that the Defendant would return the engagement ring if the marriage did not proceed (Particulars of Claim para.22). This is disputed: the Defendant denies that there was any such agreement and contends that the gift of the ring was simply an absolute gift. (There is a presumption of gift in respect of engagement rings under s.3(2) of the Law Reform (Miscellaneous Provisions) Act 1970.) There are other disputes as to the ring. The Claimant claims that the Defendant agreed to leave the ring to the Claimant's daughter in her will, which the Defendant denies (Particulars of Claim para.22.c; Defence para.22.7-22.8; Reply paras.22.7-22.8).

23. No summary judgment application or strike out application is made by other party as regards the engagement ring.

**(d) The Old RRS, the New RRS and the Porsche**

24. After they returned from holiday from Barbados, the Claimant and the Defendant also had discussions about buying a new car for the Defendant to use as her car abroad. The Defendant's case is that in around January 2020, the Claimant proposed that he would buy a new left-hand drive Range Rover Sport to that end ("the new RRS"). This was to be funded by selling the Defendant's Porsche (worth about £16,000) and the car she was then using in the UK, a Range Rover Sport which she had bought in 2018 for £80,000 cash ("the old RRS"). Any balance required to purchase the new RRS (expected to cost £80,000) was to be paid by the Claimant.

25. The Defendant says that she accepted this proposal and agreed that the Claimant could take charge of selling the Porsche and the Old RRS. Her evidence is that she did so only because the Claimant was giving her the DBX to use as her car in the UK. The common intention, according to the Defendant, was that she would use the (left-hand drive) new RRS in the UK from February 2020 pending the arrival of the DBX, then take the new RRS to Spain (Defence para.30). She would not otherwise have given up her UK and Spanish cars, which she owned absolutely. The language of gift is less clear. The Defence (para. 29) is to the effect that the Claimant had a fleet of vehicles in Portugal, and therefore the Defendant understood that the new RRS was to be hers.

26. The Claimant denies agreeing to buy the Defendant the new RRS on the basis alleged by the Defendant, asserting that it was agreed that they would own and use the new car jointly. The Defendant has drawn attention in the skeleton argument on her behalf as to the differences in his account of the agreement in the Reply at paras. 28-34 and in his witness statement in support of his summary judgment application at paras. 38-45. On both accounts, the Claimant says that he was to contribute to the purchase by a sale of his own Jeep. He also claims in his accounts how the moneys were being pooled together with further moneys which he was providing to fund not only the purchase of the new RRS but also their wedding celebrations.

27. The old RRS was sold. The Claimant says that he used £20,000 from the proceeds of sale of the old RRS as an advance payment under a finance agreement and used the rest to pay wedding and other expenses. The Claimant says that it was agreed he could do this. This is disputed by the Defendant who denies that it was agreed that the remainder of the proceeds of sale of the old RRS could be used other than for the acquisition of the new RRS: see the second witness statement of the Claimant at para. 45. She also does not

accept that she was told about a finance agreement. There is a lack of clarity as to exactly what was the sum received for the old RRS (various accounts of between £38,000 and £40,000 as referred to in the skeleton argument instead of the provision of one figure and a definitive contemporaneous document).

28. The Porsche was delivered to Sr Diego Pallas to sell in Spain (Defence para.38), but it did not sell. Since then, the Defendant has retaken control of the Porsche in January 2022.

29. The New RRS was delivered in around February 2020 and used by the Defendant in the UK. According to the Defendant, it was subsequently taken to Portugal by the Claimant, who has been using it since. This is the evidence of the Defendant with photographic evidence at para. 17 of her witness statement, contrary to the Claimant's evidence at para. 79.c.

**(e) Loan by the Defendant to the Claimant**

30. It is common ground that the Defendant loaned to the Claimant the sum of £80,000 taken from her investments, so that he could participate in an investment opportunity. The investment did not prosper. The Claimant agreed that he must repay the loan and pay to the Defendant the gains which she would have made on her investment if she had not made the loan.

31. In January 2021, the Claimant paid the Defendant the sum of £72,482.30, but he deducted various sums he claims the Defendant owed him. The Defendant claims the unpaid balance of £13,329.70 (£80,000 plus claimed losses to that date of £5,512 minus £72,432.30): see Defence paras. 51-55. The Claimant in turn alleged a set off of sums due to him arising out of the monthly payments in respect of the DBX, costs of paying for a room abroad for the benefit of her son, costs incurred for a rental car and the Defendant's share of a previous joint insurance policy: see Reply para.54.

## III The summary judgment application

32. The nature of the summary judgment applications has been set out above. CPR Part 24.2 states:

> "24.2 The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –
>
> (a) it considers that –

(i) that claimant has no real prospect of succeeding on the claim or issue; or

(ii) that defendant has no real prospect of successfully defending the claim or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at a trial.

(Rule 3.4 makes provision for the court to strike out a statement of case or part of a statement of case if it appears that it discloses no reasonable grounds for bringing or defending a claim)".

33. The correct approach on such applications was summarised as follows by Lewison J (as he then was) in *Easyair Limited v Opal Telecom Limited* [2009] EWHC 339 (Ch) at [15]:

*"As Ms Anderson QC rightly reminded me, the court must be careful before giving summary judgment on a claim. The correct approach on applications by defendants is, in my judgment, as follows:*

*i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: Swain v Hillman [2001] 2 All ER 91 ;*

*ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8]*

*iii) In reaching its conclusion the court must not conduct a "mini-trial": Swain v Hillman*

*iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel at [10]*

*v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550 ;*

*vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence*

*available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63 ;*

*vii)On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725 ."*

## IV The claim in respect of the DBX

34. The approach of the Claimant is to say that all contested facts are assumed in favour of the Defendant. Despite the significant areas of disagreement between the Claimant and Defendant, the Claimant invites the Court to make every assumption on the facts in favour of the Defendant. The Claimant submits that the defences are flawed in law.

