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Case Nos: D10CL098

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
RCJ
Strand
LONDON WC2A 2LL
Date: 24 May 2019

Between:

MS CLAUDIA ZELENA EMMANUEL	**Claimant**
- and –	
MR ANDREW AVISON	**First Defendant**
- and –	
MRS GINNY AVISON	**Second Defendant**
-and-	
MR GLENRICK WHITE	**Third Defendant**

- -

Mr Gabriel Buttimore of counsel (instructed by **Teacher Stern Solicitors**) for the **Claimant**
Mr Nigel Meares of counsel instructed by **Edward Hayes Solicitors** for the **first and second Defendants**
The Third Defendant in person

HIS HONOUR JUDGE HAND QC AND HIS HONOUR JOHN HAND QC SITTING AS A DEPUTY CIRCUIT JUDGE

Hearing dates: 23 to 27 July 2018

- -

Judgment Approved by the court for handing down

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HH JOHN HAND QC:

Introduction

1. This is a claim for declaratory relief and an order pursuant to paragraph 2 of Schedule 4 of the **Land Registration Act 2002** that the charges register in respect of the freehold and leasehold titles of 18 Bennett Park, Blackheath, London SE3 9RB ("the Property") as registered at the Land Registry should be altered by removing references to an entry made on 5 September 2014 relating to a charge ("the Legal Charge") stated to have been made on 2 September 2014 between the Claimant and the first and second Defendants, Mr and Mrs Avison in a deed (see pages 10 to 12 of the hearing bundle). The declarations sought are that what purports to be the Claimant's signature on the deed is a forgery and that she does not owe the first and second Defendants any money and consequent upon those declarations the Claimant seeks an order removing references to the charge in the Register. The Claimant has been represented by Mr Buttimore of counsel and the first and second Defendants have been represented by Mr Meares of counsel. The case against the third Defendant, who has represented himself, is that somebody acting on his behalf forged the signature.

The history of this judgment

2. A number of vicissitudes have affected this case. I did not have an opportunity to consider the papers in advance, although there is nothing unusual about that in this Court. Consequently, I read into the case on the first morning and heard some applications relating to further disclosure, cross examination procedure and witnesses before starting the case around 2.00 pm, As is my wont, I took a note of the oral evidence in the judicial notebook provided to me for that purpose but, as the evidence proceeded, I also made copious notes on the copy documents that appeared in the four volumes of the Court's hearing bundle, carefully tabbing and cross-referencing each document. Consequently, by no means all of my preparation for this judgment was contained in my notebook.

3. The evidence was completed by the early afternoon of Thursday, 26 July 2018 and by the time the court rose the third Defendant had completed his submissions. Mr Buttimore then commenced his submissions on behalf of the Claimant. The case had been listed for four days and rather than go part heard to a date in the future, I was able to make arrangements to sit on Friday, 27 July 2018. Mr Buttimore was therefore able to continue his submissions the following day and by the early afternoon I had also heard submissions from Mr Meares. As a

result Mr Buttimore replied on the law but at about 3:30 pm I concluded, given the difference of view as to who bore the burden of proof, that I should receive further written submissions and so I gave directions that the Claimant should file further written submissions dealing with the burden of proof by 10 August 2018 and the Defendants should file their submissions in reply by 23 August 2018.

4. I supplied the parties with my email address cautioning that use of court email addresses might make it more difficult for documents to reach me. Finally, before rising, I indicated that an oral judgment might possibly be given in September 2018. The Claimant and the third Defendant filed written submissions in accordance with the directions. Nothing from Mr Meares reached me. Given that the third Defendant referred to and adopted submissions made by Mr Meares it seemed likely that something had gone wrong. but it was not the only thing to have gone wrong because by then the marked-up judge's hearing bundles had disappeared and in the confusion caused by that, my attention was directed away from those submissions. The hearing bundles had been left in a file box in the chambers to Court 54 with a note that they were not to be moved and that they related to a case in which I had reserved judgment. I was alarmed by this turn of events but was assured that they would "turn up". They never did, despite myself and several others having searched the Thomas More tower from top to bottom in late August and a fruitless personal visit by myself to the Mayor's and City Court in September, it having been suggested to me that the papers had been sent there because I had sat there in early August..

5. I realised by mid-September that it was unlikely my hearing bundles would be seen again and on 19 September 2018 I asked to be supplied with an audio recording of the proceedings. About the same time I asked the court to write not only to the parties in this case but to those involved in other cases explaining that my personal circumstances were likely to lead to a delay in the delivery of a number of judgments. A replacement set of bundles was sent to me in mid-October 2018 and I then asked for a search to be made in various court inboxes for the submission from Mr Meares. This could not be found. I eventually received it via the third Defendant in early February 2019.

6. In early December I sent a full letter of explanation to the legal representatives of all parties and to the third Defendant, who was representing himself. I explained the difficulties

with my own and my wife's health and indicated that I hoped I might deliver a judgment in January 2019. Due to a deterioration in my wife's health in January this proved impossible.

7. Questions as to various matters were put to me by the Defendants in early February 2019. One concerned the recording of the proceedings. I had thought that I had the complete recording but on investigation it turned out that I had been given a recording for the last day of this hearing but that what purported to be the recording for the first four days was partly another case and partly silent. I assumed that the wrong court number had been given to the recording centre and I asked in early February for a replacement recording. I did not receive this until mid-March and, although it seems nothing has been recorded on the first day (and the recording quality of the second day is very poor), I have been able to combine what has been recorded with my note to produce this judgment, notwithstanding the absence of the original marked up and cross reference hearing bundle. This was itself time consuming, something not assisted by a temporary deterioration in my eye condition in February and March, and it has taken some time since then to list the case for the delivery of this judgment on 24 May 2019.

The Facts

8. This case has had many twists and turns with a density of what Mr Buttimore called "forensic points". What follows does not purport to deal with each inconsistency either in terms of findings of fact or of credibility. It is not my duty to decide each and every point but only those which I think are necessary for me to reach a judgment either on the case generally or in relation to the individual issues. Consequently, some of the points raised in the course of the oral evidence and some of the submissions made may not be reflected in the text of this judgment. That does not mean to say that I have not considered these matters and certainly does not mean that I have ignored them. I have simply chosen not to set them out because it seems to me that they are subsumed in the points and findings that I have set out below and to which I now turn.

The Background

9. The Claimant, who is a graduate and admitted solicitor, although not now in practice, had been the Chief Executive Officer for an economic development company, Me Afriqiyah Ltd. Her work related to financial services and investment management. Whilst working in that capacity in 2010 she met the third Defendant who was a freelance consultant doing business and project plans for Me Afriqiyah. In 2011 she became Chief Executive Officer of

the Trinidad and Tobago Securities Exchange Commission and she relocated to Trinidad. During this period and subsequently she said that there will have been numerous occasions when her passport and driving licence would have been produced and copied as a matter of routine in the carrying out of various commercial transactions.

10. She kept in touch with the third Defendant and in 2012 he suggested that they should go into business together sourcing and providing finance for business projects in the developing world. After a number of conversations between them and one visit by the third Defendant to Trinidad, the Claimant, who felt she had a similar approach to business as did the third Defendant, agreed and in July 2012 Emunite Fiscal Solutions Ltd was incorporated in St Lucia, an island which is relatively close to Trinidad, through the medium of a local adviser on corporate formation. This was to be run by the third Defendant because the Claimant had a full-time job, although it was agreed she would provide her financial and legal expertise. The third Defendant had obtained some experience of biomass energy whilst working as a consultant and in early 2013 a second company was incorporated called Emunite Energy Solutions Ltd. This was also formed in St Lucia by the Claimant, using the same local adviser. The Claimant and the third Defendant were each allotted 100 shares and a Mr Amarjit Singh Chana was allocated 10 shares (see page 610 of the hearing bundle).

11. Nothing else was done about these two companies until later in 2013 when it seemed likely that, as a result of the third Defendant's activities, some revenue might be payable. It was necessary for there to be a bank account into which such revenue could be paid and it is common ground that it was agreed that the Claimant, who was geographically proximate, should visit St Lucia (it was about a 30 minute flight) and make the necessary arrangements.

12. The first of many controversies in this case was as to what happened next. The Claimant's evidence was that when she consulted the same local advisers on corporate formation it was suggested to her that it would be better to set up an offshore company or companies and pay any revenue into accounts connected with that company or companies. As a result on 21 February 2013 Emunite Fiscal Solutions (IBC) Incorporated ("IBC") was formed[1] pursuant to the provisions of the International Business Companies Act 1999, as amended (i.e. legislation enacted in St Lucia), and the Claimant opened a St Lucia bank account

[1] The relevant documentation is at pages 611 to 637 of the hearing bundle.

on its behalf[2]. She was the sole signatory on the account and the sole shareholder in IBC. It seems likely this offshore company was intended to replace Emunite Fiscal Solutions Ltd as the active corporate vehicle for conducting financial transactions. In 2014 a second offshore company, Emunite Energy Solutions (IBC) Incorporated was set up and I infer the purpose in forming it was to replace Emunite Energy Solutions Ltd with this offshore entity, which would become the active corporate vehicle for the implementation of projects. In the event I do not think it was ever used.

