Neutral Citation Number: [2023] EWHC 975 (KB)

Case No: QB-2021-003310

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 April 2023

Before:

HIS HONOUR JUDGE SIMPKISS
(sitting as a Deputy Judge of the King's Bench Division)

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Between:

MARK SHAW	**Claimant**
- and -	
THE ESTATE OF MARTIN WOOD	**Defendant**

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Philip Coppel KC (instructed by **LSL Solicitors**) for the **Claimant**
Rebecca Sleeman (instructed by **JMW Solicitors**) for the **Defendant**

Hearing dates: 1st, 2nd and 3rd February 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 27 April 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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His Honour Judge Simpkiss (sitting as a Deputy Judge of the High Court):

Introduction

1. The Claimant is a successful hotelier. He also has a hobby interest in helicopters. In the course of this he was introduced to Mr. Martin Wood who had a helicopter business which was operated from Stapleford Aerodrome, Romford, Essex ("the Aerodrome"). He ran this operation through a company named M.W. Helicopters Limited ("MWH") which was a limited company the shares in which were owned as follows: 900,000 by Mr. Wood, 125,000 by his wife, Alison Wood and 25,000 by his engineer, Mohammad Hossen Seylani.

2. Over a period of years from 2011 to 2019 the Claimant made various loans which he agreed with Mr. Wood. On 14th September 2019 Mr. Wood died. Mrs. Wood is his executor and these proceedings are brought against the estate to recover the loans.

3. Originally there were a number of issues, including issues under the **Consumer Credit Act 1974** ("CCA"), the **Financial Services and Money Markets Act 2000** ("FSMA") and regulations under those Acts. These were all abandoned immediately before the trial which is concerned principally with one issue: whether the loans were made to Mr. Wood personally or to MWH. It is common ground that all the discussions at the time of each loan were solely between the Claimant and Mr. Wood, but most of the loans were recorded by purported written agreements signed by the Claimant and Mr. Wood.

4. The Defendant says that apart from 2 loans, one of which has wholly been repaid and the other partly repaid, all the loans were made to MWH and although Mr. Wood was named as a party to the agreements he was entering into them as director of MWH.

5. In summary by the end of the trial the following issues remained to be decided:

    i. Were the loans made under oral or written contracts?

    ii. Who were the parties to the loan agreements?

    iii. Were earlier loan agreements superseded by a written agreement dated 15th or 16th April 2019 ("the Superseding Agreement")?

    iv. What is the total of the loans to be repaid by the Defendant as executor of Martin's estate?

    v. What is the total of the loans to be repaid by the Defendant as executor of Martin's estate?

    vi. How should interest be calculated?

The Witnesses

6. The Claimant gave evidence. Both parties gave evidence that Mr. Wood operated informally and this is clearly borne out by the history of this matter. The Claimant has lent large sums of money to Mr Wood or his company without drawing up any documentation. He said that he trusted Mr. Wood and his continued provision of

funds bears this out. His evidence needs to be treated with some care as it is clearly in his interest to say that the loans were all personal as MWH is in administration.

7. The first thing to say is that his subjective views about who he was lending to are not admissible or relevant i the Claimant's case based on written agreements succeeds. As explained later, the test is an objective one.

8. Ms. Sleeman submitted that on day 2 of the trial the Claimant made a significant admission that he knew that in November 2012 he loaned £50,000 to MWH. That isn't exactly what he said. It was put to him that Mr. Wood had told him he "*wanted the loan for MWH*" and the Claimant answered "*yes*". It was not disputed by the Claimant that a number of these loans were being made for various reasons connected to MWH and the moneys were being paid into its bank account. My understanding was that Mr. Wood wanted the loan so that money could be used for MWH, not that it was a direct loan from the Claimant to MWH.

9. Ms. Sleeman also placed reliance on his reaction to the news that Mr. Wood had died. Voice mail messages were recorded showing that the Claimant was trying to get hold of Mr. Wood from in the days before he died. His evidence was that he saw Mr. Wood on 11th September 2019 looking very ill. Mr. Wood told him not to worry. The Claimant rang him afterwards to see if he was alright and then got a text message from the Defendant saying that he was in hospital but would be home soon. On 15th September 2019 she sent the Claimant a message that Mr. Wood had died.

10. Apart from the personal shock, the Claimant was clearly worried about repayment of his loan and contacted his solicitors pretty well immediately. Ms. Sleeman referred in particular to a voice mail message to the Defendant dated 1st October 2019 in which he said that he was going to Stapleford and would see if the company could be saved and "*see how we can get our money back*". There is a dispute between the Claimant and the Defendant as to whether he spoke to the Defendant on 16th or 17th September 2019 and she told him he would get his money back. If they had spoken there would have been no record so the evidence is inconclusive. It would not in any case have shed any light on their respective beliefs as to the nature of the loans.

11. The Claimant went to Stapleford on 1st October 2019 with his accountant, Andrew Read. He says he did this at the suggestion of Nigel Brunt, a friend of Mr. Wood and the Defendant, because there might be an opportunity to purchase MWH. The Claimant was cross-examined about a document prepared by Mr. Read before the visit listing information that he suggested from MWH. This included a list of employees, business on the books and other company information. It was suggested to the Claimant that this was because he was assessing whether he could recover the loans from MWH. He explained that it was required in order to enable him to assess whether to buy MWH to keep it going. At best this evidence is equivocal but I found the Claimant a clear witness who gave direct answers when questioned and did not try to tailor his evidence. I accept his evidence that he was considering buying MWH following Mr. Wood's death, although it quickly became clear that this was not a viable proposition.

12. The Claimant's case that the loans were made to Mr. Wood is consistent with the letter written by his solicitors to the Defendant, as director of MWH, asking whether the charges over the helicopters had been registered by the company. It states that

these were security and that the loans were to Mr. Wood. None of this is relevant to the issues I have to decide.