35. First, the Claimant says that there could not have been a gift because he never had ownership of the DBX such as to be able to confer title. On his behalf, there is reliance on the Latin maxim "nemo dat quod non habet" meaning that no-one can give what they do not have. Further, the Claimant submits that under the terms of the hire purchase agreement, he would not acquire ownership until he acquired the same in return for paying the Option to Purchase Fee and the Optional Final Payment. The title to the DBX was to remain with the finance company until such acquisition. He draws attention to terms and conditions including:

    (1) the Claimant must keep the DBX in his possession and under his control (Clause 4(g);

(2) the Claimant must not allow anyone else to have any rights over the DBX (Clause 4(i));
(3) the Claimant cannot transfer his rights under the hire purchase agreement to anyone else (Clause 10(b).

The Claimant submits that there could not be an agreement with someone else that would put himself in breach of the hire purchase agreement and entitle the finance company to terminate for breach.

36. Second, even if there had been an intention to make a gift, it was on the basis that there would be a marriage: there was no marriage, and so there was no effective gift.

37. Third, and related, the alternative defence based on an equitable assignment or a declaration of trust is also bad in law. The submission is that this was simply a case of a failed gift, and there was no basis in those circumstances for an equitable assignment or a declaration of trust. The Claimant places reliance on the case of *Spellman v Spellman* [1961] 1 WLR 921. The evidence was insufficient, even making all assumptions in favour of the Defendant, to establish an equitable assignment of the benefit of the hire purchase agreement, nor had there been a declaration of trust by the Claimant in favour of the Defendant.

38. The Claimant also submits that the Defendant's counterclaim in respect of deceit is bound to fail because there was no pleaded reliance on the misrepresentation. It is submitted that there is no evidence in the witness statement to show that the promise about the DBX induced the acceptance of the marriage proposal or the decision to sell the old RRS and the Porsche. In any event, it is submitted that no credibility could be given to an assertion that the Defendant only agreed to accept the marriage proposal because he promised to buy her a DBX. As regards the sales of the old RRS and the Porsche, the Claimant submits that these were not related in any way to the DBX, but only to the new RRS.

## V The claim in respect of the new RRS

39. The same points are said to apply mutatis mutandis in respect of the new RRS. It was not the Claimant's to give to the Defendant. There was no marriage. There was no evidence to support an equitable assignment or a declaration of trust. Here the language of gift or the intention to give is less easy to fathom from the account of the Defendant and there are no contemporaneous documents evidencing a gift.

## VI Preliminary points

40. The Claimant has sought to present the claim at least in respect of the DBX as turning on a narrow point of construction. To this end, there has been presented a short skeleton argument consistent with this. However, it was preceded by a lengthy witness statement of the Claimant in support of the application for summary judgment comprising 82 paragraphs over about 15 pages. It would have been known when it was written that much of it was highly contentious. It was served many months after the Defence and Counterclaim, itself a document of 25 pages in length. Oddly, there was a gap in time of 14 months from the date of the Defence and Counterclaim on 5 February 2021 until the date of the witness statement of the Claimant on 6 April 2022.

41. The Claimant presents the case on the basis that he will assume that wherever there is conflict in the evidence between his case and the Defendant, the Defendant's shall prevail. This would have come over more plausibly in the event that the Claimant's case had not been set out so fully in his above mentioned witness statement. There is a danger of lack of definition in this case about the concession that any conflicts of evidence are to be assumed as being resolved in favour of the Defendant. The concession is not enough in principle: it is necessary to drill down into the details in order to understand what the case of the Defendant looks like without contradictions of the Claimant. It is also the case that there are aspects of the Defendant's case which the Claimant seeks to disregard as being incredible. Once this occurs, there is a lack of clarity as to the scope and effect of the concession.

42. The matter can be tested by examining facts on the basis that they are not contradicted by the Claimant as follows:

    (1) Before proposing to the Defendant, the Claimant offered to give to the Defendant a DBX. There are contradictions in the dates of the Claimant's case, but on the basis of the concession for the purpose of the summary judgment application, the chronology must be that the promise of the DBX was made on 16 December 2019 and the engagement took place on 19 December 2019. The assumption should be made at least at this stage that the generosity of the present made the Defendant more amenable to the proposal of marriage. This was not a relationship which

had been going well at all times as is apparent from the separation in August/September 2019.

(2) The repeated denials of the gift must be ignored. On the contrary, it must be assumed for this purpose that the Claimant represented at all times clearly and unequivocally that he was making a gift of the DBX to the Claimant. The references in the WhatsApp messages, particularly in October 2020 must be treated as evidence that the DBX was to be for the Claimant. The registration plate was clearly evidence of this, namely a personalised number plate referable both to the Defendant (J15) and to the car (DBX).

(3) Although at some later stage there was reference to hire purchase, it must be assumed at this point, contrary to the case of the Claimant, that there was never a statement by the Claimant that there could not be a gift since the vehicle belonged to a finance company, that it was not his to give or that to part with possession would be a breach of contract.

(4) There was no statement to the effect that the DBX was a present for getting married. This is evidenced by the fact that the present was originally promised prior to the proposal of marriage. The Defendant has denied this connection, and the Claimant invites the Court to act on this basis. There is some indication that at some point it was characterised as a wedding present even in a WhatsApp from the Defendant.

43. There is a further aspect of the assumption of the facts being in favour of the Defendant. The Defendant submits that the Claimant has been prepared to present a false picture of the facts to the Court. This Court does not make any finding, even a provisional finding at this stage, but it is significant that at a trial, it is possible that the Court would find the behaviour of the Claimant at best unattractive. Against this background, a decision in favour of the Claimant at summary judgment must be on the basis none of these disputes as to fact matter, and that there remains a crisp point which renders the defence case one without any real prospect of success.