13. The third Defendant suggested that the Claimant had been less than straightforward about the formation of these two offshore corporations and that he did not know he was neither a shareholder nor a director of either. A little time was spent during the hearing dealing with whether the third Defendant had known the details of the ownership of the offshore corporations. This seems to me to be of only peripheral relevance, being at most an alleged illustration of the Claimant's lack of credibility. I will go on later in this judgment to make findings of fact about significant issues but can deal with this now by saying it seems to me that there is ample documentary evidence, despite his evidence to the contrary, that the third Defendant knew that the Claimant was the sole shareholder in IBC.

14. She had informed the third Defendant about the proposal to form the IBC in an email to which he had replied on 21 February 2013 saying that it was not a problem (see page 238 of the hearing bundle). A further email, together with attachments, from the Claimant to the third Defendant on 8 March 2013 forwarded details of the bank account that she had set up and makes clear that she was the sole operator of the account (see pages 241 to 244 of the hearing bundle). In the email, together with attachments, forwarded by the Claimant to the third Defendant on 11 December 2013 particulars of IBC are given which make it clear that the Claimant was the only shareholder and the only director. Renewal documents were sent by email in September and forwarded by the Claimant to the third Defendant in December 2013 (see pages 250 to 255 of the hearing bundle). The third Defendant says that he did not receive the attachments, which make it clear that she was the only director and sole shareholder. I do not accept his evidence on this point. I do, however, accept the Claimant's evidence that the third Defendant could access the account via Internet banking because she had given him the necessary details including the password or passwords and, as appears from the bank

[2] The relevant documentation is at pages 638 to 646 of the hearing bundle.

statements, to which I will come directly, subsequently he was able to access and use the account. The third Defendant accepted this latter point during cross examination.

15. He worked on a number of projects. Some of these produced some revenue; for instance, a project in Samoa produced US$75,000. IBC's bank account had been opened with the Bank of Saint Lucia International Ltd with a deposit made by the Claimant of US$65,000 said to have been a payment of commission from an entity called Biogen 3 (see page 639 of the hearing bundle) and this may have related to work done by the third Defendant for a project. Bank statements covering the period between 11 April 2013 and 31 March 2017 are at pages 690 to 696 of the hearing bundle. There appears to have been no formality whatsoever in terms of the running of these various companies. It was common ground between the Claimant and the third Defendant that in fact there had been no formal board meetings or management meetings and that there were no minutes of any conversations which they had about the affairs of IBC.

16. The Claimant's legal experience appears to have been in financial investment, which makes it all the more surprising that her knowledge of the transactions underlying the various debit and credit entries in the IBC bank statements appeared to be close to non-existent. Also, she appeared to have little understanding of how some of the transactions relating to the project, to which I am about to come, were supposed to work. In reality, I think she had little to do with any of the detail and was totally reliant on the third Defendant. I accept her evidence that she did not concern herself either with the details of the bank account or with the terms on which the third Defendant produced money.

17. One of the two largest projects which the third Defendant was working on related to the Republic of Guyana. The scheme was to develop a biomass pellet manufacturing plant in Guyana. The raw material from which the pellets would be produced was cultivated vegetation called Giant King Grass. It was believed this could be grown on existing farm/plantation land or on marginal or uncultivated land. The proposal made to the government of the Republic of Guyana was that IBC would invest $6,500.000.00 to fund the initial farming and harvesting over a two-year period and over a 5 year period the revenue stream produced for the benefit of the farmers of Guyana would be something of the order of US$11,500.000.00. Not revealed in any documents or witness statements but disclosed orally by the third Defendant during his evidence, it emerged that associated with, or as a component of, these monies IBC would be

entitled to a commission or commissions of US$2,100,000.00 payable as soon as the first tranche of the money was received.

18. These initial proposals were set out by the third Defendant in a letter dated 11 May 2013 sent to the Guyanese Minister of Agriculture (see pages 247 and 248 of the hearing bundle). The letter stated that "*in principal financing for this facility*" had been secured from "*the foreign direct finance market*". It seems to me that this was a very optimistic view of the way things stood in 2013. But, no doubt, many very successful projects have started out with similar optimistic statements and, in any event, both the Claimant and the third Defendant were party to this representation. It is certain, however, that IBC, or for that matter any other associated company, had no substantial funds at this point. The credit balance in the IBC bank account stood at less than US$5000.00 at this time.

19. The strategy was explained by the third Defendant at paragraph 10[3] of his witness statement made for the purposes of these proceedings (see pages 175 to 204 of the hearing bundle) as follows:

> **"In March 2013, our company Emunite Energy Solutions Ltd engaged with the Guyanese Government regarding the structuring, financing and development of a biomass pellet manufacturing plant in Guyana. Our source of finance for this project was through the Chinese Export Credit Finance Facility, which was organised by a Chinese contractor and supported by a major Chinese bank to the tune of 85% of the project cost. The remaining 15% was expected to be provided by Emunite Energy Solutions Limited."**

On the kind of figures, which had been put forward by the third Defendant to the Guyanese Minister in the letter discussed immediately above at paragraph 18 of this judgment, 15% of the project cost was likely to be a very large amount of money. This is illustrated by letters of authorisation written in both English and Chinese to a Chinese bank at pages 863.83 to 863.86 of the hearing bundle. The Claimant does not dispute that she signed these. She said in cross examination that she did so relying on information from the third Defendant. The loan amount referred to in these documents was US$14,450,000.00.

20. But other contemporary material suggests something rather more sophisticated than a straightforward loan. In November 2013 negotiations between the third Defendant and a potential investor or investors in China appear to have been quite advanced (see the emails passing between the third Defendant, Ms Susan Li, who appears to have been associated with

[3] This is more or less the same as paragraphs 6, 7 and 8 of an earlier witness statement he had made either in proceedings in the County Court at Lambeth (see pages 684 and 685 of the hearing bundle) or at an early stage of these proceedings.

a website called www.chinaequipment.asia, which, in turn, may or may not have had a connection with Hengshui Decheng Machine and Equipment Ltd, an entity said to have been controlled by a Mr Wang, and the Claimant between 8 November 2013 and 22 November 2013 at pages 249.1 and 249.2 of the hearing bundle).

21. Central to the mechanism, at this early stage, was a standby letter of credit ("SBLC"). What the above correspondence made clear to the Claimant and the third Defendant was that IBC needed to provide an SBLC and that it was not going to be put into funds by the Chinese investors in order to "*purchase*" the SBLC and so it was going to have to find the money to do so. I do not understand enough of the commercial world to know whether it is usual to "*purchase*" an SBLC, although I am bound to say that, at first sight, it strikes me as a very strange concept. To my simple mind either one has sufficient credit (or "proof of funds") for a financial institution to provide an SBLC or one does not. I should record that at one point during the course of his cross examination I reminded the third Defendant that he had a privilege against self-incrimination.

22. The concept of purchasing an SBLC was, however, one with which both the Claimant and the third Defendant appear to have been familiar because, having observed that this news was "*Excellent*!!!", the Claimant added "[w]*e can use the money from Samoa or we can negotiate with haq some sort of payment may be*" (see page 249.1 of the hearing bundle). The "*haq*" referred to was a Mr Amin Haq. The Claimant said in cross examination that she understood that he was a finance broker who, for a payment, might be able to negotiate an SBLC and it is common ground between the Claimant and the third Defendant that even in the autumn of 2014 the plan still was for IBC to obtain an SBLC, which it would use in order to borrow sufficient money to fund its part of the project. In turn this would unlock the credit line and IBC would then be able to allocate part of the monies loaned to it by the Chinese investors towards repaying the amounts which the Claimant and the third Defendant had borrowed in the process of obtaining the SBLC. Also part of the loan could be paid to IBC as commission.

23. The third Defendant was also negotiating with a specialist in the growing of Giant King Grass and its conversion into biomass pellets because in March 2014 he produced a draft agreement with an American corporation, Viaspace Inc (see pages 863.76 to 863.82 of the hearing bundle). This was for the supply of Giant King Grass to be grown on a "*propagation nursery and test plot*". It was clearly a far from perfect document; it was said at the outset to

be between Viaspace Inc and Emunite Energy Solutions but on the signature page it was to be signed by an entity called Emunite BioEnergy Inc, which, so far as I am aware, did not then exist. It appears to have been initialled by the Claimant. The third Defendant asserted that this test project did go ahead and that eventually there were 300 acres under cultivation in Guyana in 2016. The Claimant did not appear to accept this and the evidence about it rests solely on what the third Defendant said. It is unnecessary, however, to resolve that dispute in these proceedings.

24. By the summer of 2014 the project had moved a little further forward. In the estimation of the third Defendant it had the potential to generate revenue of US$5,000,000.00 over a three-year period and both the Claimant and the third Defendant regarding it as having the potential to change their lives by generating large sums of money in a short time. Therefore, at this time they set about trying to raise money. The task was daunting because it seems that at a minimum US$1,500.000.00 had to be raised as "proof of funds" and demonstrated by lodging an SBLC to that effect.