13. Stephen Wilson also gave oral evidence on behalf of the Claimant. He made a statement about his dealings with Mr. Wood, which he said were very informal. He said that he had lent Mr. Wood money several times to enable him to pay MWH's VAT bill. He paid it into MWH's account and it was repaid out of the same account about 2 months later. He did not know the Claimant and had not met him until shortly before the trial. His evidence does not advance the case one way or the other and, apart from his confirmation that MWH "*was Mr. Wood*" and that all dealings were on a friendly and informal basis, his evidence is not relevant.

14. The Claimant served a witness statement from his accountant, Andrew Read. He confirms the reason for attending Stapleford on 1st October 2019 with the Claimant, which was because the Claimant might be interested in buying MWH following Mr. Wood's death. There is no reason to believe that he would be making up what he was told by the Claimant.

15. The Defendant gave evidence. She was not a party to, nor present when, any of the oral discussions between Mr. Wood and the Claimant took place. She was also clear that she thought that what had been agreed ought to be written down and this is what she was doing when she drafted the agreements.

16. Mr. Coppel pointed out a number of inconsistencies in her witness statement. She was not consistent in how she referred to the oral agreements. She said "*orally agreed with Martin*", "*orally agreed with my husband*", "*Martin on behalf of the Company agreed*" and then back to "*orally agreed with Martin*".

17. The written documents don't support her case. She is a very experienced business woman who has been an office holder in a number of companies for decades. She said that she understood the duties of a director and that being one was a serious responsibility with duties only to act within the rules. As a director she has attended many meetings with solicitors over the years. She was also well aware of the duty to the company's directors.

18. The Defendant's answers in cross-examination were not credible in a number of respects. Although she would obviously have been very upset immediately following Mr. Wood's death, her explanation for not responding to four letters from the Claimant's solicitors in October 2019 did not ring true. She said he hadn't received them, but they were written to her solicitor and the response from them by email to the Claimant's solicitor strongly suggests that she was in contact with them. She was also instructing a professional insolvency practitioner by mid-October 2019 to advise MWH.

19. Her explanation for the written agreements was that "*in my mind they were not agreements but merely me trying to keep a loose record for the Company of what was discussed between Martin and Mr. Shaw*". She was asked about her experience of business documents and shown a VAT invoice dated 20th March 2013 for work carried out on aircraft for another company. She agreed that this was the "*right way of doing things*" and that she had been familiar with these matters "*for 20 years*".

20. It is not believable that the Defendant would decide that it was a good idea to record what had been agreed between Mr. Wood and the Claimant and then not record that the parties were MWH and the Claimant if that in fact is what had been agreed. She well understands the difference and that if Mr. Wood contracted personally it would or might put them both at personal risk. I therefore agree with Mr. Coppel's submission that most of the Defendant's evidence about who the contractual parties were to the loans and her explanation for the agreements is self-serving an a somewhat transparent attempt to avoid the personal liability of the estate.

21. Nor did I find her plea of ignorance of a conflict of interest between her defence of these proceedings and her position as director of MWH at all convincing. She understands the duties of directors and that it might be in the interests of MWH's creditors to argue that the loans were repayable by the estate.

22. An example of the Defendant's ability to give self-serving evidence was her answers to questions about MWH's accounts. She was shown the balance sheet for the accounts ending 30th April 2019, which shows debtors at £25,553 and net assets of over £2.1m. She was asked why the loan just acknowledged of £1.21m did not appear in the balance sheet if it was an MWH loan. She immediately said that this was taken into account in the £2.99m creditors due within 1 year. This was wrong because the notes to the accounts showed that these were book debts making no mention of the Claimant's loan.

23. I therefore found the Claimant's evidence much more reliable. He gave straightforward answers whereas the Defendant thought carefully before making any admissions and on several occasions disputed matters that a more straightforward witness would and should have admitted at once.

24. The Defendant's other witnesses were Roger Bennington, who had introduced the Claimant to Mr. Wood, and Neil Hewitt, whose firm were MWH's accountants between 1995 and the administration. Mr. Bennington was not present at any of the discussions about the loan agreement and could not give any relevant evidence.

25. Mr. Hewitt had no direct contact with the Claimant and no direct evidence about the agreements between him and Mr. Wood. He had not seen the 15th April 2019 agreement nor the agreements in 2011 or 2012 before they were shown to him in the witness box. His evidence does not shed any light on the intentions of Mr. Wood.

The background facts

26. Below is a summary of the loans which are relevant to this trial:

No	Date	Amount	Repayment date	Comment
1.	24/11/2011	£200,000	31/5/2012 extended to 31/5 2013	Written Repaid in full December 2013
2.	19/06/2012	£120,000	31/07/2012 plus interest £1,500	Written Repaid in full August 2012 with the interest
3.	10/09/2012	£50,000	None specified £500 cash interest	Oral No repayments

4.	30/11/2012	£50,000	31/01/13 plus interest 10% pa Oral extension	Written No repayments
5.	?/11/2013	£275,000	None specified No interest specified	Oral No repayments
6.	25/09/2014	£425,000	None specified No interest specified	Written No repayments
7.	01/07/2016	200,000	01/09/16	Written No repayments
8.	22/11/2016	£50,000		Oral Repaid in full in 12/2016 Admitted a personal loan
9.	04/05/2018	£50,000		Oral Repaid in full on 06/09/18
10.	06/03/2019	£160,000	None specified	Oral £30,000 repaid on 17/11/20 Admitted a personal loan

27. MWH was established in April 1995 and the business was run by Mr. Wood. There was an engineer, Mr. Mohammed Seylani and Mrs. Wood provided administrative support and book keeping. Both Mr. and Mrs. Wood were directors from 1995. The business of MWH was the service and maintenance of helicopters (both civil and military), helicopter training, conversion and sales.