44. There is a second preliminary point. Absent a compromise, the summary judgment application is not dispositive of the claim. For example, it does not dispose of the claim relating to the engagement ring. It could be that the Court is not prepared in effect to

strike out the deceit claim even in the event that the claim for delivery up of the DBX was permitted. It could be that the claims in respect of the new RRS did not succeed. The Court would then be trying matters which were very closely linked to points on which partial summary judgment had been given. There could be contradictions between the basis of the summary adjudication and how the matters would unfold in the course of the trial. The effect is that it is necessary to be cautious about a partial summary judgment. The Defendant has submitted that the Court is entitled to find that there is a compelling reason for a trial where the applicant seeks summary judgement on only some claims, leaving others which will have to be tried on essentially the same evidence.

## VII The parties' cases in respect of the DBX

45. The case of the Claimant is as follows. He did not confer a gift on the Defendant because it was not in his power to do so. The reason for this was that the Claimant did not own the DBX in that it was the subject of a hire purchase agreement, and it was owned at all times by a hire purchase company. Even if there was a promise to make a gift, it is not alleged that there was any consideration for this. Thus, it is not enforceable as such.

46. In order for there to be a gift on which the donee can acquire title, it must be properly constituted as such. In order for that to take place, the donor must have done everything in its power to make the transfer. Thus in *Re Rose* [1952] Ch 499, the issue was whether it sufficed to have executed a share transfer or whether the donor also had to deliver the share certificate to the donee. In the instant case, it did not suffice for the Claimant simply to procure the delivery of the DBX to the Defendant, because he did not have title and so it was not his to give. The case did not fall within an exception to the rule of *nemo dat quod non habet*. The fact that there had been a breach of promise in that the Claimant had promised to make a gift did not in the absence of consideration give rise to an obvious cause of action to assist the Defendant.

47. Hence the Defendant had pleaded in addition to gift that there had been an equitable assignment or a trust in her favour. In this connection, it is useful to refer in some detail to the case of *Spellman v Spellman* above. It requires some detailed consideration because, as with the instant case, it concerns a claim for a gift in respect of a car on hire purchase.

48. Mr and Mrs Spellman's marriage was in a bad way. They thought that if they purchased a new car their relationship might improve. Mr Spellman purchased a new car on hire

purchase and put his wife's name in the registration book. Mrs Spellman asked if the car was for her, and Mr Spellman replied that it was. Within three weeks, the parties again fell out and Mr Spellman left his wife taking the car with him.

49. The issue before the court was who owned the car; this depended on whether Mr and Mrs Spellman had entered into a legally binding contract; had they intended to create legal relations? Danckwerts LJ and Willmer LJ both said that on the construction of all of the evidence in the case, there was no intention to create legal relations, only an informal dealing with the matter between husband and wife which is common in daily life and does not give rise to a legal transaction.

50. The Judge below had found that there could not be a gift because the hirer did not have a title to pass. Further, there were provisions against assignment and a prohibition against the hirer passing possession of the car. The Court then considered an equitable assignment and/or a trust, and the Court found that neither was established.

51. At p.925, Danckwerts LJ said:

> *"There was an obligation to make further payments. I think about £300 had been paid altogether in respect of the motor-car (including £200 as a deposit), and there were instalments to be paid which would last for a matter of two years, and then, and not until then, there was an option which could be exercised by the hirer with whom the hire-purchase agreement had been made to purchase the car by the payment of £1. There were provisions that the car should kept in repair, that the hirer should pay the rent in respect of the premises where the car was kept, there was a provision against assignment of the hire-purchase agreement or the benefit thereof, and there was a prohibition against the hirer parting with possession. All those complications obviously made it very difficult to effect a simple gift of the car by a man to his wife. It appears from his note that the judge came to the conclusion that the husband had the idea of making a gift of the car to his wife, but the conclusion of the judge was that it was impossible in the circumstances, and no gift could be made until the husband had acquired the car by the final payment. Of course, on that view of the matter, it is impossible to sustain the wife's claim based upon the theory of a gift of the car."*

52. At p. 925-926, Danckwerts LJ said:

*"it is not, it seems to me, sufficient for the purposes of the transfer of equitable rights which could be required by an equitable assignment. The judge said that he thought the husband might have said: "I have bought it for her use and intend in due course to give it to her," and in the course of his judgment he said it was not a declaration of trust. As regards that point it seems to me that the conclusion of the judge was clearly right. If there was an intention to execute an equitable assignment or to make a gift, in either of those cases the matter involves a transfer, and if it is not done in a way which satisfies the law and equity, then one cannot translate what has in fact been attempted into something else, that is to say, a declaration of trust by the husband in the present case.* Milroy v Lord *and a long series of later cases have clearly established that principle. It seems to me, in the first place, that it is not possible to find sufficient words or evidence of intention to create the necessary equitable assignment in the present case."*

53. Danckwerts LJ went on to consider at p.926 that an equitable assignment is possible, even where a third party had banned an assignment. As he said:

*"One is that it was contended on behalf of the husband in the present case that the question of whether the wife had a right by means of an equitable assignment to the chose in action represented by the hire-purchase agreement is not a proper subject of proceedings under* section 17 of the Married Women's Property Act 1882. *That point, it seems to me, is entirely misconceived and one which it is difficult for the husband to sustain considering that he was responsible for the initiation of the proceedings. It is quite plain that a chose in action is a species of property; that is clear from In re Turcan."*

54. Ormerod LJ agreed with Danckwerts LJ. Willmer LJ also agreed with Danckwerts LJ and made some observations of his own. His reason why the claim failed was because on the facts, the Court found that the dealing between the husband and the wife had been informal without intention to create legal relations between them in relation to the car or the hire purchase agreement. For Danckwerts LJ, this was a reason for finding against the wife.