25. In June 2014 Mr Amarjit Chana, who was a shareholder in Emunite Energy Solutions Ltd had collected £85,000.00 from various family members and forwarded it to the third Defendant to use in connection with "*Emunite energy*" (see page 509 of the hearing bundle). On 2 July 2014 the third Defendant appears to have transferred US$211,983.75[4] to the Saint Lucia bank account of IBC (see page 691 of the hearing bundle) and on 3 July 2014 (see the same page) the sum of US$200,000 was transferred out of the bank account to Hebei Decheng International Trade Company Ltd, which the Claimant said in evidence she believed to be an entity controlled by Mr Wang and was the same as, or associated with, Hengshui Decheng Machine and Equipment Ltd. Although there was some disagreements about this history, the resolution of such evidential differences as there were between the Claimant and the third Defendant do not seem to me necessary for the purposes of this judgment but it is at this point in the history that the accounts of the parties started to diverge significantly and I now turn to examine these competing versions of events.

Executing the Charge - the Claimant's evidence

[4] This was obviously more than the US dollar equivalent of £85,000 and there was some evidence that rather more funds than those from Mr Chana had become available Some time was taken up with who had borrowed what from whom but I do not think is necessary to record that detail.

26. The Claimant accepted that by July 2014 she had realised that in order for the Guyana project to proceed money would have to be borrowed. She flew from Trinidad to the United Kingdom on 3 August 2014 (arriving on 4 August) and was due to return on 26 August 2014 (see pages 287.1 to 287.5 of the hearing bundle). One of the reasons she came was to have a medical investigation carried out. She subsequently changed her return date to 31 August 2014. The reason for doing so appears to have been the rekindling of her relationship with a former boyfriend. Eventually he became her husband.

27. For some time before she travelled from Trinidad discussions had been going on between her and the third Defendant about borrowing money. He was friendly with the first and second Defendants who, like him, lived in Worthing and he suggested to the Claimant that they would be willing to lend some money. The proposition that he had put to them was set out in writing in an email dated 8 July 2014, which appears at page 257 of the hearing bundle and is in these terms:

> **"Hello Andrew**
> **Information as promised**
>
> **As explained earlier we are in the final stages of financing 100,000 Biomass Pellet Manufacturing Plant in the Republic of Guyana. In order to finalise the finance facility we need to deposit with the Chinese project contractor 5% of the project value which then triggers the execution of the finance agreement and disbursement of the project financing. The funds required are for proof of funds only and will be held in the contractor's account until disbursement then returned to us, where we will return to you 20% interest. We will require possession of the funds for a period of no more than 60 days. As a measure of security we will offer the ability to affect a sale of my business partner's property as below."**

The third Defendant explained in cross examination that this was an abbreviated version of how the project was to be financed. In fact, the 15 % figure quoted in earlier descriptions of the scheme had not really altered; it had just been divided into three tranches of 5%. Therefore, when she was cross examined about the mechanism by Mr Meares of counsel it is not surprising, perhaps, that the Claimant did not appear to have a complete grasp of how this would work. She said she had relied upon the third Defendant's experience. In re-examination she told Mr Buttimore of counsel that she had not seen this email until disclosure in this case and the Claimant's position on this and all subsequent correspondence passing between the Defendants during the period leading up to and including 26 August 2014 was that she had been deliberately excluded from it by the third Defendant.

28. The email continues by providing details of the Property, the outstanding mortgage and an estimated valuation. I infer from another email dated 8 July 2014 thanking the Claimant for having earlier sent details of the Property, the outstanding mortgage and an estimated valuation (see page 256 of the hearing bundle) that the third Defendant had incorporated those same details into the above email, which he sent to the first Defendant, and had done so on the same date he had received those details from the Claimant.

29. The Claimant said (see paragraph 22 of her witness statement at page 130 of the hearing bundle) that "*market valuations*" were to be carried out on their "*respective properties*". She agreed to that process so far as her property was concerned but gave authority only to her "*managing agents to allow an estate agent valuation to be conducted*" and was unaware that a "*formal valuation*" was to be carried out by a surveyor (see paragraph 23 of her witness statement at page 130 of the hearing bundle). In fact, a surveyor had been instructed to carry out a formal valuation and this took place on 8 August 2014 (see the correspondence at pages 288 to 300 of the hearing bundle). The third Defendant paid for it (see page 299 of the hearing bundle).

30. It is clear from the contemporary documents that the third Defendant was the point of contact in respect of this valuation. There appears to have been no contact whatsoever between the Claimant and the first and second Defendants about any part of the transaction. Nevertheless, the Claimant seems to have been aware that the latter might be prepared to lend the Claimant and the third Defendant money because on 14 July 2014 she forwarded to the third Defendant a loan agreement, which she had drafted based on an Internet pro forma (see pages 258 to 260 of the hearing bundle) and he then forwarded it to the first and second Defendants (see pages 261 to 263 of the hearing bundle). Paragraph 3 of the draft agreement provides:

> "**Collateral**
> **The Borrower agrees to provide security for the loan in the form of 18 Bennett Park, Blackheath, London SE3 9RB ("Collateral") in the event of a default as set out below, the Lender instruct the Borrower and the Borrower shall do so without hesitation, to effect a sale of the Collateral to settle the Loan owing and interest due. In the event that the parties agree to instruct a third party agent, the Borrower shall authorize the third party to provide to the Lender any relevant correspondence.**"

This would not operate as a legal charge, although as Mr Meares of counsel pointed out it might operate as an equitable mortgage. It is clear, however, that the first and second Defendants did

not accept this draft agreement. When cross-examined by Mr Meares of counsel the Claimant accepted that her draft was a tripartite agreement with provision for details of the property of the third Defendant to be included in the document.

31. On 24 July 2014 the Claimant sent the Third Defendant a 2010 Mortgage Account Summary Statement as an attachment to an email (see pages 273 and 274 of the hearing bundle). He then forwarded that statement to the first Defendant. This proved to be unsatisfactory to the latter and the third Defendant suggested that an up-to-date letter of confirmation be provided in respect of the outstanding mortgage on the Property (see page 279 of the hearing bundle). The Claimant wrote to the mortgagee, Santander plc, on 24 July 2014 requesting a letter confirming the total amount of outstanding mortgage and asking that it be sent to the third Defendant's address in Worthing (see page 284 of the hearing bundle). The mortgagee replied by letter of 5 August 2014 addressed to the Claimant at the address of the third Defendant giving the details. He forwarded it to the first Defendant, who acknowledged receipt of this by an email to the third Defendant dated 13 August 2014 (see page 332 of the hearing bundle). In that email the first Defendant indicated that he was willing to loan £200,000.00. The third Defendant immediately asked for the sum loaned to be increased to £210,000.00 and the first Defendant agreed. The Claimant said she knew nothing of this increase. The third Defendant said that she had been aware of that increase.

32. Having rejected the Claimant's draft agreement, the first and second Defendants instructed solicitors to produce a draft agreement and a draft legal charge. A number of changes were made during the drafting process and on 16 August 2014 the draft legal charge at pages 357 to 359 and the draft agreement at pages 361 to 364 of the hearing bundle were both sent to the Claimant (see the email at page 366 of the hearing bundle). These were not satisfactory to her; she said the following in an email to the third Defendant dated 17 August 2014 (see page 365 (also at page 375) of the hearing bundle):

> "**This was not what we initially discussed. We agreed that the property would be used as collateral in the event of a default – therefore a means to assure Andrew that we had assets which could satisfy the debt. Clause 5 should read that I agree that the property will be used as collateral the loan – i never agreed to execute a legal charge over the property especially for 60 days. I can represent and warrant that the property is free of all encumbrances and liens with the exception of the mortgage and it will remain so until the debt is repaid – as this is a contractual relationship with the added protection of the indemnity, i believe this is more in line with what was discussed and provides Andrew with the comfort he requested.**
>
> **The main discomfort I have with the legal charge is that I cannot remove the charge myself – therefore once the debt is repaid in the event that the legal**

charge is not removed in a timely manner either through he negligence of land registry or Andrew's solicitor, the charge remains on my property and this limits what I can do with my property. I believe this course of action to be excessive.

Please would you ask Andrew how long it takes for the charge to be registered and removed and whether his solicitor is prepared to represent and warrant that the charge will be removed from land registry records once the debt is repaid. Once we have confirmed the payment date either the charge is removed the day before or we withhold some payment until the charge is removed."

33. The Claimant says that she told the third Defendant in the course of a telephone conversation that she was not happy to proceed. She felt that she was not in control and was very uncomfortable about the loss of autonomy. The third Defendant said that he would speak again to the first Defendant, which he apparently did on 18 August 2014. The first Defendant then asked his solicitor in an email (see page 376 of hearing bundle) about adding a provision for financial compensation in the event of a failure to remove the charge promptly. When the Claimant was asked about the account apparently given by the third Defendant to the first Defendant, namely that her anxiety originated from a bad experience she had previously with a second charge, the Claimant was adamant that she had never had either a second charge or any such experience and that she had never said any such thing to the third Defendant.

34. On 19 August 2014 the third Defendant sent her a revised legal charge, which at clause 4 provided for £10,000.00 to be retained by the Chargee's solicitor until the charge registered at the Land Registry was removed (see pages 394.1 to 394.3 of the hearing bundle). Later the same day the Claimant attended hospital for her medical investigation (see page 320.1[5]). This was a minor matter involving no subsequent restrictions on driving nor the wearing of any special clothing post-investigation. On 26 August 2014 the Claimant was suffering no ill effects whatsoever from her medical investigation the week before.