28. Two other companies were referred to: MW Helicopters (Serbia) Ltd and Excel Charter Ltd. Mr. Wood was the majority shareholder and a director of both companies which operated at the same premises at Stapleford.

29. The Claimant and Mr. Wood first met in about May 2011 when Mr. Roger Bennington (a customer of MWH) told the Claimant that he might be interested in purchasing a Gazelle helicopter which MWH was selling. Mr. Bennington had known the Claimant for a number of years and he flew him to Stapleford and introduced the Claimant to Mr. Wood.

30. At this meeting (at which Mr. Bennington was not present after the introduction) the Claimant agreed to buy the Gazelle helicopter (REG G-MANN) for £250,000. A sale and purchase agreement dated 19th May 2011 was drawn up naming the Claimant as purchaser and MWH as the vendor. It was signed by the Claimant and Mr. Wood recording that the latter was a director of MWH under his signature. The price was paid in 2 instalments: a deposit of £100,000 in May and the balance of £150,000 on collection on 29th July 2011. The Gazelle remained registered in the name of MWH. The Claimant's unchallenged evidence was that this was normal because MWH would be dealing with the maintenance.

31. Following the purchase of G-MANN the Claimant's evidence was that he regularly visited the Aerodrome to refuel and would usually have a cup of tea and a chat with

Mr. Wood. They did not become friends in the sense that they socialised together (save when Mr. Wood and the Defendant were invited to the Claimant's 60th birthday party) but they met at the Aerodrome regularly and would chat together for a couple of hours about a range of subjects connected with aircraft. The Claimant's evidence was each of the loans originated from discussions he had with Mr. Wood during these regular "*chats*".

32. In November 2011 Mr. Wood asked the Claimant if he would be interested in lending £200,000 at an interest rate of 10% per annum. The Claimant says that the proposal was that the loan would be made to Mr. Wood but the Defendant's case is that the proposals were always that the loans would be made to MWH and that it was and had always been clear that the loans were to MWH, save for those which are admitted to have been personal loans and which I will explain in due course.

33. The Claimant says that Mr. Wood told him that he wanted to pay off some high interest loans and also invest in the business (ie MWH).

34. Following this request, and the Claimant's indication that he would make the loan, terms were drawn up by the Defendant and these are set out in a written document sent to the Claimant as an email attachment on 24th November 2011. In the email she says that she is attaching "*an agreement*" and that it has been signed by Mr. Wood, as it had been. She also asked the Claimant to let her know if she had missed anything.

35. The Defendant's evidence is that Mr. Wood told her what had been agreed with the Claimant and she then recorded it in writing. She said that one of her roles was to "*produce drafts of documents to reflect the arrangements made between the parties and to keep up to date of [sic] financial affairs such as loans made to the [MWH] by Mr. Shaw and repayment of loans and interest*". She said that these (by which she meant all the purported agreements which I will refer to) were not agreements "*but merely me trying to keep a loose record for the Company of what was discussed between Mr. Wood and [the Claimant]*".

36. The Defendant was not present at any of the meetings between the Claimant and Mr. Wood when the loans were discussed.

37. The document contains the following features which are relevant:

    a. It is drawn up on MWH headed paper and is headed "AGREEMENT".

    b. There are 2 parties: Party (1) is Mr. Wood and Party (2) is the Claimant.

    c. It expressly states: "*It is agreed that Party 2 will loan party 1 the sum of £200,000 by way of bank transfer to the account of …"*

    d. The specified account for payment is MWH's account with National Westminster Bank ("MWH account").

    e. The purpose of the loan is stated as being to enable the purchase of 3 ex MOD gazelle helicopters for subsequent sale.

    f. Party (1) agreed to pay interest at 10% pa monthly in arrears.

g. Party (1) agreed to service any additional requirements of Party (2) in respect of helicopter usage over and above existing arrangement.

h. The loan was to be repaid by 31st May 2012 and "*Party 1 may settle the total debt at any time prior to [that date] without penalty*".

i. Party 1 agreed to provide security in the form of 2 cars and the 3 gazelle helicopters which were going to be purchased.

38. Nowhere in the written agreement is there any reference to it being entered into by Mr. Wood on behalf of MWH and his signature does not mention that he was a director or state that he was signing as director.

39. This agreement was updated on 21st December 2012 when it was agreed that the date for repayment of the loan would be extended to 31st May 2013. The Defendant emailed the Claimant with the updated agreement signed by Mr. Wood on 21st December 2013. It was also agreed that the two motor cars be removed from the list of security to be provided.

40. Further loans were agreed and made by the Claimant and the relevant provisions are set out in the table above. There is no dispute about the amount of the loans nor of amounts repaid. All of the loans which are referred to as "*written*" are set out in written documents which were drawn up by the Defendant in circumstances similar to those which she describes in relation to the November 2011 agreement. There are slight variations between them but the parties are identified in the same way, as the Claimant being the Party (2) and Mr. Wood Party (1). I will set out below the relevant differences between each transaction.

19th June 2012 (£120,000)

41. This was also drawn on MWH headed notepaper. The purpose of the loan was stated to be to "*prepare and finalise helicopters of the fleet to airworthiness condition for onward sale*". Security was identified as a Gazelle 341G valued at £250,000. It was signed by the Claimant and Mr. Wood. Interest of £1,500 was agreed. There was no reference to it being signed by Mr. Wood as director or on behalf of MWH.

10th September 2012 (£50,000)

42. This was an oral agreement which the Claimant says he agreed with Mr. Wood in September 2012 with a fixed sum of £500 interest. This was to provide working capital for MWH and the moneys were paid into MWH's bank account on 10th September 2012.