55. Willmer LJ also stated that the title in the car must be vested in the hire purchase company and for so long as the agreement remained, the right to possession of the car

must be in the husband. Thus, an order to compel the husband to give up possession would require the husband to break the contract with the hire purchase company. Likewise, Willmer LJ had difficulty about an assignment because of the provisions in the hire purchase agreement in which the hirer agreed not to assign or charge the car or the benefit of the agreement. He also found the case for an assignment as difficult on the facts in that the promise to acquire the car preceded the actual acquisition of the car.

56. On the basis of this case, in the instant case, the Claimant submitted that the case of the Defendant must be rejected. He relies on the following:
    (1) There was no intention to create legal relations: this was not mentioned in the Defence, but it is relied upon in the evidence of the Claimant;
    (2) The property in the DBX is and was at all material times with the finance company and therefore the Claimant has been unable to confer title on the Defendant, and accordingly the claim that there was a gift must fail.
    (3) If there was any conversation about a gift, it was before any finance agreement in respect of the same and before any delivery of the car;
    (4) The claim for a declaration of trust and/or an assignment must fail in any event because there was no language of trust or assignment: such a finding is not a default position for an ineffective gift;
    (5) The facts of *Spellman* are said to be stronger because the vehicle registration document had been in the name of the wife, whereas in the instant case, the registration document is in the name of the Claimant.

57. The Defendant's submissions were to contrary effect. The skeleton argument of the Defendant at para.60 stated as follows:

> *"It would have been entirely possible as a matter of law for [the Claimant] to equitably assign to [the Defendant] his rights under the alleged hire purchase agreement - including the right to possession and use of the DBX during the term of the hire. In this regard:*
> *a. Rights under a hire-purchase agreement are choses in action capable of assignment: Spellman v. Spellman [1961] 2 All ER 498 (CA).*
> *b. An equitable assignment of such rights need not be in writing nor in any particular form (ibid.; and Chitty on Contracts 34th Edn para.22-026).*
> *c. What is necessary is that (1) there should be an intention to assign; (2) the subject matter of the assignment should be capable of being identified at the*

*time of the assignment; (3) there should be some act by the assignor showing that he is transferring the chose in action: ibid. fn.100.*

*d. Consideration is not required for an actual assignment of an existing chose in action, provided the assignor has done everything which is necessary according to the nature of the property to transfer title to it (Chitty paras.22-034, 22-035).*

*e. Where the chose in action does not exist at the time of the assignment, the proper analysis may rather be that there is only an agreement to assign, which would require consideration to bind the assignor and to take effect when the chose in action comes into existence (Chitty para.22-028).*

*f. It is submitted however that an ineffective agreement to assign may be superseded if, once the chose in action comes into existence, the assignor acts or continues to act in a way that constitutes an actual assignment.*

*g. The fact that the document creating the chose in action contains a prohibition against assignment does not prevent the assignment taking effect as between assignor and assignee (Spellman at 501 per Danckwerts LJ; also Chitty para.22-046).*

**VIII Discussion**

58. On the basis that the facts as asserted by the Defendant are to be accepted, the intention to make a gift of a DBX was prior to the engagement and not on the basis that the Claimant and the Defendant would get married. A cynical approach might be that it would make the Defendant more likely to accept the subsequent proposal of marriage. Given suspicions as recently as August or September 2019 that the Claimant's affections for a former fiancée had not come to an end, that might not at trial turn out to be a fanciful thought.

59. On the basis of the Claimant's account, there was no reference to hire purchase until shortly before the delivery of the vehicle. Thus, the Claimant was entitled to believe that she was to receive the DBX as a gift.

60. The Claimant contends that the arrangements about the new RRS were entirely separate from the arrangements in respect of the DBX. On the premise of the Defendant's account, the arrangements were entirely interlinked such that the Claimant changed her position by agreeing to sell her cars on the faith of the promises in respect of the DBX

and the new RRS. At lowest, the Defendant may not have agreed to those intended sales if she had known that the DBX and the new RRS were not intended as gifts for her.

61. The Claimant's conduct prior to the separation was to lead her to believe that she was to be the recipient of these gifts. Insofar as the Claimant now contends that he clearly did not have the wherewithal to afford such expensive cars and that he had been upfront about hire purchase from an early stage, his case is to be ignored on the basis of the concession. In any event, his case is confused in that he contends that he needed the money to help to acquire a more expensive property in Alderley Edge where they would live when they got married. If money was to be saved for that purpose, then he might be expected not to have agreed to acquire either the DBX or the new RRS. His case about his resources is also confusing: no money to buy outright the cars, but able to hand over an engagement ring of a very high value.

62. In the context of dealing between the parties, it is also to be noted that it was common ground that the Defendant sold some investments to a value of £80,000 to make available a loan to the Claimant in connection with a new business of his own. The accommodation was not all one way. It is a feature which may well be explored at trial that there are serious differences in respect of the arrangement about the new RRS. On the Claimant's case (not the Defendant's case), the Claimant and the Defendant agreed to share the new RRS 50/50. It is surprising that the Defendant would give up her old RRS and her Porsche owned outright by her in order to share a new RRS with the Claimant.

63. Then, it turns out that the money from the old RRS (however much precisely that was) was not used entirely for the new RRS. On the basis that unknown to the Defendant, there was a consumer credit agreement with Santander to finance the purchase of the new RRS, it therefore transpires that about £20,000 of the proceeds of the old RRS were said to be used for wedding expenses on the Defendant's case, without her knowledge and consent.