35. At paragraph 27 of her witness statement (see page 131 of the hearing bundle) the Claimant says that upon receipt of the revised charge she telephoned the third Defendant and informed him she was not prepared to have a charge on her property, that the rate of interest of 40% was too high and that instead of trying to borrow money from the first and second Defendants the Claimant and the third Defendant should approach a bank for a loan at normal

[5] The letter refers to the appointment being on a Friday but this was clearly an error because 19 August 2014 was a Tuesday.

commercial rates. About two days later she says (see paragraph 28 of her witness statement at page 131 of the hearing bundle) the third Defendant told her that the first Defendant had "*agreed to loan the money to him personally and that he used his own property as security*".

36. She reiterated this at paragraph 31 of her witness statement (see page 132 of the hearing bundle) and she was cross-examined by Mr White as to what she had meant by the word "*personally*". She explained that she only meant the money had been paid directly to Mr White, who then paid it into IBC's bank account. She accepted that the money was being lent in the knowledge that it would be used, or could be used, for company purposes. It was intended that the company would repay it but she accepted that the lender could call upon the person to whom the loan had been made for repayment. She also accepted that as between herself and the third Defendant there would be a right of contribution whether or not the latter had any personal legal liability under the loan agreement to repay the first and second Defendants. I understood the third Defendant to accept this as being the position as between himself and the Claimant.

37. But it was the Claimant's evidence that she had never entered into any agreement with the first and second Defendants and she had never signed any legal charge in their favour in respect of the Property. She knew nothing about any notary and that subject had never been raised with her by the third Defendant. She had not travelled to Worthing on 26 August 2014, she had not gone to the third Defendant's house, she had not met his daughters (although she accepted she had met them in Barbados on two later occasions) and she emphatically denied that she had any difficulty with or fear of dogs.

38. During her visit to the United Kingdom she had stayed with her sister, Ms Senzeni Lawla-Huntley and her family at her flat. The latter gave evidence in accordance with her witness statement, which is at pages 122 and 123 of the hearing bundle. She had reason to remember the week commencing Sunday, 24 August 2014 because extensive damp-proofing works were due to start at her flat on 1 September 2014 and it was necessary to pack up and take out of the premises the entire contents of the flat. She had started packing up on Tuesday, 26 August 2014 and had asked the Claimant to assist her by looking after the young children of the family. Her sister had done that and there was no question of her having travelled to Worthing that day. Another memorable aspect of that week was that the Claimant had gone to dinner with the man who subsequently became her husband. Ms Lawla-Huntley could not be

sure whether this was on the Tuesday or the Wednesday. According to the Claimant's evidence it was on Wednesday, 27 August 2014.

Executing the Charge - the third Defendant's evidence

39. In turning from the Claimant's evidence to that of the third Defendant it is only necessary to identify some of the points of difference between his evidence and that of the Claimant as to the events leading up to 26 August 2014. Firstly, the third Defendant said that the Claimant knew that he had insufficient equity in his Worthing house for it to be acceptable as any form of security and, therefore, she cannot have believed, as she had stated in her evidence, that, initially, at least, each was putting up his or her respective property as security. Secondly, the third Defendant had told the Claimant that the first Defendant had made it clear he did not regard the third Defendant's Barbados property as a suitable security.

40. Thirdly, whilst the third Defendant accepted that he had not copied the Claimant into any of the email correspondence passing between him and the first Defendant he believed that he had forwarded some of this correspondence to her. The only explanation he could give for the nondisclosure of such forwarded material was that the relevant email threads containing this forwarding must have been lost. In any event, there had been, he said, a large number of telephone conversations in which these communications were discussed between the Claimant and the third Defendant. Fourthly, although he accepted that he would be liable in respect of any money loaned by the first Defendant, the third Defendant denied that he had ever agreed with the Claimant that he would be a joint signatory to the loan agreement, which the Claimant had drafted.

41. Fifthly, it was his evidence that it was the Claimant who had suggested that her flat be put up as security, something which she denied. Sixthly, although there was no consistency about this, the third Defendant suggested that it was at the suggestion of the first Defendant that the Claimant had drawn up a first draft of the loan agreement. The first Defendant denied that and, indeed, on the contrary, not only regarded her draft as unsuitable in terms of its wording but also as inappropriate in terms of a potential conflict because she was the borrower and, therefore, in his mind should not also be the draftsman. Seventhly, the third Defendant said that he had made it clear to the Claimant that what was necessary was a formal valuation; her evidence was that she had never sanctioned any such thing. Eighthly, the third Defendant's

evidence was that he had discussed the increase in the amount borrowed from £200,000.00 to £210,000.00; the Claimant denied that. Ninthly, there was a difference between the Claimant's evidence and that of the third Defendant. He acknowledged that there was a possibility that once the loan agreement was signed the money might not be released by the Chinese company within 60 days in which case the 40% rate would be triggered but he described that as a technicality and said that it had been discussed with the Claimant by telephone along the lines that over £42,000.00 in interest paled into insignificance when there would be an immediate commission payable of US$2,100,000.00 when the loan money was paid to IBC and, in turn, it funnelled the money through to whatever operative company was implementing the project, probably "energy solutions". By contrast the Claimant's evidence was that there had been no further discussion about this after she had refused to accept such a 40% rate and the next thing that she had heard that the money had been loaned to the third Defendant.

42. In relation to the signing of the deed, the third Defendant's evidence was that the Claimant had agreed to execute a legal charge on the Property and arrangements were made for her to come to Worthing for that purpose. In the event, after telephoning the third Defendant in the morning to ascertain the whereabouts of his home, she was driven down by an old school friend because she could not drive due to the medical procedure she had undergone and they met the third Defendant and his wife at their house at about 2.00 pm. Either on that day or at some point earlier the Claimant had told the third Defendant that she was wearing a pressure suit. The Claimant and her friend did not go into the house at that stage but had stopped outside and called the third Defendant via a mobile telephone to inform him that they had arrived. He and his wife came outside to meet them. The Claimant's friend was of mixed race. The third Defendant believed her to be of Ghanaian or Caribbean descent. He described her as dark skinned.

43. It was an important day for the third Defendant's family because his twin daughters had received their GCSE results that morning and as a result of their grades both had been accepted into the sixth form of the prestigious Brighton College. This was a cause for celebration and on the account given in his witness statement made for the purpose of this trial it was at this stage the third Defendant invited the Claimant and her friend to accompany them later to a local fish restaurant for supper. He had told the first Defendant that the Claimant would be in Worthing on 26 August 2014 and first Defendant had indicated that he would like to meet her. Therefore, he also mentioned that the first Defendant was keen to meet the Claimant and asked

if she was willing to do so. She declined both invitations because she needed to get back to London. This is the account set out in paragraph 32 of the third Defendant's witness statement at page 182 of the hearing bundle. It is inconsistent with an earlier account that he had given in paragraph 27 of an earlier witness statement at page 686 of the hearing bundle. Essentially the difference is in the sequence of events. He explained this discrepancy on the basis that the later witness statement had been prepared with the help of others and that he had remembered more detail later.

44. The third Defendant and his wife then went with the Claimant and her friend in their car, with the third Defendant driving, to a branch of Costa Coffee in Worthing, arriving there at about 2.30 pm. Prior arrangements had been made for the Claimant to bring the necessary identification and for a notary, Mr Peter Laverick, to witness the execution of the legal charge and the signing of the loan agreement. The first Defendant had stipulated that the execution of the legal charge and the loan agreement, if completed within England and Wales, must be witnessed by a solicitor or if completed outside that jurisdiction should be witnessed by a notary. The third Defendant had visited Bennett Griffiths, solicitors in Worthing, because in relation to a previous transaction, which required notarisation, he had retained one of the solicitors who was also a notary. But it transpired there was no longer a notary at the firm.

45. Therefore, the third Defendant had looked in the Yellow Pages directory and come across Mr Laverick, who was prepared to travel, and retained him. He was already at Costa Coffee when they arrived. The third Defendant drove off to park the car while the Claimant, her friend and the third Defendant's wife went into Costa Coffee. The third Defendant joined them shortly afterwards. The Claimant and the third Defendant and Mr Laverick sat at one table and the Claimant's friend and the third Defendant's wife sat at another table whilst the transaction took place. The third Defendant recollected that Mr Laverick had identified himself to them and that the first step he took was to ask to see identification. The third Defendant said that he wanted the signing of two documents to be witnessed. Mr Laverick asked to see the documents and at some point observed that they looked like some sort of mortgage, commenting that he did not like the look of them. The third Defendant could not remember Mr Laverick taking any notes.

46. Once the signatures had been completed Mr Laverick then went about his business and the third Defendant drove the others back to his house because, although the Claimant had

declined the invitations, she had indicated a desire to meet the twin daughters. Upon returning to the house it was necessary to lock the family dogs into a room because both the Claimant and her friend were afraid of them. The Claimant had a conversation with the twins and asked her for recommendations from them about what books to read to pass on to her own daughter, who was a somewhat reluctant reader. After a photograph of the Claimant and the twins was taken by the third Defendant's wife using the Claimant's mobile telephone the Claimant and her friend left and drove off in the motorcar.