30th November 2012 (£50,000)

43. This was not drawn on headed notepaper. The purpose of the loan was stated to be "*short term loan .. for working capital in the account of MW Helicopters Ltd*". Interest was agreed at 10% per annum. No signed version has been produced.

44. The money was paid into MWH's bank account on 4th December 2012. The bank statement contains the following reference: "*payment for Mart*" meaning Mr. Wood.

The Claimant says that the original draft of this agreement was on MWH headed paper but this was removed by the Defendant at his request.

November 2013 (£275,000)

45. In November 2013 Mr. Wood proposed to the Claimant that he could arrange for the sale of the helicopter G-MANN. It was agreed between them that if a sale could be achieved in excess of the £250,000 that the Claimant had paid to purchase it, they would split the profit between them 50:50.

46. The Claimant says that it was then agreed with Mr. Wood that he would lend him the whole of the sale proceeds in return for Mr. Wood arranging, at his expense, to train the Claimant to qualify to fly twin engine helicopters. Thereafter he would permit the Claimant, subject to availability, to fly twin engine helicopters which he owned free of charge.

47. The Claimant's evidence was that Mr. Wood always referred to the helicopters he was dealing with as "*his helicopters*". In due course the Claimant was trained and qualified to fly "*twins*" and then regularly flew them though Mr. Wood.

48. G-Mann was sold in January 2014 for £300,000 and the whole of the proceeds were retained by Mr. Wood, including the Claimant's share of the £50,000 profit.

24th September 2014 (£475,000)

49. In September 2014 Mr. Wood approached the Claimant and asked him for a loan of £425,000 so that MWH could purchase 2 Gazelle helicopters. As before, the Defendant prepared a written agreement which was signed by Mr. Wood and sent to the Claimant. The document records the loan as being £475,000 but the Claimant accepts that it should have been recorded as £425,000.

50. The Claimant says that Mr. Wood's proposal was that a quick profit could be made on the sale of the 2 helicopters which would be shared 50:50. The Claimant says that he wasn't interested in that part of the proposal as he was already flying Martin's helicopters twice a week free of charge.

51. The written agreement was in very similar terms to the earlier agreements, was not on MWH notepaper and, as before, the Claimant and Mr. Wood were named as the parties with nothing to suggest that Mr. Wood was signing as director or on behalf of MWH. The share of profits was included as a term of the written agreement and it was agreed that 4 helicopters would be put up as security. There was an express term that "*Party 1 (*Mr. Wood*) agrees to service any additional requirements of Party 2, in respect of helicopter usage, positioning and transfers*". There was no interest provision.

52. Both parties signed the agreement and £425,000 was transferred to MWH's bank account.

53. The Defendant's pleaded case is that this transaction was a joint venture between the Claimant and Mr. Wood acting as agent for MWH, to purchase the 2 specific helicopters and sell them on at a profit. She was reticent in accepting that the Claimant had ever signed it, saying that she had only seen the version containing the

Claimant's signature when she received a copy from his solicitors in these proceedings. She did however state from the witness box that she wasn't suggesting that it hadn't been signed and there is no dispute that Mr. Wood signed it. What seems to have happened is that the Claimant signed it but didn't return it.

54. The 2 helicopters were sold in 2015 but there was no profit after the refurbishment costs had been deduced. The Defendant says that it was orally agreed by the Claimant and Mr. Wood that following the sale MWH could continue to have the benefit of this loan. The Claimant does not agree with this, saying that when he was told that the helicopters had not made a profit he asked when he would be repaid his loan and was told not to worry. He was also offered further security of another helicopter.

June 2016 (£200,000)

55. Mr. Wood asked the Claimant for another loan in late June 2016 which was agreed. The Defendant drew up an agreement and this stated that the loan was "*for the purposes of working capital introduction into MW Helicopters Ltd*". The agreement is dated 1st July 2016 and is drafted in the same way as before with Mr. Wood and the Claimant as Party 1 and Party 2. It is expressly stated that it is to supersede all previous agreements between "*Party 1 and Party 2*". It then recites that Party 2 has made loans totalling £1,000,000 to Party 1 "*for the purposes of working capital introduction into MW Helicopters Ltd*" and 5 helicopters are put up as security. The £200,000 loan is to be repaid by 1st September 2016 and the remainder "*when agreed by both parties*". There is no mention of Mr. Wood signing as director or on behalf of MWH and no interest provided for.

56. It is not disputed that at the date of the agreement the total amount owing under the various loan agreements was £1,000,000 including the additional £200,000.

22nd November 2016 (£50,000)

57. It is accepted by the Defendant that in November 2016 the Claimant agreed to lend Mr. Wood £50,000 as a personal loan. The £50,000 was paid into MWH's bank account. The Defendant says that the purpose of this loan was to help Mr. Wood's nephew with a short term cash issue on the purchase of a house. The loan was repaid by 15th December 2016 and was not recorded in writing. It does not form part of the Claimant's claim.

4th May 2018 (£50,000)

58. This was another oral agreement between Mr. Wood and the Claimant with the moneys paid into MWH's bank account. It was repaid on 6th September 2018.

6th March 2019 (£160,000)

59. Mr. Wood asked the Claimant for a further loan of £160,000 which the latter says he was told was required as short term bridging finance to enable his sister to purchase a house while her own house was being sold. He says that he was reluctant to increase the borrowing further as he was no longer using Mr. Wood's helicopters following his purchase of G-OLDH. He was persuaded to lend the money and paid £160,000 into a current account in the name of M. Wood. It is accepted that this was a personal loan

and there was no written agreement. This loan remains outstanding although the Defendant says that £30,000 was repaid in November 2020.