**(a) Intention to create legal relations**

64. The recent argument of the Claimant (not in the pleadings but in the context of the summary judgment application) that there was no intention to create legal relations may be a legal construct borrowed from the *Spellman* case. Whatever its genesis, this case is not on all fours with *Spellman* for the following reasons (among others):

(1) The instant case is not one of a married couple.

(2) The instant case is not one of a typical couple, but one of two people evidently with access to large funds, acquiring or having luxury cars beyond the reach of most people.

(3) It is common ground that at least a part of their dealings did involve an intention to create legal relations, namely the release of investments in order to facilitate a loan of £80,000. On that premise, it is easier to infer that other of their dealings were with an intention to create legal relations.

(4) The contributions to the new RRS involving the sales of other cars are unlikely to have been some informal arrangement such that there would be no recourse if for example the Claimant decided to use the proceeds of the old RRS and the Porsche for himself. In that context, the arrangements about the DBX acquired a character such as there might be recourse whether from the start or in the context of the arrangements between the parties as they evolved.

(5) The law has moved on as regards dealings between couples and in particular where they are not married (and without the protection of matrimonial legislation on divorce or judicial separation). This is reflected by the weakening of presumptions such as the presumption of advancement. Likewise, at least in respect of land law, *Stack v Dowden* [2007] 2 AC 432, Baroness Hale at paras. 45-46 stated that the presumption of a resulting trust was not a rule of law and the law had moved on in response to changing social and economic conditions to search the parties' shared intentions, actual or inferred, in respect of the real estate, in the light of their whole course of conduct in relation to it. In that context, there is a realistic prospect of being able to establish an intention to create relations despite informality in cases such as the instant one and to look closely at the intentions of the parties.

65. In the context of the relationship of the Claimant and the Defendant and the matters to which I have drawn attention, I am satisfied that there is real prospect of success in being able to show that the parties had an intention to create legal relations.

**(b) The effect of the communications and actions between the parties as regards the DBX**

66. The next question is then what is the effect of the communications and actions of and between the parties as regards the DBX. The Defendant puts the Claimant to proof as to whether there was a consumer credit agreement in respect of the DBX. There has not

been produced an agreement signed by both parties containing all the terms. The Defendant says that the Claimant ought to be expected to prove this and to produce a correct and entire document. Whilst the criticism is well made that there have only been supplied piecemeal documents, I do not decide this case on the basis that the relevant document has not been provided.

67. It is apparent from the documents that the Claimant signed documents in which he gave an instruction to his bank Weatherbys Bank Ltd to make direct debits in favour of the finance company and that he agreed the monthly debits to be paid each month over a period of about 4 years and an optional final repayment. There is no reason to believe that direct debit payments were not then paid. Whilst there may be some doubt as to whether each of the terms and conditions were incorporated, it seems likely on the information before the Court that the Claimant did not have title, but title is and was with the finance company who leased the DBX on hire purchase to the Claimant. Whilst the position can still be explored at trial, and I make no final ruling on this point, I shall assume for the purpose of this application that the Claimant did enter into a hire purchase agreement in respect of the DBX.

68. There then is the problem about how a gift could be conferred on the Defendant on the basis that the Claimant did not have title to confer such a gift. On this basis, as in the case of *Spellman*, it is not possible on the evidence before the Court to infer that there was a gift, even if there were indications that the car was to be the Defendant's.

69. The question then arises as to whether there was an equitable assignment or a trust. To this effect, on the concession of the Claimant, the Court is to assume all of the facts in favour of the Defendant. In that regard, for the purpose of the summary judgment application, I accept the submission of the Defendant at paragraph 60 of the skeleton argument as either an accurate statement of law or, to the extent that the law is not totally settled, a workable model of what the law might be. It is not necessary for the purpose of this application to be more definitive, and it is apparent that this is area where the law is not entirely settled.

70. Applying the law to the facts, there would have been no difficulty in inferring a gift in the event that the Claimant had not chosen to use hire purchase to fund the acquisition of the DBX or at least in finding that such an inference had a real prospect of success at trial. Although sometimes the language was used about a wedding present, including in a WhatsApp message of the Defendant, I am satisfied that there would at least have been a

real prospect of establishing that the gift was not conditional on marriage. This is because the original promise was before they even got engaged, the language used about the DBX belonging to her and the registration number by reference to the Defendant. It is also because of the other connected dealing referred to above including the sale of the old RRS and Porsche which was not linked solely to the new RRS, but which left the Claimant without her cars on the faith that she was to acquire the DBX. Even if the DBX had been referred to latterly as a wedding present, there is an argument with a real prospect of success that it was not on the basis of an express or an implied promise that it would have to be returned if the wedding was not to proceed.

71. What difference does it make that the DBX was acquired on hire purchase thereby, on the Claimant's case, making a gift not possible? It does not alter the fact that the Defendant was led to believe that the DBX was being put forward by the Claimant as a gift. It does not alter the Defendant's understanding that this was the case. On the assumption that the Defendant's case is accepted at this stage, it might be that the Claimant simply failed to think through the consequences of the hire purchase arrangement. If the Claimant did think it through, it is not apparent that he shared the consequences with the Defendant. The Defendant makes an alternative counterclaim in deceit. Without a trial, it is not possible to decide nhow it was, if it was the case, that the Claimant used the language of gift, but entered into a hire purchase agreement.

72. When the relationship came to an end, the Claimant immediately assumed that anything that was passed over during the relationship and acquired by him should be returned to him. This applied to the DBX and to the engagement ring in particular as well as to various personal effects.

73. With legal advice, he then used the hire purchase agreement in a way convenient to him. There could not be a gift because he did not have legal title to confer. The prohibition against possession of the car being with anybody else meant that he had a legal obligation to have the DBX returned to him. None of this had prevented him from using language during the relationship to the effect that the DBX was a gift. It did not prevent him from using the Defendant's address in Alderley Edge, Cheshire, as his own in the consumer credit agreement despite the fact that he was still living in Portugal save for 90 days or less per annum. This may have been known to Mr Davenport-Simpson of Aston Martin. Evidently, it was the Claimant, and not Aston Martin/the finance company, who sought the delivery up of the car.