47. The third Defendant's wife, Mrs Susan Elizabeth Sanders White, gave a similar account. She added some detail about how the Claimant was in discomfort due to the procedure she had undergone and that she was wearing a pressure suit in order to prevent thrombosis after the procedure. She confirmed that the Claimant and her friend were both afraid of dogs. She recollected that the friend's name was June or Jasmine. There was some difference as between her account and that of the third Defendant about the relative positions of the Claimant and her friend in the motorcar. He recollected that the Claimant was in the back seat and that her friend had moved over to the front passenger seat when he had got into the driver's seat and so his wife was in the back with the Claimant. His wife's recollection was that the Claimant had been in the front passenger seat and remained there whereas her friend had moved from the driver's seat into the other rear passenger seat alongside Mrs White. She accepted that there was more detail in her later statement than in her earlier statement and, like the third Defendant, she said that the more she thought about it the more she had remembered. She agreed with the third Defendant that the Claimant had talked to her daughters at their house and that subsequently they had all met the Claimant again in Barbados on two occasions in 2015.

48. The twin daughters of the Third Defendant, Ms Florence Elizabeth Sanders White and Alice Jordan Sanders White were both called to give evidence. Both stood by the accounts they had given in their witness statements of having met the Claimant at their home in Worthing on 26 August 2014. Florence recollected that the Claimant's friend was taller and darker than the Claimant. She said that she had not met the Claimant twice in Barbados but only once. She had recommended Animal Farm and 1984 by George Orwell as books that the Claimant's daughter should read. She understood that the daughter was a year or a couple of years younger than she was. Her recollection, shared by her sister Alice, was that the Claimant and her friend had come into the house when they had arrived and the dogs had to be locked away then and the same procedure had been adopted when they had returned from Worthing. When cross examined,

however, Alice accepted that she might have been remembering that part of the history wrongly and that when she first arrived the Claimant might have been on the doorstep and not have come into the house.

49. Finally, in relation to the evidence of those who say they were present on 26 August 2014, there is the evidence of Mr Peter Laverick, who was called by the third Defendant. He had been a senior partner in Bennett Griffin in Worthing, having been enrolled as a solicitor in 1965 and subsequently registered as a notary public in 1983. He had retired from practice as a solicitor by August 2014 but he was still conducting a practice from home as a notary public. In 2016 he had prepared a draft witness statement, which according to paragraph 3 and 4 of his later witness statement dated 14 May 2018 (see pages 168 to 170 of the hearing bundle), he had sent to the solicitor acting on behalf of the Claimant in 2016. This earlier draft statement is at pages 700 and 701 of the hearing bundle and the last paragraph reads:

> "**I am unable to describe the signatories or who was present. My recollection is that the two signatories were white and they were accompanied by a black male to whom they were lending the funds raised. I am not however certain that this is correct, and indeed my recollection of the whole meeting is now shadowy.**"

Subsequently, when this draft became a signed witness statement dated 19 July 2016 that last sentence was omitted (see pages 831 and 832 of the hearing bundle).

50. Nevertheless, it seems to have stated accurately the lack of clarity of his recollection because at paragraph 6 of his later witness statement he accepted "*that even in July 2016 I did not have a clear recollection of the numbers and descriptions of people who were present or the nature of the transaction being undertaken*". A year later he wrote "[m]*y memory of the event is now fading for this event and I am now an unreliable witness to this transaction*" (see his email dated 1 June 2017 to the solicitor then acting for the first and second Defendants at page 597 of the hearing bundle). He accepted that in the summer of 2016 he had been in contact with the solicitor then acting for the Claimant, Mr Kiranjit Phull. The latter said (see his witness statement at pages 124 to 126 of the hearing bundle) that he had spoken to Mr Laverick by telephone once in June 2016 and once in July 2016[6] and on both occasions he had said that the woman executing the deed and agreement had been "*Caucasian*" (i.e. of white ethnic origin).

[6] See also page 980 of the hearing bundle where in a letter he uses the expression "again reiterated"; this could lead to the interpretation that both conversations had been in June 2016 but the precise dates do not matter.

51. Mr Laverick insisted, however, that even though he had realised at an early stage that the witnessing of the documents produced at Costa Coffee on 26 August 2014 was not a transaction requiring him to function as a notary public, nevertheless he had approached it with the same degree of caution as he always did. He was confident that he had seen a driving licence identifying the Claimant and checked that it matched the person who produced it and checked the signature as noted in the page from his Notary Public Register, which appears at page 26 of the hearing bundle. He had not noticed anything unusual about the behaviour of either of the signatories and he was not suspicious about the transaction. He said when he had checked the driving licence used as identification of the female signatory he thought it was genuine. He had occasionally come across forged documents in the course of his practice as a notary public. When cross-examined by Mr Buttimore he asserted emphatically that he had checked the authenticity of the driving licence although he acknowledged that this was what he "*would*" have done as a matter of routine. He relied on his note and from that his evidence was that he must have checked the authenticity of the document because he must have looked at it and then written what he had written in his note. Ultimately, however, he accepted, albeit with a degree of reluctance, that the assertion that he had checked the authenticity of the document was "*putting the matter way too high*".

52. At pages 414 and 415 is an exchange of correspondence between the solicitor acting on behalf of the first and second Defendants by which Mr Laverick is asked about the advice he had given and in which he seems to confirm that he had given some advice. This is not consistent with his contemporaneous note which is "*No advice given!"* (see page 26 of the hearing bundle). In his oral evidence Mr Laverick said that he had not advised the parties fully. His recollection was that he had mentioned that this transaction was a mortgage. He also said he did not like the look of the way the deeds were worded but when he was told that the documents had been drawn up by a solicitor "*he decided to shut up*". He would not accept that his response at page 415, namely that he had "*advised them of the effect of the deeds*", was inaccurate although he did accept that all he had ever done was to identify the transaction as a mortgage.

Execution of the charge – the evidence of the first and second Defendants

53. The second Defendant did not give oral evidence because, although she was in attendance at the hearing, neither the third Defendant nor Mr Buttimore wished to cross examine her and so her witness statement (see pages 163 to 167 of the hearing bundle) stood as

her evidence. In it she gives a relatively brief account of having agreed with the first Defendant that the money should be loaned and she gives some detail of the hardship suffered by herself and her husband as a result of the failure to repay the loan.

54. The first Defendant did give oral evidence and was cross-examined by Mr Buttimore. In relation to the execution of the Legal Charge the first Defendant accepted that he did not regard the third Defendant as able to offer any satisfactory security. Consequently, he was only prepared to make the loan if he could be satisfied that the Property offered adequate security. He had never suggested that the agreement should be drawn up by the Claimant and he regarded it as inappropriate for her to do so.

55. The third Defendant had throughout been the channel of communication with the Claimant and although the first Defendant would have liked to have had contact with the Claimant he never had any communication whatsoever with her. He was not clear as to when she was in the United Kingdom in August 2014, although he knew that she was coming here because the third Defendant told him so. He did not know that she was coming to Worthing and he never received any invitation to meet her there or join her and the third Defendant for a meal. The use of a notary public as a witness to the execution of the loan agreement and the Legal Charge was not what he intended or in accordance with his instructions. He had only envisaged the use of a notary public if these documents were executed outside United Kingdom. Otherwise he expected the transaction to take place in the presence of a solicitor. He was content, however with the execution having been witnessed by Mr Laverick and he believed that the latter had given the necessary advice.

56. It had always been his intention to register the Legal Charge and he did so as soon as possible after the documents were executed. He was very surprised to be told about the text from the third Defendant to the second Defendant's mobile telephone (see page 490 of the hearing bundle) raising the fact that the Legal Charge had been registered. Later, he was surprised to see the What App messages passing between the Claimant and the third Defendant on 26 May 2016 (see pages 541 to 544 of the hearing bundle). He believed that the third Defendant must have misheard what he said (see paragraph 61 of the witness statement of the first Defendant) because there had been no delay in registering the Legal Charge and the first Defendant had never agreed to any delay.

57. He had been in contact with the third Defendant throughout 2015 and he was prepared to wait for repayment even though the loan was long overdue. He accepted that he had never taken any steps to recover money from the third Defendant. Even when the third Defendant's promises made in 2016 that repayment of the money was imminent proved to be incorrect and he described himself as running out of patience, he and his wife were prepared to meet the third Defendant and his wife in order to discuss the Claimant's litigation in the County Court at Lambeth. It had been his consistent position since September 2016 that it was more probable than not that the third Defendant was telling the truth about the execution of the loan agreement and the Legal Charge.

Execution of the charge – the expert evidence

58. Mr Robert Radley, an expert in the forensic examination of handwriting and documents was jointly instructed to examine the loan agreement, the legal charge, the page of Mr Laverick's Notary Public Register and thirty six other "comparison" documents and offer an opinion as to whether the Claimant had signed the first three of those documents. He concluded that the Claimant's "*signature style*" was "*simplistic in construction and also extremely variable in execution*" and was "*an insecure signature style which may be simulated (freehand copied) by another individual with an expected fair degree of pictorial success*". In the result his opinion was "*that the evidence as to whether Ms Emanuel signed the three question signatures in her name… has to be regarded as inconclusive.*" (see pages 215 and 216 of the hearing bundle).

59. There was nothing more he could do in terms of his expertise although he suggested that another approach might be a fingerprint examination of the documents. This was proposed by the Claimant but the third Defendant took the view that it was probably a waste of time and money to do this given the amount of time which had passed and refused his consent to that further procedure.