The purchase of the Gazelle helicopter G-OLDH

60. In July 2017 the Claimant agreed to purchase a Gazelle helicopter G-OLDH (later re-registered YU-HHH) from MWH for £250,000. He paid MWH direct and did not set off the payment against the outstanding loans, which on his case were made to Mr. Wood personally.

61. In her Defence the Defendant pleads that the purchase price was £350,000, of which the Claimant paid £250,000 to MWH on 23rd October 2017. She says that there was a shortfall in payments and also flying costs which she says were due from the Claimant and that 2 attempts were made to draw up a fresh agreement dated 1st December 2017 and 1st December 2018. She says in her pleading that she doesn't know if these were shown or sent to the Claimant. The 2017 document records £327,135 unpaid flying costs and the 2018 document £384,361 outstanding flying costs. The Claimant's case is that he did not agree to pay any flying costs because of the previous agreements with Mr. Wood at the time of various loans.

The April 2019 superseding agreement

62. On 15th and 16th April 2019 a written agreement was signed by Mr. Wood and the Claimant ("the Superseding Agreement"). I will refer to this later, but it stated that it superseded all previous agreements and set out the total loans due. Once more, Mr. Wood was named as "*Party (1)"* and the party to whom the loan was made.

63. The lead up to the Superseding Agreement is relevant to the issues in this case as the parties disagree about its effect.

64. The Claimant's evidence is that on 14th April 2019 he visited Stapleford Aerodrome. While he was there Mr. Wood handed him a document bearing the date 1st April 2019 typed on MWH headed notepaper. The document stated that it superseded all previous agreements and recited that Party 2 had a loan in place to Party 1 totalling £1,210,000 for the purpose of introducing working capital into MWH. On the second page, headed "*Notes*" were 2 clauses. One stated that on 23rd October 2017 Party 2 paid £250,000 for a Gazelle Helicopter G-OLD "*(agreed sale £350,000)"*. There was also a clause stating that flying costs to January 2019 totalled £412,558.

65. The Claimant says that he was very angry when he saw these entries and that it was on MWH paper. He says that no additional payment was due on the helicopter purchase because the updated avionics had not been fitted. This was the first time that any suggestion had been made that he should pay for his flying costs as he believed that these were the quid pro quo for his loans.

66. The Claimant says that Mr. Wood apologised and said that he would ask the Defendant to remove the offending clauses and print the agreement on plain notepaper.

67. On 15th April 2019 the Defendant emailed the Claimant an amended agreement on plain paper but page 2 was still included with the clauses he had objected to, although the helicopter price had been changed to £300,000. A further agreement was sent on 16th April removing page 2 and this is the document that Mr. Wood and the Claimant signed.

68. The Defendant accepts that she made the amendments after receiving the Claimant's objections. Her explanation is that she simply accepted the objections because she believed that MWH's records would confirm the correct balances on both figures. This is simply not credible. In cross-examination she was pressed about the removal of page 2 of the agreement. She said that it was her decision to take it out and that she had not discussed it with Mr Wood. This is also not credible. The original 2 drafts had the signatures on page 2 where the final version is signed by both parties on page 1.

69. The Defendant says that she had not seen the version signed by the Claimant until September 2019 when it was sent to her by the Claimant's solicitor. He says that he would have given it to Mr. Wood next time he was at the Aerodrome. Nothing turns on this since both agree that it was signed by Mr. Wood when it was sent to the Claimant to sign and it is probable that the Claimant signed it immediately.

70. In fact both parties now agree that the total loan figure is incorrect. The Claimant accepts that it should have been £1,160,000 (including the admitted personal loans of £160,000. The Defendant's case is that the estate owes the Claimant £130,000 and this was accepted by the Claimant.

71. Mr. Wood died on 14th September 2019. This claim is brought against his estate. The Defendant is the sole executor and has not taken out a grant of probate because she says that she was advised that it was not necessary, most of Mr. Wood's assets having passed to her by survivorship.

72. Following Mr. Wood's death, MWH changed its name to "AW Realisations Limited" on 16th July 2020 and on 3rd July 2020 the High Court appointed administrators of MWH.

The Issues

73. The Claimant's case is very straightforward. He says that he orally agreed with Mr. Wood to make the loans. The terms of all but 2 of the loans were written down in agreement documents which were signed by them and either comprise the agreement between them or evidence the terms of the oral agreements. The oral agreements were, to all relevant extents, on similar terms as a result of the course of dealing between them in the earlier transactions.

74. Each of the loans was made to Mr. Wood personally and not MWH. The fact that the moneys were paid into MWH's bank account is not determinative of the identity of the borrower as they were paid into that account at the direction of Mr. Wood acting in his personal capacity.

75. He says that whatever the position with regard to the individual loan transactions, the Superseding Agreement takes precedence and it is (a) a written agreement and (b) is

an agreement by Mr. Wood personally to repay the amount referred to (albeit now conceded that it was mistakenly overstated and liability is for the lower figure).

76. The Defendant's pleaded case is that, apart from the loans which are admitted to be personal, all the loans were made to MWH and that the estate is not therefore liable. It was admitted that £130.000 of personal loans remain outstanding and that MWH owed £1,000,000 on the basis that the loans were made to it.

77. In her opening submissions Ms. Sleeman submitted that the loans were oral but "*recorded in writing*". The main defence was that they were made to the company MWH and not to Mr. Wood personally. **The Consumer Credit Act** and other statutory defences were abandoned.

78. In her closing submissions Ms. Sleeman developed her client's case and submitted that all the disputed loan agreements were made orally and none were made in writing. The Superseding Agreement was unenforceable for a lack of consideration.

79. Mr. Coppel objected to these additional arguments on the grounds that they were not part of the pleaded defence and he had only received notice of them when he first saw Ms. Sleeman's closing submissions late on Sunday 5th February 2023, the day before final submissions were heard.