74. I am satisfied that there is an argument with a real prospect of success that whereas the DBX might at its inception have been intended or perceived as a gift by itself, as time went on, this transaction became connected with the other dealings between the parties. On the basis that the DBX was being acquired for her, the Defendant agreed to allow the Claimant to sell the two vehicles owned by her on the basis among other things that her vehicle in the UK would be replaced by the DBX.

75. The Defendant also changed her position by liquidating investments and lending or continuing to lend the Claimant the sum of £80,000 (there is no evidence of repayment being sought before the break-up of the relationship). The Claimant asserts now that each of these matters was separate the one from the other. I do not accept this without a trial. Ultimately, there is a real prospect of showing that they were all inter-connected. This is capable of being put into the language of consideration. There is a real prospect that consideration for the promise of the DBX was or became the Claimant lending or continuing to make the loan and/or allowing the Claimant to sell her cars in the UK (which she would not have permitted without the promise that she would be receiving the DBX).

76. In the light of the above, I am satisfied that but for the hire purchase agreement, there was a real prospect that the Defendant would have been able to establish an unconditional gift of the DBX. Assuming for this purpose that there was a hire purchase agreement, there is a real prospect of establishing an equitable assignment of the hire purchase agreement. The parties do not have to establish that they had in mind that they were assigning a chose in action rather than conveying property: see *Whiteley v Hilt* 1918 2 KB 808. To the extent that it was necessary to prove consideration on the basis that the hire purchase agreement did not exist at the time of the agreement to assign, there is an argument with a real prospect of success that there was consideration to bind the Claimant prior to the hire purchase agreement coming into existence.

77. If in fact the argument based on equitable assignment were to fail e.g. for want of consideration, there is an argument with a real prospect of success that there was a trust in respect of the chose in action to reflect the intention of the parties that the Defendant should acquire the DBX. This is an area of law which is controversial but is sufficiently developed for the argument to have a real prospect of success. It is at least arguable that a trust by operation of law can be established from a failed assignment: see an article entitled 'The nature of assignment and non-assignment clauses' by Professor Michael Bridge [2016] LQR 47 and *Don King Productions v Warren and others* 13 April 1998 per

Lightman J and on appeal at [2000] Ch 291. There have been a number of cases which have emphasised that bars of assignment and the like between contracting parties do not prevent the court from giving effect to an assignment or a trust between one of the contracting parties and a third party (assignee or beneficiary). In *Spellman*, there was reference to *Re Turcan* (1888) 40 Ch.D. 5. Since *Spellman*, this has been reinforced in cases such as *Linden Gardens Trust Ltd v Lenesta Sludge Disposal Ltd* [1994] 1 A.C. 85, 108 and *Hendry v Chartsearch* [1998] CLC 1382: see also Chitty on Contracts 34th Ed. para. 22-046. In *Tom Shaw v Moss Empires Ltd* (1908) 25 TLR 190, 191 Darling J said that a prohibition against assignment *"could no more operate to invalidate the assignment than it could interfere with the laws of gravitation"*.

78. Mr Berragan for the Claimant emphasised the case of *Milroy v Lord* 4 De GF & J 264, 274-275 to the effect that *"to render a voluntary settlement valid and effectual, the settlor must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done in order to transfer the property and render the settlement binding upon him… there is no equity in this court to perfect an imperfect gift. The cases, I think go further to this extent. But if the settlement is intended to be effectuated by one of the modes to which I have referred, the court will not give effect to it by applying another of those modes. If it is intended to take effect by transfer, the court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust..."*: per Turner LJ.

79. Mr Harding for the Defendant drew attention to the case of *Pennington v Waine* [2002] 1 WLR 2075 in which Arden LJ (as she then was) referred in detail to developments since *Milroy v Lord* to the effect that whilst the court would not assist a volunteer, it would not strive officiously to defeat a gift: see *T Choithram International SA v Pagarini* [2001] 1 WLR 1. For example, it would utilise the constructive trust (at para. 59). Further, *"... where a court of equity is satisfied that the donor had an intention to make an immediate gift, the court will construe the words which the donor used as words effecting a gift or declaring a trust if they can fairly bear that meaning, and otherwise the gift will fail."* (at para. 60). To this end, the court may apply a benevolent construction of the words used.

80. It therefore follows that there is a real prospect of success either in an argument that there was an equitable assignment supported with consideration or that there was a trust in favour of the Defendant. The mellowing of the strictures of *Milroy v Lord* may come to

assist the Defendant at trial, depending very much on the particular analysis of the facts which can only occur in the course of a trial.

**(c) Can the Claimant sue as bailee in respect of the DBX?**

81. In this context, the arguments of the Claimant following the break-up of the relationship may be self-serving. There is no evidence that the finance company became concerned about a non-party to the finance agreement being in possession of the DBX, contrary to the terms of the agreement. The finance company may well have known that the DBX was intended for the Defendant: they must have known about the registration number relating to the Defendant. They may have known that the address of Alderley Edge, Cheshire was that of the Defendant. They may have known that the Claimant was living in Portugal at the time, and that he was in the UK for less than 90 days per annum. They are likely to have known about the romantic association at the time of the Claimant with the Defendant. It may appear at trial that the finance company was prepared to have a loose interpretation of the possession provision in the finance agreement.