The history after 26 August 2014

60. I have mentioned in the context of the evidence of the first Defendant some of the significant features of this period. I do not, however, propose to go into every detail of it but instead will mention what I regard to be the salient features. Firstly, there is no evidence that the Claimant was perturbed about the fact that the loan was not repaid when it was due. Secondly, there is nothing to suggest that the Claimant was concerned about the failure of Mr

Haq to secure an SBLC. If she was concerned there appears to have been no communication to that effect. On the other hand, as pages 441.1 and 523 and 524 of the hearing bundle suggest, she may have believed that he was still engaged in late 2014 and in 2015 in trying to produce an SBLC. But it is only after the discoveries she made in May 2016 that she raised the subject of Mr Haq with the third Defendant in any form of correspondence.

61. On 5 February 2016 the third Defendant forwarded correspondence to the Claimant under cover of an email of that date (see page 466 of the hearing bundle) from Mr Titus Van Heur of ZVM Funding. This was to the effect that the latter would provide funds for the Guyana project (see pages 467 to 469). A further and similar email was sent on 23 February 2016 (see pages 470 and 471 of the hearing bundle) and another similar email sent on 16 March 2016 (see pages 474 and 475 of the hearing bundle). But nothing more had happened by May and on 11 May 2016 the Claimant sent an email to Mr Titus Van Heur enquiring as to the whereabouts of the money, which was supposed to have been lodged in the IBC bank account. He replied that he knew nothing about this and in a further reply indicated that he had never "closed a deal" with the third Defendant (see pages 478 and 479 of the hearing bundle).

62. As a result, the Claimant sent an email to the third Defendant (probably on 24 May 2016; the reply is certainly on that date) challenging the information, which he had forwarded to her. In particular she challenged the documents that suggested US$1,000.000.00 had been deposited and asked straightforwardly "*Did you fabricate documents?*". She also asked to know what had happened to the money that had been borrowed. She had, she said come to the conclusion that the third Defendant was "*a fraudster, liar and a thief". In his reply the 3rd Defendant said "all that you have placed in the email below is true and yes I am a fraudster, thief et cetera and I invite you to do what you deem fitting.*" (see pages 481 and 482 of the hearing bundle).

63. At the same time the Claimant was attempting to sell the Property in order to fund work being done to a house she was building in Barbados. On 26 May 2016 she said discovered for the first time that a Legal Charge had been registered by the first Defendant (see the WhatsApp correspondence between pages 541 and 554 of the hearing bundle). This was as a result of searches done by the solicitor Mr Phull. He had been instructed in respect of the sale in April 2016 and on 26 May 2016, whilst looking for confirmation as to the Santander mortgage about which he had been informed he realised that there was a second mortgage about which he had

received no instructions. Consequently, he raised this with the Claimant. His recollection was that she appeared to be shocked by the news and immediately believed herself to have been the victim of a fraud by the third Defendant. Mr Phull corresponded with the solicitors acting for the first and second Defendant and he believed that he had reached a compromise with them but at the end of June new solicitors had been instructed by the first Defendant and it became clear that payment in full was being insisted upon. Accordingly, he became involved in the proceedings in the County Court at Lambeth.

64. From that point in May onwards, the Claimant demanded repayment of the money that had been paid to Mr Haq and Mr Wang. It is clear from the WhatsApp correspondence that over the period from May to July 2016 the third Defendant made a series of promises as to how the loan might be repaid. Certainly by July 2016 the Claimant regarded him as having "*tricked and lied and defrauded me*" (see the WhatsApp at 19:18 on 11/07/2016 at pages 552 to 553 of the hearing bundle.

The Claimant's submissions

65. Mr Buttimore accepted the general proposition that "*he who asserts must prove*". He referred me, however, to paragraph 6.02, 6.03 and 6.06 of the 19th edition of **Phipson on Evidence**. He also referred me to **Saunders v Anglia Building Society** [1971] AC 1004, which is part of the **Gallie v Lee** litigation, best known as a modern application of the "*non est factum*" doctrine. The question was, he submitted, what is the core issue? Here it is whether she entered into the agreement and executed the legal charge. Because it is the Defendants who are asserting that she did enter into the agreement and did execute the charge then they must prove it. They would have to do this if they were seeking to enforce the agreement and the charge and if they failed then the consequence would be that the Claimant would be entitled to have the charge removed from the Register. In any event the Claimant had served a Notice to Prove Documents at Trial pursuant to **CPR Part 32.19** and the effect of that was the Defendants must prove the documents. He cited the judgment of Norris J in **Redstone Mortgages Ltd v B Legal Ltd** [2014] EWHC 3398 (Ch) as supporting this proposition. In particular he relied upon paragraph 57 of the judgment which reads:

> "**Requiring a party to "prove" a document means that the party relying upon the document must lead apparently credible evidence of sufficient weight that the document is what it purports to be. The question then is whether (in the light of that evidence and in the absence of any evidence to the contrary effect being reduced by the party challenging the document) the party bearing the burden of proof in the action has established its case on the balance of probabilities. Redstone cannot (by a refusal to admit the authenticity of the**

document) transfer the overall burden of proof on to Be Legal any more than it could do so simply by refusing to admit a fact."

This was essentially the position here, he submitted.

66. As he had done skilfully during his cross examination of the witnesses, so also in his equally skilful closing submissions, Mr Buttimore pulled no punches so far as the third Defendant was concerned. The latter was, submitted Mr Buttimore, a man without moral compass, who exercised a high degree of control over events. There were high stakes involved and if the Guyana project could be pulled off then he and the Claimant would have made a great deal of money. This explained the desperate measures that the third Defendant had resorted to and it explained why the third Defendant sought to manage the channel of communication between himself, the Claimant and the first and second Defendants.

67. Mr Buttimore accepted that the draft, which the Claimant had produced from an Internet template, might well have created an equitable mortgage had it been executed. But that was not what the first and second Defendants relied upon and what they relied upon was a forgery.

68. Whilst Mr Buttimore never suggested that the first and second Defendants were anything other than innocent dupes of the third Defendant he submitted that it was important to recognise the way in which the latter had manipulated the situation from July 2014 onwards and an important part of that was the way in which the third Defendant had departed from the process, which the first Defendant had very carefully laid down. He never made it clear to the Claimant that a formal valuation of the Property was being obtained. When it became clear that the Claimant would not accept the terms proffered by the first Defendant, he lied by saying that a loan had been made to him personally. He obtained quite opportunistically an additional £10,000.00 on loan without any discussion with the Claimant. He arranged for the documents to be executed in Worthing and, submitted Mr Buttimore, he never informed the Claimant about this. He turned the first Defendant's requirements as to execution on their head by using a notary public instead of a solicitor.

69. Mr Buttimore accepted that the Claimant knew of the increase in the loan and of the nature of the proposed documents because she had received the scanned versions of both the draft loan agreement and the draft Legal Charge. It was clear that she objected to a rate of interest of 40% but it was even clearer from her email to the third Defendant on 17 August 2014

(see page 105 of the hearing bundle) that her main complaint was that a charge was being imposed on the Property. The third Defendant had simply cut and pasted the text of her email into his email to the first Defendant. This was quite deliberate tactic on his part so as to ensure that the whole of the Claimant's email was not disclosed to the first Defendant, who might, otherwise, have become uncomfortable about the transaction.

70. Whilst there were many oddities relating to the account as to what had happened in Worthing the most important point, submitted Mr Buttimore, was that the third Defendant had never sent the final version of the Legal Charge to the Claimant and had never sent executed counterparts of either the Legal Charge or the loan agreement to her. It was clear from her request in May 2016 to see these documents that this had never happened. An equally important point was if she had been at Costa Coffee in Worthing at between 2:30 pm and 3:00 pm on 26 August 2014 and had executed, by signing them, documents, which, as between herself and the first and second Defendants gave them rights against the Property, it was impossible to understand why she had not taken the counterpart documents away with her. If for any reason she had forgotten to do so, similarly why would the Claimant not have asked subsequently to be sent copies?

71. Mr Buttimore accepted that it was inconceivable that the first Defendant would have agreed to delay registration of the charge and the third Defendant knew that to be the case. But this was not disclosed by the third Defendant to the Claimant. Likewise, the Claimant was kept in the dark about developments with Mr Haq. Mr Buttimore submitted that she clearly believed Mr Haq might still be engaged with the Guyana project as late as 2016. The truth, however, was that nothing was resolved in respect of the Guyana project and the third Defendant gave scraps of what was false information to the Claimant to persuade her that the project would go ahead. The Claimant may only have had herself to blame for allowing a state of affairs to develop where the third Defendant was completely in charge of the project but that was the position.

72. Towards the end of 2014 the third Defendant had made a series of untrue statements to the first Defendant about the delay in receiving the finance from the Chinese investors. In his closing submissions Mr Buttimore conducted an impressive analysis of all the subsequent correspondence, demonstrating that on a number of occasions the third Defendant must have been lying.

73. There was nothing, however, in the correspondence and in particular in the Whats App messages to cast any doubt on the credibility of the Claimant. The expression "*using the property as collateral*" (see page 481 of the hearing bundle) could not be interpreted as an admission by the Claimant that she knew about the charge. This was clearly a reference to Mr Chana having used his property as collateral. Moreover, the reference related not to the Guyana project but to the Samoa project and for that reason, also, reliance upon it by the third Defendant was misplaced. Nor should the use by the Claimant of the phrase "*the charge*" on 26 May 2016 (see page 542 of the hearing bundle) be construed, in the way the third Defendant had construed it in cross examination, as amounting to an admission that she was aware her property had been the subject of a Legal Charge. The significant document was the text message at page 484 of the hearing bundle in which she said that there should not be a charge on her property at all.