80. There are also issues between the parties about the total amount due and interest. I pick these up at the end of this judgment.

The Law

81. I was referred to a number of cases in relation to the issue of the identity of the contracting parties. In her closing submissions Ms. Sleeman referred to **Chitty on Contracts 34th Ed** 5-040:

> "*When the parties are dealing face to face there is a strong presumption that the mistaken party intends to deal with the person physically present or, to put it in other words, there is a presumption that the offer is made to the person present*".

82. She also referred to the House of Lords decision in **Shogun Finance Limited v Hudson** [2004] 1 AC 919. The cases cited in the passage from **Chitty** and **Shogun** all concerned situations where someone entered into an agreement face to face with the other party and is masquerading as someone else (normally someone of a much higher status or credit standing) and mistaken identity. The presumption has to be viewed in that context. At paragraph 179 Lord Phillips considered the earlier decision of **Cundy v Lindsay** where the approach to identifying the parties was the same as that used in identifying the terms, namely focussing on deducing the intention of the parties by their words and conduct. He then said:

> "*Where there is some form of personal contact between individuals who are conducting negotiations, this approach gives rise to problems. In such a situation I would favour the application of a strong presumption that each intends to contract with the other with whom he is dealing. Where*

> *however the contract is exclusively conducted in writing there is no need for the presumption*".

83. The present case is a somewhat different situation. The issue is not the identity of the person with whom the Claimant is contracting but Mr. Wood's capacity. Is he contracting personally or on behalf of MWH? The latter can only conduct negotiations through the medium of an authorised human, in this case Mr. Wood. The presumption doesn't therefore assist. If it was to apply then it would favour the Claimant since Mr. Wood was present and the presumption would be that the contracting parties were the Claimant and Mr. Wood. The issue of capacity can only be resolved by ascertaining the intention of the parties from their words and conduct. In this case there are written agreements which set out all the terms agreed between the parties even if the agreement was reached orally before being put into writing.

84. Even if I had been satisfied that it was open to the Defendant to make a case that the loans were all made under oral agreements (which I am not) and wrong about my analysis of the principle advanced by Ms. Sleeman, it would make no difference. Firstly because the presumption works against her client and, secondly, because the best evidence of the terms of the contract is contained in the written agreements and the course of conduct established by them which applies to the oral agreements.

85. Mr. Coppel made several propositions of law, none of which can be seriously challenged:

a. In a situation where parties agree terms (orally or in correspondence) and then record them formally in a document which they then sign, if there is a discrepancy between the two then the remedy is rectification but this does not mean that there isn't a contract (**Chitty** para 4-40). In the present case there is no claim for rectification by the Defendant.

b. Where there is a written contract, the parol evidence rule provides that oral evidence cannot be received to add to, subtract from or vary the written terms save in some exceptional circumstances. There is a comprehensive analysis of the legal principles in the judgment of Jackson LJ in **Hamid v Francis Bradshaw Partnership** [2013] EWCA Civ 470 at para 46 onwards. At paragraph 57 he says:

> "*In my view the principles which emerge from this line of authorities are the following. (i) Where an issue arises as to the identity of the contracting party referred to in a deed or contract, extrinsic evidence is admissible to assist resolution of that issue. (ii) In determining the identity of the contracting party, the court's approach is objective, not subjective. The question is what a reasonable person, furnished with the relevant information, would conclude. The private thoughts of the protagonists concerning who was contracting with whom are irrelevant and inadmissible. (iii) If the extrinsic evidence establishes that a party has been misdescribed in the document, the court may correct that error as a matter of construction without any need for formal rectification. (iv) where the issue is whether the party signed the document as principal or as*

> *agent for someone else, there is no automatic relaxation of the parol evidence rule. The person who signed is the contracting party unless (a) the document makes clear that he signed as agent from a sufficiently identified principal or as the officer of a sufficiently identified company, or (b) extrinsic evidence establishes that both parties knew he was signing as agent or company officer.*"

c. A similar issue arose in relation to a charter party in **Internaut Shipping GmbH v Fercometal Sarl** [2003] EWCA Civ 812:

> "*the signature is, as it were, the party's seal upon the contract … Prima facie a person does not sign a document without intending the be bound under it, or, to put that thought in the objective rather than subjective form, without properly being regarded as intending to be bound under it. If therefore he wishes to be regarded as not binding himself under it, then he should qualify his signature or otherwise make plain that the contract does not bind him personally*."

d. Finally, Mr. Coppel referred to **Purbrick v Cruz** [2020] EWCA Civ 1494 (QB). This was not a trial, but the hearing of an application for a freezing injunction, so that the issue was whether the claimant had a good arguable case based on his claim that the defendant had signed a contract intending to be personally bound. Knowles J decided that there was, placing particular weight on the fact that the defendant was named personally with no qualification identifying him as agent or officer of the company – even though the contract was on the company's headed note paper with its registration and VAT numbers. The money had also been paid into the company's account.

Who were the contracting parties

86. Mr. Coppel objected to the way in which Ms. Sleeman put the case in her final submissions on the grounds that it contradicted the pleaded case, had not been advanced in opening and that it could only be put that way with an amended pleading. He said that there were two new points: (i) that there were no written agreements because each loan was agreed orally and therefore the purported "*written agreements*" could not change the existing contractual relationship and (ii) that the "*superseding agreements*" were unenforceable for want of consideration.