82. Thus, there arises the question whether the Claimant is able to sue the Defendant for the return of the DBX or for damages for wrongful interference with the DBX. A bailee is able to sue a sub-bailee for damage to a chattel despite not having ownership of the chattel: see *The Winkfield* [1902] P. 42. However, that does not mean that where a bailee confers a possessory right on a sub-bailee in breach of his contract with the owner that the bailee can sue the sub-bailee for breach of bailment or wrongful interference with goods, particularly where the sub-bailee changes her position in reliance on the arrangement. Whatever the position between the finance company and the bailee or the sub-bailee, there is an argument with a real prospect of success that the sub-bailee (here the Defendant) can meet a claim of the bailee (here the Claimant) by saying that the bailee conferred on her at least a possessory entitlement as between the Claimant and the Defendant, whatever the separate position of the finance company.

83. In view of the above discussion, for the purpose of this summary application, I make the following findings namely that there is a real prospect of success in the following arguments, namely

(1) the Defendant is able as against the Claimant to meet a claim for possession or wrongful interference with the DBX on the ground that the Claimant conferred the

entitlement to possession or the use of the DBX and that he has not been entitled to resile from this;

(2) as regards the hire purchase agreement in respect of the DBX, the Claimant has conferred an equitable assignment of the same to the Defendant: alternatively, he holds the rights under the agreement on trust for the Defendant.

84. On the premise that there was intended to be a gift from the Claimant to the Defendant, but the financing got in the way of a gift, I am satisfied that for the purpose of the summary judgment application, the Defendant has a real prospect of success in defending the Claimant's claims to possession of the DBX and to damages for wrongful interference with the DBX.

85. Looking at the matter broadly, in the events which have occurred, whether it be by way of an equitable assignment or a declaration of trust or a constructive trust, there is a real prospect of the Defendant being able to show that the facts of this case are very different from *Spellman* both as regards intention to create legal relations and being able to infer an equitable assignment or a trust.

86. Applying the relevant law, I am satisfied that the following arguments have a real prospect of success. First, the rights under the consumer credit agreement are choses in action capable of assignment. Second, it suffices for an equitable assignment or a constructive trust that such rights are neither in writing nor in any particular from. Third, there was here an intention to make a gift, and instead of there being a transfer of the car, there is an argument with a real prospect of success of the inference of an intention at least for a transfer of the chose in action. No gift was perfected by delivery, and by the time of the delivery, there was a finance agreement in place. By that stage, it may be that the true analysis was that there had been consideration through the loan and the sales of her personal cars, and the proceeds being provided to the Claimant.

87. It is necessary to add two further matters for the purpose of completeness. First, together with the claim in respect of the DBX goes various named Associated Items which are named in the documents. They were special items which were ordered with the DBX. The analysis in respect of the same follows the same analysis as in respect of the DBX. Second, with the applications under CPR Part 24, there have been brought applications to strike out the Defence under CPR Part 3.4(2) on the basis that the Defence discloses no reasonable grounds to defend or to make claims. Together with the rejection of the

summary judgment applications, the strike out claims are also rejected in that they are two sides of the same coin.

**(d) The claim in deceit**

88. The Defendant has made an alternative claim in respect of the DBX. It is that the Claimant represented that he owned or would own the DBX and was or would be in a position to make an effective and unconditional gift of the DBX to the Defendant, he intended to make an outright gift of the DBX to the Defendant and the DBX would be hers to own: see Defence and Counterclaim para. 45. The Defendant says that the representations were made intending that the Defendant would rely on them and in particular to accept his marriage proposal and subsequently to agree to his selling the old RRS and the Porsche. If the DBX was not his to gift, the representations were made falsely and knowing that they were false. She counterclaims damages including the loss of the old RRS and other costs.

89. The Claimant seeks to strike out this claim and/or seeks reverse summary judgment on the basis that the assertions in the pleadings have not been repeated in the second witness statement of the Claimant. Further, the Claimant submits that the allegation that she "only" agreed to the marriage proposal because of the offer to buy her the DBX has no real prospect of success: see the Claimant's skeleton argument para. 14e. It is also submitted that there is no apparent/pleaded/evidenced connection in respect of the purchase of the new RRS with anything said or done in relation to the DBX: see the Claimant's skeleton argument para. 14f.

90. I do not accept these submissions. It does not have to be alleged that she only agreed to the marriage proposal because of the offer to buy the DBX. For the purpose of the law of deceit, it suffices if the offer was a significant factor: it does not have to be the only or a predominant factor: *Dadourian Group International Inc v Simms and others* [2009] 1 Lloyd's Rep. 601; [2009] EWCA Civ 169. At para. 99, Arden LJ approved the Judge's holding that *"the misrepresentation does not have to be the sole inducement for the representee to be able to rely on it: it is enough if the misrepresentation plays a real and substantial part, albeit not a decisive part, in inducing the representee to act."*

91. The background of the temporary cessation of the relationship during the summer because of the Defendant's concerns about the Claimant being in contact with a former fiancée is relevant. It is not possible absent a trial to appraise how significant was the offer of a

present of the DBX in the decision of the Defendant to agree to marriage. It would not be the first time that the affection of a person has been bought in such a manner. In 1917 in *Jacobs v Davis* [1917] 2 KB 532, Shearman J referred to a dictum of Lord Hardwicke in *Robinson v Cumming* [1742] 2 Atk. 409 who referred to certain suitors making gifts to a prospective marriage partner as if "an adventurer". It is premature without a trial to make any such characterisation of the Claimant, but it is not fanciful to suggest that a trial judge may come to a such a view of the evidence.

92. The fact that this allegation was not repeated in the witness statement is not decisive. The Defendant has signed a Statement of Truth at the bottom of the Defence and Counterclaim. Likewise, the absence of a pleaded connection between the new RRS and DBX is not correct: see the Defence and Counterclaim para. 49.3. In any event, the connection is obvious since as a matter of fact the Defendant was prepared to sell the old RRS only on the basis that she was about to receive the DBX.