74. The Claimant believed, and, submitted Mr Buttimore, was right to believe, that the third Defendant had accepted that he had behaved fraudulently in respect of the execution of charge. This had happened during a telephone conversation in the period around 24 to 26 May 2016. In the exchanges between himself and the Claimant and himself and the first and second Defendants in May 2016, the third Defendant had attempted to appear to the Claimant as though he was supporting her contention that she did not know a Legal Charge had been registered and at the same time to appear to the first and second Defendants simply to be relaying to them what the Claimant was saying. The difficulty of this position was illustrated by the email that he sent to the first Defendant on 27 May 2016 (see page 495 of the hearing bundle). One can see there his dilemma because he had to say that he did not know the charge had been registered. This led to the WhatsApp at 13:29 on 27 May 2016 (see page 545 of the hearing bundle). The third Defendant had accepted that this amounted to an admission of responsibility but explained it on the basis that he had been threatened.

75. Mr Buttimore submitted that I should approach the expert evidence of Mr Radley by reference to two authorities; the judgment of Clarke LJ paragraphs 39 to 43 in **Coopers Payne Ltd and others v Southampton Container Terminal Ltd** [2003] EWCA Civ 1223 and the later judgment of the Court of Appeal in **Armstrong and another v First York Ltd** [2005] EWCA Civ 277. The principle established by these cases was that I must take the expert evidence into account. Consequently, Mr Buttimore submitted that I should have regard to Mr Radley's evidence and even though the expert had come to no conclusion I must make up my

own mind about it. I should bear in mind that the first Defendant had never given a cogent explanation for refusing to have the documents examined by an expert in fingerprints. I should also take account of the fact that there were some odd dots on the relevant signatures. Mr Laverick's evidence was confusing; he said at one point that he would not have put dots there and at another point that he did. Nevertheless it was significant as was the fact that the signature was simplistic and easily copied.

76. Mr Buttimore contrasted the Claimant's evidence with that of the Third Defendant. His evidence should be treated with great caution. There seems to have been an element of fraud about the scheme he was setting up with the Chinese investors. He had lied continuously. He had fabricated documents. He could not explain Ms Lawla-Huntely's evidence except by saying she must have been confused about the dates. He characterised the evidence given by the third Defendant's daughters as forthright but submitted that I should either regard them as liars or as having confused meetings with the Claimant in Barbados with meeting in Worthing. Mr Laverick, he submitted, had been an unimpressive witness and his protestations that he had taken care on 26 August 2014 were plainly unreliable.

The submissions on behalf of the first and second Defendants

77. Mr Meares submitted that the issue was whether or not the Claimant had been impersonated on 26 August 2014 at Costa Coffee in Worthing. He accepted that the third Defendant's evidence had to be approached with considerable caution. The court, submitted Mr Meares, would have to take a view. The Claimant's signature might have been relatively easy to replicate in a fraudulent way but to focus on that underplayed the boldness of the alleged fraud. The imposter had to carry off the impersonation. There had to have been a very good forgery of a driving licence.

78. Mr Meares accepted that Ms Lawla-Huntley had appeared to be an honest witness. But she might be mistaken. The expert evidence was inconclusive. There were various oddities about the account of events in Worthing and Mr Laverick had given inconsistent evidence and his recollection might not have been very good. Even so what was there to suggest that the third Defendant's daughters were lying? The court had to balance the evidence and it was for the Claimant to prove there had been a fraud. Mr Meares did not accept that any burden lay on any of the Defendants.

The submissions of the third Defendant

79. He submitted that the Claimant had been party to all the decisions. Both of them had been desperate to conclude the financing for the Guyana project. That was why the Claimant had put up her house. He had not engaged an imposter and it was implausible that he had done so. There had been insufficient time to search for somebody and arrange for the necessary fraudulent documents to be produced. Mr Laverick had not been suspicious. He was an experienced man and the reason he had not been since suspicious was because there was nothing to be suspicious about. It was inconceivable that he would persuade his daughters to give perjured evidence on his behalf.

Discussion and Conclusion

80. Mr Meares submitted that I must decide who is telling the truth in this case and, in essence, that I should not sit on the fence. This accords with what Baroness Hale suggested in **Re B (Children)** [2008] UK HL 35 when at paragraph 32 of her speech she put the matter in terms of finding for one side or the other:

> "**In our legal system, if a judge finds it more likely than not that something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not take place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other. Sometimes the burden of proof will come to his rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But generally speaking a judge is able to make up his mind where the truth lies without needing to rely upon the burden of proof.**"

81. In the judgment of the House of Lords in **Rhesa Shipping Co v Edmonds (The Popi M)** [1985] 2 AER 712, in a very colourful passage at p.995, Lord Brandon, however, invoked Sherlock Holmes in the context of saying that if the case is not proved then the judge should say so:

> "**My Lords, the late Sir Arthur Conan Doyle in his book "The Sign of Four", describes his hero, Mr. Sherlock Holmes, as saying to the latter's friend, Dr. Watson: "how often have I said to you that, when you have eliminated the impossible, whatever remains, however improbable, must be the truth?" It is, no doubt, on the basis of this well-known but unjudicial dictum that Bingham J. decided to accept the shipowners' submarine theory, even though he regarded it, for seven cogent reasons, as extremely improbable.**
>
> **In my view there are three reasons why it is inappropriate to apply the dictum of Mr. Sherlock Holmes, to which I have just referred, to the process of fact-finding which a judge of first instance has to perform at the conclusion of a case of the kind here concerned.**
>
> **The first reason is one which I have already sought to emphasise as being of great importance, namely, that the judge is not bound always to make a finding**

> **one way or the other with regard to the facts averred by the parties. He has open to him the third alternative of saying that the party on whom the burden of proof lies in relation to any averment made by him has failed to discharge that burden. No judge likes to decide cases on burden of proof if he can legitimately avoid having to do so. There are cases, however, in which, owing to the unsatisfactory state of the evidence or otherwise, deciding on the burden of proof is the only just course for him to take.**"

82. What was said by Lord Brandon in the **Popi M** case was approved more recently in the Supreme Court in **Sienkiewicz v Greif (UK) Ltd; Willmore v Knowsley Metropolitan Borough Council** [2011] UKSC 10. Lord Mance said this at para.193:

> "**In other cases, there will be continuing good sense in the House of Lords' reminder to fact-finders in [the *'Popi M'*] that it is not their duty to reach conclusions of fact, one way or the other, in every case. There are cases where, as a matter of justice and policy, a court should say that the evidence adduced (whatever its type) is too weak to prove anything to an appropriate standard, so that the claim should fail.**"

83. In the context of allegations of fraud/forgery/dishonesty, although controversial for a number of years, it is now clearly established, and can be stated with complete confidence, that those who have alleged fraud bear the burden of proving it but are able to discharge that burden on a balance of probability. I do not intend to add to the length of this judgment a detailed consideration of all the high authority bearing on this topic. Lord Carswell summarised the current state of the law in **In re D (Secretary of State for Northern Ireland intervening)** [2008] UKHL 33; [2008] 1 W.L.R. 1499 in the following paragraphs:

> "**23 Much judicial time has been spent in the last 50 or 60 years in attempts to explain what is required by way of proof of facts for a court or tribunal to reach the proper conclusion. It is indisputable that only two standards are recognised by the common law, proof on the balance of probabilities and proof beyond reasonable doubt. The latter standard is that required by the criminal law and in such areas of dispute as contempt of court or disciplinary proceedings brought against members of a profession. The former is the general standard applicable to all other civil proceedings and means simply, as Lord Nicholls of Birkenhead said in *In re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563*, 586, that "a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not". …**
>
> **26 If any further clarification were required, it was provided by Lord Hoffmann in *Secretary of State for the Home Department v Rehman [2003] 1 AC 153* where the Special Immigration Appeals Commission had held that the Secretary of State had not established to a high degree of probability that the applicant, who was the subject of a deportation order, was likely to be a threat to national security. The House of Lords held that where past acts were relied on they should be proved to the civil standard of proof. Lord Hoffmann said, at para 55:**
>
> > **"I turn next to the commission's views on the standard of proof. By way of preliminary I feel bound to say that I think that a 'high civil balance of probabilities'; is an unfortunate mixed metaphor. The civil standard of proof always means more likely than not. The only higher degree of probability required by the law is the criminal standard. But, as Lord Nicholls of Birkenhead explained in *In re H***

> ***(Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563*, 586, some things are inherently more likely than others. It would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian. On this basis, cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not."**
>
> **Lord Hoffmann recently returned to the topic in *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening) [2008] 3 WLR 1* where, with support from Baroness Hale of Richmond, he reaffirmed in emphatic terms the views which he expressed in Rehman's case.**

27 Richards LJ expressed the proposition neatly in *R (N) v Mental Health Review Tribunal (Northern Region) [2006] QB 468*, para 62 where he said:

> **"Although there is a single civil *standard* of proof on the balance of probabilities, it is flexible in its *application*. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."**
>
> **In my opinion this paragraph effectively states in concise terms the proper state of the law on this topic. I would add one small qualification, which may be no more than an explanation of what Richards LJ meant about the seriousness of the consequences. That factor is relevant to the likelihood or unlikelihood of the allegation being unfounded, as I explain below.**

28 It is recognised by these statements that a possible source of confusion is the failure to bear in mind with sufficient clarity the fact that in some contexts a court or tribunal has to look at the facts more critically or more anxiously than in others before it can be satisfied to the requisite standard. The standard itself is, however, finite and unvarying. Situations which make such heightened examination necessary may be the inherent unlikelihood of the occurrence taking place (Lord Hoffmann's example of the animal seen in Regent's Park), the seriousness of the allegation to be proved or, in some cases, the consequences which could follow from acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration: a tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it has been established. The seriousness of consequences is another facet of the same proposition: if it is alleged that a bank manager has committed a minor peculation, that could entail very serious consequences for his career, so making it the less likely that he would risk doing such a thing. These are all matters of ordinary experience, requiring the application of good sense on the part of those who have to decide such issues. They do not require a different standard of proof or a specially cogent standard of evidence, merely appropriately careful consideration by the tribunal before it is satisfied of the matter which has to be established."