87. Neither of these points were advanced in Ms. Sleeman's opening skeleton and the first of them involves a submission that there has been a mistake as to the capacity in which Mr. Wood was contracting. The defence pleads that the loans were made under "*oral agreements*" but "*recorded in writing*". Both new points should have been clearly pleaded in the defence and weren't. I therefore agree with Mr. Coppel that in order to be able to advance them, an application would have to be made to amend the defence. It is far too late to raise a plea of mistake with the evidence concluded. None was made and therefore this point doesn't arise for decision. The first point is inconsistent with the pleaded case and the agreed case summary, where it is clearly stated that the agreements were "*partly oral and partly in writing*" and that there was a contract between the Claimant and MWH. It is also inconsistent with the

Defendant's evidence. She clearly stated that her intention when drawing up the written documents was "*to record what had been agreed*". The consideration point is however one which would have required a pleading in response and, probably, some further evidence from the Claimant's side.

88. In any event, neither point gets the Defendant anywhere for reasons that I will explain.

89. Ms. Sleeman submits that, on a proper contractual analysis, the written agreements do not change the contractual position agreed orally. This begs the question: what was agreed orally? She says that there are three possibilities:

    a. The Claimant intended to contract with Mr. Wood and vice versa;

    b. The Claimant intended to contract with MWH and Mr. Wood, acting on behalf of MWH, intended to contract with the Claimant;

    c. The Claimant intended to contract with Mr. Wood but Mr. Wood intended to contract with the Claimant, but on behalf of MWH.

90. If point (c) is the factual position, Ms. Sleeman says that there is no contract at all and the Claimant's remedy is a restitution claim against the recipient – MWH. One of the problems with this argument is that there would be no contract at the time the parties signed the written agreements. This would give the latter precedence and defeat the point that she is making.

91. I find that the written documents set out the terms that were agreed between Mr. Wood and the Claimant. I reject the Defendant's evidence that the documents were "*not agreements but merely me trying to keep a loose record for the Company of what was discussed between Martin and Mr. Shaw*". They purport to be formal legal documents, are drafted as such and are signed by both parties. If they had been intended to be "*loose records*" this was unnecessary if the loans had been properly recorded in MWH's books. There is no evidence that they were. Mr. Hewitt had no direct knowledge of the loans, was unaware of any company documents recording them and had not seen the loan agreements which are central to these proceedings. Mr. Hewitt's witness statement contained somewhat vague evidence of discussions between Mr. Wood and the Defendant each year between 2011 and 2018 and from these he said he was aware that the Claimant had made loans to MWH. He exhibited documents, described as "*Mr. Shaw's loan account*" which were clearly created after Mr Wood's death for the purpose of the administration. Nor does he say that he prepared them.

92. Nothing has been produced to support the proposition that Mr. Wood and the Defendant told him for the purpose of preparing the annual accounts that the loans were made to MWH. If they had, it is extraordinary that he was not shown the various loan agreements at the time. Mr. Hewitt was not told that there were significant loans due to be repaid by MWH to the Claimant until after the administration. It is highly unlikely that he would not have been told at the time of preparing the accounts if Mr. Wood had believed that the loans were made direct to MWH.

93. I am satisfied that MWH's accounts don't reflect these loans. The Defendant said that the loans had all been recorded in MWH's documents. If that was the case then she has not been able to prove it.

94. The only benefit to MWH and to Mr. and Mrs. Wood in making a written record which was signed by the Claimant would be to make it clear who was liable to repay the loan. I am satisfied that the Defendant would not have drafted these documents without making it clear that MWH was Party (1) and was to repay the loan, if that had been what she had been told had been agreed.

95. There are differences between the agreements as set out earlier in this judgment, for example the November 2011 agreement is on MWH notepaper but names Mr. Wood as Party (1) who expressly agrees that it is a loan to him. Similarly with the June 2012 loan. From November 2012 the agreements cease to be on MWH notepaper and the April 2019 superseding agreement was also not on MWH notepaper. As this document was clearly intended to set out the account between the parties one might have expected it to make clear who owed the debt stated to be £1.21m.

96. There is also the evidence relating to the drafting of the 15th April 2019 agreement showing that the parties were not treating that document as a "*loose record*". The Claimant and the Defendant both gave evidence that it was the Claimant who objected to it being printed on MWH notepaper. Why would the Claimant object if he believed that the loans were to MWH and that it was liable to repay them? Why would Mr. Wood tell the Defendant to print a copy on plain paper if he believed that he was not personally liable? It makes no sense.

97. The Defendant can give no direct evidence of what was agreed. She has a significant personal interest in arguing that the loan was to be repaid by MWH. She says that the written agreements record what she was told by Mr.Wood had been orally agreed. Therefore the written agreements are the best evidence of what was agreed.

98. Against this, Ms. Sleeman can make two significant points. The moneys were in fact all paid directly into MWH's account. This does not, of itself, mean that the loan was being made to MWH. The Claimant would not have known how these transactions were going to be recorded in MWH's books but one would expect the payments to be made direct if the purpose of the loans to Mr. Wood was to enable him to inject capital into the company or to meet a cash flow problem (as Mr. Wilson says he did to enable VAT to be paid). As Mr. Hewitt accepted, the transactions could have been treated as director's loan account. In fact they are not recorded in MWH's books.

99. Secondly, Ms. Sleeman submits that the security given in the agreements is provided, for the most part, by helicopters owned by MWH. The Claimant's evidence was that he thought Mr. Wood owned them personally, but whether or not that was the case (and I accept that Mr. Wood probably said so) is not very relevant. He was being offered security of the helicopters and didn't then bother to check whether the securities had been registered. Both Mr. Wilson and the Claimant gave evidence that the helicopters would have remained registered in MWH's name even if the ownership had changed and this wasn't seriously challenged. There were technical reasons for this. The Claimant wasn't a party to any arrangements between Mr. Wood and MWH and it is not inconsistent that the security was being provided by a third

party, particularly if the loan moneys were being passed on to the company by way of further loan.