93. It therefore follows that the attempt to obtain summary judgment in respect of the claim in deceit must fail, as must the application to strike out parts of the Defence in this regard.

**(e) Reverse summary judgment in respect of the RRS**

94. The Defendant seeks a declaration that she is the absolute owner of the new RRS, on the basis that it was bought for her as a gift. Here too, she says that there was no reference to the purchase of the same through a consumer credit agreement. In the alternative, if the new RRS is owned by a third party, the Claimant seeks a declaration that she is beneficially entitled to a declaration of trust or that an equitable assignment in respect of the new RRS.

95. The Claimant seeks reverse summary judgment under CPR Part 24 or applies to strike out this part of the Counterclaim. His case is that it was agreed that the new RRS would be a jointly owned vehicle for the parties to use and enjoy on a joint basis: see Reply para. 27. He refers to the contribution to the new RRS being partly through the Defendant's old RRS and in part due to the Claimant's jeep and the provision of further funds by the Claimant.

96. The Claimant says that he agreed in January 2020 with the Defendant that he would fund the surplus balance by way of finance: see Reply para. 33. He contends that he did so through a finance agreement with Santander, but the effect here is that by not paying the

balance himself, he has caused the ownership of the new RRS to be vested in the finance company. Despite this complication, his case is that the agreement of the Claimant and the Defendant was that they were to be joint owners of the new RRS.

97. I have drawn attention above to how the Claimant took the Defendant's cars with a view to their being used for the purpose of the acquisition of the new RRS. The Defendant believed that the Claimant was going to fund the balance of the expense of the car. Contrary to this, the Claimant has in fact obtained finance and has used £18,000 out of the sale price for the deposit of the car but used the balance of the proceeds of the old RRS to discharge expenses. There is a clear contradiction here in the evidence: the Claimant says that he did so with the agreement of the Defendant and the Defendant says that it was without her agreement.

98. The Claimant seeks summary judgment on the basis that the Defendant has no real prospects of success in her claim as regards the new RRS. The position is complex because it is not easy to see how the Claimant's case of joint ownership fits into the analysis of title being with the finance company. The Defendant's case is that in the context of the car arrangements of the parties, she was led by the Claimant into the belief that she would become the owner of the new RRS. If she does not have title to the car, the Claimant advances a similar analysis as in respect of the DBX giving rise to entitlements to an equitable assignment and/or a constructive trust in respect of such rights as the Claimant may have under the consumer credit agreement. The Defendant had provided consideration through at least the old RRS.

99. There are various different ways in which the claim is put in respect of new RRS. In addition to the declarations referred to above, the Defendant counterclaims in relation to the old RRS, namely (a) a declaration that the Claimant held and holds the power to sell the old RRS and the net proceeds of sale of the same on trust for the sole purpose of purchasing the new RRS, (b) an order that the Claimant account for the sale proceeds of the old RRS, (c) damages or equitable compensation for breach of trust, and (d) an order that the Claimant makes good any deficit in the net proceeds of sale held on trust. So interlocking are the various counterclaims related to the new and the old RRS cars and so controversial are the facts that it is inappropriate to find that there should be summary judgment. Likewise, insofar as any of the alternatives are particularly weak, it is inappropriate for any way of putting the case to be singled out for summary judgment or strike out. It is more appropriate to leave all of this to trial.

100. The Defendant also seeks summary judgment that there is no real prospect of succeeding on the counterclaim in respect of the Porsche vehicle. The Defendant is withdrawing this part of her claim at least in respect of any claim for its return because she has now recovered it. In those circumstances, there is no point in giving summary judgment where the real issue to resolve is going to be costs. That in turn may depends upon the true facts in respect of the Porsche being determined at trial. The same applies to various personal belongings which have been part of the Counterclaim and where the claim is no longer pursued.

**IX Conclusion**

101. I have concluded that the Defendant has at lowest a real prospect of success in fact and in law both in defending the claims of the Claimant and in maintaining her Counterclaims. For the reasons set out above, the Claimant's application for summary judgment in respect of the DBX and the Associated Items must fail. So must the Claimant's attempt to obtain reverse summary judgment in respect of the Defendant's counterclaims relating to the DBX and the Associated Items, the new RRS and the old RRS. The counterclaims in respect of the delivery of the Porsche and the Defendant's personal belongings have been overtaken by events and do not require any order at this stage. So too must the alternative strike out applications fail. I dismiss the entirety of the applications.

102. It is artificial and unsatisfactory to seek to sanitise the facts by assuming that the many controversies are to be resolved in favour of the Defendant. The resolution of this case depends at least in part upon how the precise facts are assessed. It is far from clear what facts are to be treated as agreed for the purpose of the application. In my judgment, the attempted shortcut of the applications for summary judgment and strike out must fail. There is no shortcut in this case. There are too many arguments to be tried, and they are interlocking or potentially interlocking.

103. It is also potentially undesirable and even hazardous to look at various strands of the case separately from the whole. This is especially acute in circumstances where even if summary judgment were to be allowed, the claim will continue thereafter. There is a significant danger in this case that assumptions at the earlier stage will be invalidated by evidence which may emerge hereafter including at the trial of the remaining issues. In addition to finding that there are real prospects of success which are an answer to the

applications for summary judgment and for strike out, there is also some other compelling reason for the matters as a whole to go to trial.

104. The conclusion of this judgment that there is no shortcut to avoid trial does not mean that other forms of dispute resolution should not be explored. This is especially the case in circumstances where the DBX is the subject of a SORN (statutory off the road notification). The parties' interests are in either resolving their differences through mediation (if not tried already) or, failing a successful mediation, having a resolution of their differences in a trial. In considering consequential matters, the Court would wish to make directions for the matter going forwards.

105. The parties have been asked to provide a draft order in respect of consequential matters. Until an order is approved, all consequential matters are adjourned.