Thus, where, as here, fraud is alleged (and in my view this applies equally to allegations of forgery and dishonest and/or unlawful conduct) those alleging it must prove it on a balance of probability by reference to clear evidence. I intend no disrespect to Mr Buttimore's careful submissions on this topic when I say that, in the context of this case, it seems to me over complex to contemplate the burden of proof passing back and forth. His client seeks a

declaration that the loan agreement and the Legal Charge are not her deeds and the product of forgery and impersonation and to my mind she bears the burden of proving it.

84. There have been on all sides suggestions that the evidence of other parties was unreliable. The reliability and credibility of witnesses is a matter for the Court but I remind myself of what was said by Goff LJ in **Armagas Ltd v Mundogas SA (The Ocean Frost)** [1985] 1 Lloyd's Rep 1, at page 57 col. 1. There Goff LJ described his own experience in the context of allegations of fraud although, as he confirmed later, what he said has general application and it seems to me to be very apposite in the instant case:

> **"Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and the overall probabilities. It is frequently very difficult to tell whether witnesses are telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth."**

85. This has been approved many times in later cases, recently by the Court of Appeal in **Synclair v E Lancs Hospital NHS Trust** [2015] EWCA Civ 12 where Tomlinson LJ said this at paragraph 10:

> "**Both Mr Giles Colin for the Trust and Mr Darryl Allen QC for the Claimant reminded us of some of the classical learning on the nature of the judicial fact-finding function. We were shown, in chronological order: the well-known remarks of Lord Pearce in his dissenting speech in *Onassis & Calogeropoulos v Vergottis* [1968] 2 Lloyds Rep 403 at p 431[7]; the guidance given by Lord Goff of Chieveley giving the opinion of the Judicial Committee of the Privy Council in *Grace Shipping v Sharp & Co* [1987] 1 Lloyd's Rep 207 at 215-6, in particular founding upon his own judgment in the earlier decision of the Court of Appeal in *Armagas Ltd v Mundogas SA (The Ocean Frost)* [1985] 1 Lloyd's Rep 1 when he said, at page 57:-**
>
> [and he cites the passage set out above in the previous paragraph of this judgment]
>
> **In *Grace Shipping* Lord Goff noted that his earlier observation was, in their Lordships' opinion "equally apposite in a case where the evidence of the witnesses is likely to be unreliable; and it is to be remembered that in commercial cases, such as the present, there is usually a substantial body of contemporary documentary evidence." We were reminded too that in "The Business of Judging", Oxford, 2000, Lord Bingham of Cornhill observed that:-**

[7] A passage considered by Arden LJ in paragraphs 10 to 12 of her judgment in **Wetton v Ahmed and others** [2011] EWCA Civ 610

> **"In many cases, letters or minutes written well before there was any breath of dispute between parties may throw a very clear light on their knowledge and intentions at a particular time."**
>
> **The essential thrust of this learning is the unsurprising proposition that when assessing the evidence of witnesses about what they said, or what was said to them, or what they saw or heard, it is essential to test their veracity or reliability by reference to the objective facts proved independently of their testimony, in particular by reference to contemporary documentary evidence."**

Sometime "*this learning*", however, is not that easy to apply. Where not only the veracity of the witnesses but also the veracity of some of the documents is challenged, as is the case here, then the Court must examine the factual contentions and the documentary material relied on as supporting those contentions with care.

86. Some matters are, however, abundantly clear. I have no hesitation in regarding the third Defendant as an unreliable witness. He comes into some of the categories identified by Lord Pearce in his speech in the **Onassis** case. Principally, he is an acknowledged fabricator of documents and I think he has told a significant number of lies. He excuses these on the grounds of the desperation forced on him by desperate circumstances. But, in my judgment, that cannot justify his duplicity. I acknowledge that there were glittering prizes on offer, although I have some doubt as to how achievable they actually were. I fear that the Claimant was also infected by it. She was, I find, unrealistic for a long period of time.

87. I accept Mr Buttimore's submission that Mr Laverick's evidence needs to be scrutinised with care. He clearly did not give much advice in Costa Coffee in Worthing and he recorded as much in his notes yet he was prepared to say shortly afterwards that he had done so in correspondence. The extent to which he examined the driving licence with care therefore must be open to question.

88. There were a number of curious features about the account given by the third Defendant and his wife about events that day. The Claimant had undergone a routine medical investigation (a colposcopy) of a kind undergone by many hundreds, if not thousands, of women annually. She may have had some form of local anaesthetic but she says that she had recovered quickly and was able to drive. I accept that evidence. This makes the account of her being unable to drive and wearing a "*pressure suit*" bizarre. Moreover, the account of her being frightened by dogs is also odd, given that she is a dog owner, which I also accept. Like others, I accept that Ms Lawla-Huntley seemed a straightforward witness. On the other hand, there was nothing

untoward about the evidence given by the twin daughters of the third Defendant. Each of these respective accounts has been attacked on a broadly similar basis, namely that of confusion of time and place and broadly speaking I accept that one must be wrong but I have much greater difficulty in saying which is wrong.

89. I do not, however, accept the Claimant's evidence that the third Defendant admitted in a telephone conversation that he had behaved fraudulently in relation to the execution of the loan agreement and the Legal Charge. In reaching that conclusion I take account of the fact that the statement he made in May 2016 to the first and second Defendants about his knowledge as to the Legal Charge can only be accounted for by his desire to "*run with the fox and hunt with the hounds*" in attempting to support the Claimant's position that she did not know about the Legal Charge. I admire the way in which the first and second Defendant have stood by the third Defendant but it seems to me that in this period he was clearly not being truthful with them. Moreover, to my mind it cannot have been clearer that the first Defendant intended to register the charge.

90. I agree it is odd that the Claimant neither took the counterpart documents away with her nor asked for copies later. Nevertheless, despite Mr Buttimore's persuasive advocacy, I am perturbed by two aspects of the Claimant's account. Firstly, it seems to me that her email of 17 August 2014 (see above at paragraph 32 of this judgment) was not the outright rejection in principle of a charge against the Property, which I would have expected had she definitely decided against it at that stage. I accept that the interest rate was not attractive to her, although I find it difficult to accept that it was ever a serious suggestion that a loan might be available from a banking institution. Given her experience in financial investment this seems to me to have been fanciful having regard to her means, the means of the third Defendant and the creditworthiness of any of the companies. What I find particularly telling is that in this email she does propose a mechanism for removing the charge.

91. Secondly, I am surprised that the Whats App messages do not state clearly the Claimant's astonishment at finding that there was any charge at all. Mr Buttimore submitted that she does refer to the fact that there should not be a charge at all. But amongst a torrent of accusations, entirely justifiable, about the conduct and honesty of the third Defendant there is nothing that asks how it comes about that there is a charge against her property or that asserts

then , what she asserted in July 2016, namely that the only explanation must be that he had forged the documents.?

92. In the end I am left in the position of the Claimant saying she was not the person who signed the documents at Costa Coffee in Worthing and the third Defendant, his wife and children saying that she had been In Worthing that day and the third Defendant and his wife saying that she had signed the document. Plainly somebody did sign it, unless the whole of Mr Laverick's evidence is a fabrication, which whatever my reservations about the care he took, is a finding I am not prepared to make. If that person was not the Claimant than it was somebody able to forge her signature. According to Mr Radley this is not a difficult signature to forge but his expert evidence is inconclusive and I do not derive any assistance in reaching a conclusion from the appearance of dots on some of the documents. I accept the submission of Mr Meares that this was a bold impersonation, if it occurred. There are some odd features about the accounts but to my mind none of them compel a conclusion one way or the other.

93. I think it is possible that the Claimant was impersonated. I think it is just as possible that she was in attendance. Mr Meares argued that I must reach a conclusion but I am afraid I regarded it as impossible to do so. The outcome is the unhappy one that the Claimant has not proved on a balance of probabilities that she did not sign the documents. She may not have done but there is other evidence that cannot be completely discounted to suggest that she did. In those circumstances I cannot make the declarations she seeks and I will not direct any alteration to the Register.