100. The wording of the written agreements is clear and unambiguous. There is nothing to suggest that Mr. Wood was entering into them or signing them on behalf of MWH. If he had been this should have been expressed on their face. It would have been easy for them to state that MWH was Party (1) instead of Mr. Wood. I therefore prefer the Claimant's evidence that the loans were all personal loans to Mr. Wood and not loans to MWH, even if the purpose for which Mr. Wood was borrowing the money was to inject it into MWH.

101. If MWH had been intended to be liable to repay the loans then I accept Mr. Shaw's evidence that he would have treated them differently because they were loans to a company. For example, he would have carried out a due diligence process. He was prepared to deal with the matter in the less formal way because he trusted Mr. Wood and thought he was dealing with him personally. Furthermore, such large loans would have been formally recorded by MWH and dealt with in its books.

102. Ms. Sleeman also distinguished the three loans which the Defendant acknowledges were personal because the moneys were used, and intended to be used, for non-company matters. The problem with that is that the 15th – 16th April 2015 agreement includes these loans in the overall figure of £1.21m, £30,000 of which has been repaid by the estate since Mr. Wood's death.

The superseding Agreement 15th - 16th April 2019

103. This agreement states that it is the supersedes all other previous agreements. It couldn't be expressed more clearly that this was a consolidation of previous agreements and of the loan. The Defendant did not treat this as "*a loose record*" of what had been agreed because there was a negotiation between her and the Claimant leading to significant amendment. She wanted to include £412,558 "*flying costs up to January 2019*" which the Claimant objected to on the grounds that it had been agreed that these would be a quid pro quo for not receiving interest on the loans. She also wanted to include reference to an outstanding £100,000 due from the Claimant on the sale of the Gazelle helicopter. After speaking to Mr. Wood both of these provisions were withdrawn.

104. This was the opportunity to make it crystal clear that the loans were made to MWH. I do not accept the Defendant's attempt to blame the drafting of the agreements on her lack of legal expertise. She knew what she was doing as is made clear by her inclusion of the provisions which were later withdrawn. You do not have to be a lawyer in order to understand that, in plain English, Mr. Wood was a party to the agreement and that the Superseding Agreement (and the earlier agreements) include an acknowledgment that the Claimant is lending money to Mr. Wood. She would also have understood the significance of the Claimant insisting that it should not be printed on MWH notepaper.

105. Ms. Sleeman submits that the Superseding Agreement is unenforceable for lack of consideration. I have already dealt with the pleading issue and ruled that this point cannot be advanced. Her final submissions show the difficulties she would have faced with an application to amend when she refers to the absence of any pleading in

response that the consideration was a forbearance to sue. There clearly was consideration because the agreed security for continuing the loan changed as it was reduced.

106. In conclusion, if the Superseding Agreement is unenforceable for lack of consideration, the contractual position reverts to the previous position and the Claimant can enforce the agreements that it supersedes. If it is enforceable then, subject to the agreed correction of the figure to £1.16m and repayment of £30,000, the Claimant is entitled to recover £1.13m from Mr. Wood's estate.

Other points

107. Mr. Coppel argued that I should draw adverse inferences from the failure of the Defendant to adduce any evidence from Mr. Mohammad Seylani and Mr. Nigel Brunt. I was referred to the relevant authorities and will not set them out here. His proposition is that Mr. Seylani could reasonably have been expected to know whether the moneys were loaned to Mr. Wood or MWH. I very much doubt that his evidence would have shed much light on the issues in this case. In any case the best evidence of what was intended is the written documentation drawn up by the Defendant. Mr. Blunt is, at best, a peripheral witness and even if I were to draw an adverse inference from his non-attendance it would have carried no weight.

108. In the light of my finding that the loan agreements were all with Mr. Wood, the issue of the payments for services connected with the Claimant's use of helicopters doesn't arise because that would be between him and MWH. I accept the Claimant's evidence that it was agreed that these would be waived in return for the interest free loans. The Superseding Agreement put an end to any argument about the amounts due to be repaid, including any issue about these charges but, in any case, there is no defence of set off and any such defence could only be brought by the MWH. This would also include the Defendant's contention that the Claimant owed money on the purchase of the Gazelle helicopter G-OLDH.

109. What in fact happened is that in July 2017 the Claimant agreed to purchase the Gazelle for £250,000. He paid this to MWH in October 2017 and did not set this off against the sums due to him under the loan agreements because these were owed to him by Mr. Wood. The Defendant says that the price was £350,000 and that £100,000 remained unpaid. I accept the Claimant's evidence that it was agreed that he would pay a further £50,000 once the avionics had been up-dated. This never happened and therefore the original price was correct. His evidence on this was not challenged. The Defendant pointed to earlier written loan agreements in which there is reference to the shortfall, as well as to the liability for use of the helicopters. None of the documents she referred to was signed by the Claimant and until he rejected the first drafts of the Superseding Agreement in April 2019 it is not at all clear that he had seen any of these other documents. They are probably drafts which the Defendant put together and which weren't used.

Interest

110. By the end of the trial there was little between counsel about this issue. Both agreed that it should run from the first written demand and be paid under section 35A of the **Senior Courts Act 1981**. The first written demand was made on 1st October 2019,

which is the date from which interest should run on £1.13m. Ms. Sleeman said that it should be at the rate of 3% p.a. and Mr. Coppel 4%. I award 4%.

Conclusion

111. I therefore give judgment for the Claimant in the sum of £1.13m plus interest at the rate of 4% p.a. from 1st October 2019 until the final order in this case.

112. A further hearing will be listed by CVP to deal with the final order, costs and any other outstanding matters. This will be arranged on a date convenient to the parties and I will hand down judgment formally on a date beforehand in the absence of the parties and their representatives.